

Boyd, C.]

[May 27.

OTTAWA BOARD OF PARK MANAGEMENT *v.* CITY OF OTTAWA.

Public health—Local Board of Health—Expropriation of land for hospital—Public park—Provincial Board of Health—Order in Council.

Motion by the plaintiffs for an interim injunction restraining the defendants from using for purposes other than park purposes the land or any part thereof situate in the city of Ottawa, comprising about 17 1/3 acres, known as "The Rifle Range," and acquired by the plaintiffs for park purposes under the Public Parks Act, R.S.O. c. 233; and restraining the defendants from interfering with the plaintiffs in the management, regulation, and control of such park land; and restraining the defendants from applying permanently such land or any portion thereof for the purpose of erecting thereon a contagious diseases hospital.

Sec. 104 of the Public Health Act, R.S.O. c. 248, provides for the erection and maintenance of contagious diseases hospitals by a municipality. Sec. 106 provides for a temporary hospital in case of emergency. There is no provision in the Act for the expropriation of land to be used in perpetuity (as was claimed by the notice given under the Act). The outlay contemplated was \$40,000, which indicated that the building was to be one under s. 104, and not under s. 106.

Held, that, under the restricted powers given to the local board of health, they were seeking to deprive the plaintiffs permanently of property legally set apart for the purposes of a public park; that the actual or virtual expropriation of the land for the use of a hospital in perpetuity, or during the existence of the substantial building contracted for, is not within the powers conferred by the Public Health Act on the local board; and that this radical infirmity attaching to the local board is not overcome by the sanction of the Provincial Board of Health or of an Order in Council. Injunction granted till the trial or further order.

W. Wyld, for plaintiffs. *T. McVeity*, for defendants.

Boyd, C.]

IN RE MCINTYRE.

[May 27.

Wills—Annuities—Purchase of—Assets of estate—Distribution.

Motion by David McIntyre under Rule 938 for directions to the executors of the will of Hugh McIntyre as to the distribution of the estate among the residuary legatees and as to the providing for the payment of annuities bequeathed by the will.

Aylesworth, K.C., for the motion. *Shepley*, K.C., *Folinsbee*, and *T. Urquhart*, for the other parties.

Boyd, C.—I think the parties interested in the residue are entitled to have sums set apart to answer the annuities from time to time, as sufficient