

The council having failed to comply with the notice, the motion was launched.

The applicants were, under the Public Health Act, R.S.O. 1914 ch. 218, sec. 3 (1), constituted a Provincial Board of Health for the Province of Ontario, and clothed therein with powers of investigation, inquiry, and inspection with reference to disease and public health.

By sec. 15 of that Act every local board is created a corporation; and, by sec. 83, it is expressly declared (1) that "no determination or order of the Provincial Board or of a local board for the removal or abatement of a nuisance shall be enforced except by the order of a Judge of the Supreme Court where such removal or abatement involves the loss or destruction of property to the value of \$2,000 or upwards," and (2) that "the order may be made upon the application of the Provincial Board or of the local board."

It was argued that the maxim *expressio unius est exclusio alterius* should be applied in the construction of this statute. Reference to *Blackburn v. Flavelle* (1881), 6 App. Cas. 628, 634; *Graham v. Commissioners for Queen Victoria Niagara Falls Park* (1898), 20 O.R. 1; *Re City of Ottawa and Provincial Board of Health* (1914), 33 O.L.R. 1.

The learned Judge was of opinion that the Provincial Board had no status or power to apply to this Court for the order of mandamus, and that the order could not be made with only the present parties before the Court. Such an order might be obtained at the instance of the Crown, and it might be made upon the present application were the Crown to consent to be added as an applicant. It was possible also that on an application by a ratepayer of the city such an order might be made, or that, if one were to consent to become an applicant, such order might be made upon this motion. In the latter case further argument would be necessary.

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ROSE, J.

DECEMBER 24th, 1919.

### PATON v. FILLION.

*Vendor and Purchaser—Agreement for Sale of Land—Default Made by Purchaser in Payment of Price—Action for Declaration of Instalments Paid and Property Transferred in Part Payment—Counterclaim—Misrepresentations Made by Vendor—Fraud—Relief from Forfeiture—Terms—Agreement as to Proceeds of Sale of Trees Cut by Purchaser on Land—Costs—Reference—Remedies—Damages—Set-off—Waiver.*

Action for a declaration that, by non-payment of two instalments of the purchase-money, the defendant had forfeited all his