

1890 ARTHUR W. GODSON (PLAINTIFF)..... APPELLANT ;

\*Jan. 27, 28.

AND

\*Nov. 10.

THE CORPORATION ON THE CITY }  
 OF TORONTO AND JOSEPH E. } RESPONDENTS.  
 McDougall (DEFENDANTS)..... }

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Prohibition—Restraining inquiry ordered by city council—R.S.O. (1887)  
 c. 184 s. 477—Functions of county court judge.*

The council of the City of Toronto, under the provisions of R. S. O. (1887) c. 184 s. 477, passed a resolution directing a county court judge to inquire into dealings between the city and persons who were or had been contractors for civic works and ascertain if the city had been defrauded out of public monies in connection with such contracts ; to inquire into the whole system of tendering, awarding, carrying out, fulfilling and inspecting contracts with the city ; and to ascertain in what respect, if any, the system of the business of the city in that respect was defective. G. who had been a contractor with the city and whose name was mentioned in the resolution, attended before the judge and claimed that the inquiry as to his contracts should proceed only on specific charges of malfeasance or misconduct, and the judge refusing to order such charges to be formulated he applied for a writ of prohibition.

*Held*, affirming the judgment of the Court of Appeal for Ontario, Gwynne J. dissenting, that the county court judge was not acting judicially in holding this inquiry ; that he was in no sense a court and had no power to pronounce judgment imposing any legal duty or obligation on any person ; and he was not, therefore, subject to control by writ of prohibition from a superior court.

*Held*, per Gwynne J. that the writ of prohibition would lie and in the circumstances shown it ought to issue.

APPEAL from a decision of the Court of Appeal for Ontario (1) reversing the judgment of Mr. Justice Robertson (2), who ordered a writ of prohibition to is-

PRESENT.—Sir W. J. Ritchie C.J. and Fournier, Taschereau, Gwynne and Patterson JJ.

(1) 16 Ont. App. R. 452

(2) 16 O.R. 275.

sue to restrain the judge of the county court of the county of York from proceeding with an inquiry against the plaintiff.

The Municipal Corporations Act (1), provides by sec. 477, as follows :

“ In case the council of any municipality at any time passes a resolution requesting the judge of the county court of the county in which the municipality is situate, to investigate any matter to be mentioned in the resolution and relating to a supposed malfeasance, breach of trust, or other misconduct on the part of any member of the council or officer of the corporation, or of any person having a contract therewith in relation to the duties or obligations of the member, officer, or other person to the municipality, or in case the council of any municipality sees fit to cause inquiry to made into or concerning any matter connected with the good government of the municipality or the conduct of any part of the public business thereof; and if the council at any time passes a resolution requesting the judge to make the inquiry, the judge shall inquire into the same, and shall for that purpose have all the powers which may be conferred upon commissioners under the act respecting inquiries concerning public matters; and the judge shall, with all convenient speed, report to the council the result of the inquiry, and the evidence taken thereon.”

Under this provision, the council of the city of Toronto passed resolutions reciting that one Lackie, an officer of the corporation, had been guilty of malfeasance and breach of trust in his position of inspector of materials furnished for work done for the city by contractors, and specifying instances of such malfeasance, one of them being that the plaintiff had been allowed to furnish material inferior to that called for by his

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

(1) R. S. O. (1887), ch. 184.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

contract, and the county court judge was directed to make an inquiry with a view of ascertaining the truth of the allegations against Lackie, and also :

“ 2. To investigate and inquire into every matter and thing connected in any manner with the past or present relations which may have existed or do exist between the city of Toronto, contractors and officials, and other persons who are or who have been connected with this corporation, and which relations might or may tend to unduly influence the action of the said officials and persons in favor of said contractors when dealing with them on behalf of the city.”

“ 3. To investigate and inquire into and ascertain whether contractors or other persons wrongfully obtained from the city of Toronto payment of moneys by deception, fraud or other unlawful means, and if so, who are the parties, and to what amount were such moneys obtained unlawfully.”

“ 4. To investigate and inquire into the whole system of tendering, awarding, carrying out, fulfilling and inspecting contracts made with the city of Toronto, and to ascertain whether the present system and conduct of that part of the public business has been or is defective, and that the said county judge do report to this council on as early a day as possible the result of the inquiry into the matters and things referred, and the evidence taken therein.”

