

MIDDLETON, J.

JANUARY 24TH, 1912.

VERNER v. CITY OF TORONTO.

Municipal Corporation—Purchase of Land outside of Municipal Limits—Erection of Isolation Hospital—Refusal by outside Municipality to Consent to—Powers of Council—Acquisition and Resale—Action by Ratepayer to Rescind Purchase—Status of Plaintiff—"Use of the Corporation"—Purpose of Holding—Right to Inquire into—Crown.

Action by John Verner, on behalf of himself and all other ratepayers of the City of Toronto, against the Corporation of the City of Toronto and one Thompson, for a declaration that the defendant corporation were not legally empowered to purchase certain land in the Township of York, alleged to have been purchased for the purpose of erecting an isolation hospital thereon, and to set aside the conveyance from the defendant Thompson to the defendant corporation, and to restrain the defendant corporation from expending any money on or taking any steps towards the purchase of the land or the erection of the hospital thereon.

W. C. Chisholm, K.C., for the plaintiff.

H. L. Drayton, K.C., for the defendant corporation.

C. A. Moss, for the defendant Thompson.

MIDDLETON, J.:—I am content to accept the statement in Dillon, 5th ed., par. 990: "Whether a municipal corporation, with power to purchase and hold real estate for certain purposes, has acquired and is holding such property for other purposes, is a question which can only be determined in a proceeding at the instance of the State."

The municipality has the power to purchase and hold lands for the use of the corporation (Municipal Act, 1903, sec. 534), and has, for certain purposes, the further right to expropriate lands both within and outside the municipal limits.

Under sec. 104 of the Public Health Act, this hospital cannot be established without the consent of the Township of York. This consent was not asked at the date of the purchase, and, when asked, has been refused, or, perhaps it should be said more accurately, was not given.

It is argued that, this being the object of the purchase, the consent should have been obtained before the land was purchased. The statute does not so provide. All that it aims at is