

HON. MR. JUSTICE LENNOX.

APRIL 2ND, 1913.

WARREN v. WHITBY.

4 O. W. N. 1029.

Municipal Corporation—By-law Appointing Medical Officer of Health—Motion to Quash—Public Health Act, 1912—Right of Council to Dismiss Applicant—Municipal Act, s. 320.

LENNOX, J., dismissed a motion to quash the by-law of a town appointing a Medical Officer of Health made by the former occupant of the office, holding that as the applicant was not appointed under the Public Health Act of 1912, he was dismissable at the will of the Council.

Motion by Frank Warren, a physician and surgeon, to quash By-law No. 832 of town of Whitby, appointing one McGillivray Medical Officer of Health for the town.

E. N. Armour, for the applicant.

J. E. Farewell, K.C., for the respondent municipality.

HON. MR. JUSTICE LENNOX:—Upon the merits this is not a matter inviting judicial action. It does not appear that the appointment made was not a good appointment, or that the council acted in haste, in bad faith, or contrary to the public interest. It is not suggested that the people of Whitby are behind Dr. Warren in his attempt to veto the action of their municipal council.

He is acting solely in his own interest, and for his individual satisfaction or gain.

It could not be pretended that he was harshly treated; for his appointment, as he knew from undeviating practice, terminated at latest in January, 1913; and meantime, under the statute then in force, his tenure of office was always at the will of the council; his engagement was a temporary one, revocable at any time without forfeiture by the municipality and without the obligation of assigning cause.

The Public Health Act of 1912, amongst other things, inaugurates an essentially new policy as regards local medical officers of health. Their qualifications were not defined under the old Act; they are defined now. There might be such an officer under the old Act; there must be such an officer under the new one. If appointed by the council his tenure of office was formerly at the will of the council; but under the Act of 1912, an appointee continues in office dur-