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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 6TH, 1920.

*RE PROVINCIAL BOARD OF HEALTH FOR ONTARIO
AND CITY OF TORONTO.

Public Health—Compulsory Vaccination—Vaccination Act, R.S.O. 1914 ch. 219, sec. 12—City Council Notified by Provincial Board of Health to Order Vaccination of Citizens—Failure of Council so to Order—Motion by Board for Mandamus to Council—Discretion of Council—Discretion of Court—Status of Board—Corporation—Legal Entity—Parties—Public Health Act, R.S.O. 1914 ch. 218, secs. 6, 7, 83 (2).

An appeal by the Provincial Board of Health from the order of SUTHERLAND, J., in Chambers, ante 304.

The appeal was heard by RIDDELL, LATCHFORD, MIDDLETON, and LENNOX, JJ.

H. M. Mowat, K.C., for the appellants.

G. R. Geary, K.C., and C. M. Colquhoun, for the city corporation and council, respondents.

RIDDELL, J., read a judgment in which he said that the fact that smallpox existed in the city of Toronto alone made it the duty of the council of the municipality to make an order under sec. 12 of the Vaccination Act, R.S.O. 1914 ch. 219. The council is not given a discretion.

There can be no doubt of the power of the Court to grant a mandamus requiring the council to do its statutory duty. The Court has a discretion, but will not as a rule overlook the breach of a plainly imperative duty imposed by the Legislature.

Reference to *Rex v. Bishop of Sarum*, [1916] 1 K.B. 466; *Rex v. Lords Commissioners of His Majesty's Treasury*, [1909] 2 K.B. 183.

* This case and all others so marked to be reported in the Ontario Law Reports.