Legal Department

J. M. GLENN, K.C., LL.B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Bissonnette vs. Municipality of Stirling, et al.

In the Fifth Division Court of the County of Hastings, the judgment of the County Judge is as follows: This action is brought by the plaintiff, who is a practising physician in the village of Stirling, to recover for professional services rendered the Acker family, who were afflicted with typhoid fever during the months of June and July, 1901. The plaintiff seeks to recover first from the corporation of Stirling, and failing that, then against the defendants, Jesse Barlow and Joseph Doak, two of the members of the Board of Health for the village, on their personal promises "to see him paid."

The plaintiff states in his evidence that he notified the clerk of the municipality of the sickness in the Acker family; that a meeting of the Board of Health was called at which he attended. He told them at the meeting that he was their family physician, but could not attend them without pay. That it was intimated to him that he was to go and attend the family and he would be paid.

Now, the law in these cases is very plain. In all municipalities a Board of Health is constituted and a medical health officer is appointed to look after just such cases as we have in hand. In fact, during the year in which these services were rendered, Dr. Sprague was appointed health officer for the village.

It appears that after the clerk was made aware of the state of affairs in the Acker family by the plaintiff, a meeting of the Board of Health was called and was attended by the plaintiff, the reeve, the clerk, the medical health officer and Mr. Barlow, Mr. Doak, I believe, not attending. The family being poor, it was decided to appoint the husband and father (who was a laboring man) to nurse the family at the sum of one dollar per day, which sum, I believe, was paid. But, as it appears from the evidence, no action was taken to appoint a physician.

Now, the plaintiff not being medical health officer, a clear contract of hiring or engagement must be shown in order to maintain an action for services such as these. Has such a hiring or engagement been shown either expressly or by implication? The plaintiff has failed to prove that he was engaged by Board of Health.

But he sues Jesse Barlow and Joseph Doak upon their personal promises to see him paid.

Mr. Barlow states in his evidence as follows, viz.: "He (the plaintiff) stated that he would attend the family, as he was their doctor. I never gave him authority to do so. We had several conversations. I never told him he would be paid." In cross-examination Mr. Barlow states: "The plaintiff never told me he expected pay from the Board of Health. The doctor never said anything about pay."

Mr. Doak states in his evidence: "I did not attend the meeting of the Board of Health I heard that the Acker family were sick. I never promised to pay the doctor." In cross-examination he states: "The doctor came to me to see if he could take some action on his account. I think it was after the people recovered, after he had done the work. I saw him once on the street and twice at my house."

On the evidence I cannot find th defendants liable for the account sued on. The family is very poor; they were all down, one after another, with typhoid fever, an infectious disease. The poor we have with us always, and when in distress, those of us who are able must assist them; if not, then we are inhuman. The law makes it obligatory for the municipality to take care of the poor within the bounds of the municipality. It seems to me that the medical health officer was well and satisfactorily rid of attending these people. The plaintiff did so, and so successfully that the disease did not spread to any other part of the village. Morally, and in all fairness, he should be paid something. He, however, did not take the proper steps in the beginning, and this court is therefore unable to assist him.

The action will, therefore, be dismissed, but without costs.

Attorney-General v. City of Toronto.

Judgment in action and information with respect to the Island Park, tried at Toronto without a jury. The Chancellor is not able to see his way clearly to order an injunction as sought by plaintiffs. A by-law was passed in November, 1880, No. 1,028, purporting to establish a park on the Island, and certain lots were designated therein, including those now in question, and it was enacted that these, "together with such other lands as may hereafter be obtained from lessees or otherwise, shall be set aside, devoted to and form a park." Other lands were afterwards by by-law in May, 1887, and November, 1887, directed to be taken and expropriated in order to enlarge the Island Park. Yet the action of the city authorities was contemporaneously and for years at variance with the conclusion that these lots now in question were regarded or treated as actually forming parts of an existing park. A special committee was appointed in 1901, called the Island Committee, who are elaborating a plan of park improvement, which will for the first time supply a definite policy to work upon from year to year. The city has treated the leases existing at the date of the first by-law in November, 1880, though then liable to forfeiture, as existing and valid leases, under which rent has been paid on the whole lots down to 1883 or 1884, or perhaps later, and after that on parts of the lots on which buildings or improvements have been made, down to 1895, if not to the present time. Taxes have also been levied upon these lots during the terms of the leases, and have been paid to the city as an annual charge. Some fifty houses or structures, including a church building, have been erected upon the lots in question since 1880 till the present time. Plans have also been made, with the sanction of the city, and registered, of certain of the lots, on which streets are laid out, with reference to which trees have been planted and houses built. The term used in intituling the by-law to "establish" a park, does not denote the idea of permanency or unchangeableness. It indicates that much would be required in the particular locality to be done before the park could take a fixed form and definite area. As said by the court in Osborne v. S. D. Co., 178 U. S. 38, it is manifest that to construe the word "establish" to mean to fix unalterably, would throw the powers of the board into confusion and contradiction. See also Dundee v. Morris, 3 Macq. 166. The defendants acted in the belief that there was power to deal with the land designated as park land by leasing it, imposing and collecting rents and taxes, approving of the laying out of new streets on registered plans, and otherwise exercising the control of owners, though some regard for the enjoyment and benefit of the public has been always kept in view. The park scheme has not been abandoned, but the details and the area of its occupation on the Island have been modified from time to time by successive councils. If the city has the power to exercise such control, it is not for the court to interfere, nor can the wishes of the residents on the Island control the situation as against the legislative and dedicating powers of the corporation. In the absence of any distinct authority the conclusion is that the city has not exceeded its corporate or legislative powers in dealing as has been done with this Island Park. The doctrine of irrevocable dedication is not applicable to the case of a park which is established by by-law out of land belonging to the corporation as owners in fee simple. Having enacted a by-law to establish a park, the same body, or its successors, may repeal, alter or amend as it deems proper, so long as no vested right is disturbed: R. S. O. ch. 1, sec. 8 (37); ch. 223, sec. 326. Attorney-General v. Toronto, 10 Gr. 339, referred to. The joint information and action fail, and should be dismissed, but as the motives of the relators and plaintiff are commendable, no costs if this ends the litigation. Should an appeal be lodged, costs should be paid by the Attorney-General as proof of good faith in prolonging controversy.