THE BOARD OF HEALTH FOR THE TOWNSHIP OF SALTFLEET (*Respondent*) ..... APPELLANT;

1956

*June 13
*Oct. 2

AND

GEORGE KNAPMAN (*Applicant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Public health—Powers, duties and responsibilities of local boards of health—Requiring abandonment of unfit premises—"Due examination" —Duty to act judicially—Hearing interested persons—The Public Health Act, R.S.O. 1950, c. 306, sched. B, s. 7.

Certiorari—Effect of statutory restriction—Ineffectiveness of privative section where natural justice denied by inferior tribunal—The Public Health Act, R.S.O. 1950, c. 306, s. 143.

The power of a local board of health, under s. 7 of the statutory by-law under the Ontario *Public Health Act,* to order premises vacated, and if necessary to eject the occupants forcibly, is predicated upon the board's being "satisfied upon due examination" that the premises are either (i) unfit for the purpose of a dwelling or (ii) a nuisance, or (iii) in some way dangerous or injurious to the health of the occupants or of the public. In deciding whether or not one of these conditions exist, and to answer the allegation. If the board, instead of doing of the premises in question, or other persons whose rights may be affected, an opportunity to know which of the causes is alleged to exist, and to answer the allegation. If the board, instead of doing this, refuses to listen to those whose rights may be vitally affected, its action may be reviewed by the Court on *certiorari,* notwithstanding s. 143 of the Act.

APPEAL from the judgment of the Court of Appeal for Ontario (1), affirming the judgment of Gale J. (2).

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H. F. Parkinson, Q.C., and *J. R. McCallum*, for the appellant (respondent in the Court below).

C. L. Dubin, Q.C., and *S. Paikin*, for the respondent (applicant in the Court below).

THE CHIEF JUSTICE:—For the reasons given by Gale J. (2) this appeal should be dismissed with costs.

The judgment of Taschereau, Locke, Cartwright and Abbott JJ. was delivered by

CARTWRIGHT J.:—This is an appeal brought pursuant to special leave granted by this Court, from a judgment of the Court of Appeal for Ontario (1) affirming a judgment of Gale J. (2) ordering that certain resolutions passed by the appellant be removed into the Supreme Court of Ontario by way of *certiorari*.

The relevant facts are fully set out in the reasons for judgment of Gale J., with which I am in substantial agreement, and a brief summary of such facts will be sufficient for the purpose of indicating the reasons for the conclusion at which I have arrived.

The resolutions in question were passed at a meeting held at 7 p.m. on July 29, 1953; they provided (i) that written notice be delivered to the occupants of a number of dwellings owned by the respondent requiring them to vacate the same within 14 days, and (ii) that any occupants who had not vacated the buildings at the expiration of the time stated in the notice should be forcibly evicted.

The proceedings before the appellant board were initiated by the medical officer of health and the sanitary inspector for the Township of Saltfleet who had inspected some of the buildings on the day on which the resolutions were passed. The respondent and several of the occupants had learned that the meeting had been convened to consider action such as was taken and attended to ascertain the nature of the complaints and to make submissions in answer to any adverse allegations as to the condition of the buildings. They were informed by members of the appellant board that the meeting was private and were denied any hearing.

(1) [1955] O.W.N. 615, [1955] 3 D.L.R. 248.

(2) [1954] O.R. 360, [1954] 3 D.L.R. 760.

It was argued for the appellant that its action was the exercise of an administrative authority and not of a judicial or quasi-judicial function.

The appellant in passing the resolutions in question purported to act under s. 7 of the statutory by-law set out in sched. B to *The Public Health Act,* R.S.O. 1950, c. 306, which reads as follows:—

7. If the local board is satisfied upon due examination that a cellar, room, tenement or building within the municipality, occupied as a dwelling place, has become by reason of the number of occupants, want of cleanliness, the existence therein of a communicable disease, or other cause, unfit for such purpose, or that it has become a nuisance, or in any way dangerous or injurious to the health of the occupants, or of the public, the board may give notice in writing to such occupants, or any of them, requiring the premises to be put in proper sanitary condition, or requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, every person so offending shall be liable to the penalties mentioned in section 35 of this by-law and the board may cause the premises to be properly cleansed at the expense of the owners or occupants or may remove the occupants forcibly and close up the premises, and the same shall not again be occupied as a dwelling place until put into proper sanitary condition.

It will be observed that it is a condition precedent to the exercise by the board of the power to require the occupants of a building to quit it and to remove them by force if they fail to do so that it shall be satisfied upon due examination that such building has become either (i) unfit for the purpose of a dwelling, or (ii) a nuisance, or (iii) in some way dangerous or injurious to the health of the occupants or of the public. I agree with Gale J. that in deciding whether or not such condition exists a duty to act judicially rests upon the board. It would, I think, require the plainest words to enable us to impute to the Legislature the intention to confer upon the local board the power to forcibly eject the occupants of a building for certain specified causes without giving such occupants an opportunity to know which of such causes was alleged to exist or to make answer to the allegation; and I find no such words in the statute or the schedule.

Once it has been decided that the board was under a duty to act judicially it is clear, for the reasons given by Gale J., that, the appellant having refused to listen to those whose

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rights would be vitally affected by the orders it proposed to make, s. 143 of *The Public Health Act* does not deprive the Court of jurisdiction to proceed by way of *certiorari*.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the applicant, respondent: White, Paikin & Robson, Hamilton.

Solicitors for the respondent, appellant: Robinson, McCallum & McKerracher, Hamilton.

*PRESENT: Taschereau, Rand, Locke, Cartwright and Nolan JJ.