The judge proceeded to hold an inquiry as directed by these resolutions, and notice was given to plaintiff that certain contracts in which he had been interested would be taken up and investigated on a day named. The plaintiff and his counsel attended the inquiry in pursuance of this notice and claimed that specific charges of misconduct should be formulated which the judge refused to direct.

Eventually the plaintiff, on being informed that the

judge intended to proceed to Chicago and take evidence of a witness there who had formerly been in plaintiff's employ, applied to Mr. Justice Robertson for a writ of prohibition to restrain from further prosecuting the inquiry otherwise than as to the acts and conduct of Lackie, the officer of the corporation named in the resolution. Mr. Justice Robertson granted the writ (1), but his decision granting it was afterwards reversed by the Court of Appeal (2). From the judgment of the latter court the plaintiff appealed to the Supreme Court of Canada.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

*McCarthy* Q.C. and *T. P. Gall* for appellant. As to prohibition generally see *Rex v. Justices of Dorset* (3); *Bishop of Chichester v. Harward* (4); Bacon's Abr. (5); Comyn's Dig. (6).

As to the powers exercised by the county court judge, see *The State v. Young* (7); *Chabot v. Lord Morpeth* (8); *Reg. v. Hastings Local Board* (9).

Prohibition will lie against other than courts. *Reg. v. Herford* (10); *South Eastern Railway Company v. Railway Commissioners* (11); *Reg. v. Local Government Board* (12); *Gould v. Capper* (13); *Macknochie v. Lord Penzance* (14).

*Biggar* Q. C. for the respondent the City of Tronto and *Aylesworth* Q. C. for the respondent McDogall referred to *Cuté v. Morgan* (15); *Rex. v. Justices of Dorset* (16); *Poulin v. Corporation of Quebec* (17); *Molson v. Lamb* (18).

Sir W. J. RITCHIE C.J.—I am clearly of opinion that

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| (1) 16 O.R. 275.         | (10) 3 E. & E. 115.      |
| (2) 16 Ont. App. R. 452. | (11) 6 Q.B.D. 586.       |
| (3) 15 East 598.         | (12) 10 Q. B. D. 320.    |
| (4) 1 T. R. 650.         | (13) 5 East 366.         |
| (5) Title Prohibition.   | (14) 6 App. Cas. 459.    |
| (6) Prohibition A 1.     | (15) 7 Can. S.C.R. 1.    |
| (7) 29 Minn. 474.        | (16) 15 East 589.        |
| (8) 15 Q.B. 446.         | (17) 9 Can. S.C.R. 185.  |
| (9) 6 B. & S. 401.       | (18) 15 Can. S.C.R. 253. |

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Ritchie J.C.

the judgment of the Court of Appeal, in reversing the judgment of Mr. Justice Robertson who had granted a writ of prohibition in this case, was right and should not be disturbed. The proceeding before the county court judge was, in my opinion, in no sense a judicial proceeding. The city was empowered by law to issue the commission to the county judge to make the inquiries directed in this case. The object of such inquiry was simply to obtain information for the council as to their members, officers and contractors, and to report the result of the inquiry to the council with the evidence taken, and upon which the council might in their discretion, if they should deem it necessary, take action. The county judge was in no way acting judicially ; he was in no sense a court ; he had no powers conferred on him of pronouncing any judgment, decree or order imposing any legal duty or obligation whatever on the applicant for this writ, nor upon any other individual. The proceeding for prohibition in this case was, therefore, wholly unwarranted, and the appeal should be dismissed with costs.

FOURNIER and TASCHEREAU JJ. concurred.

GWYNNE J.—By sec. 477 of the Municipal Act, ch. 184, of the Revised Statutes of Ontario, it is enacted that (1)

Now, the powers thus imported into the above act from the act respecting inquiries concerning public matters, ch. 17 R. S. O., are :

The power of summoning before the judge any party or witnesses, and of requiring them to give evidence on oath, orally or in writing, or on solemn affirmation if they be parties entitled to affirm in civil matters, and to produce such documents and things as the judge shall deem requisite to the full investigation of the matters referred to him to inquire into ; and the same power to enforce the attendance of witnesses, and to compel them to give evidence and produce documents

(1) See p. 37.

and things as is vested in any court in civil cases; but no party or witness shall be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

Now, it is to be observed that the person authorized to make whatever inquiry is authorized is designated in his official character only as "the judge of the county court of the county in which the municipality is situate," and the subjects which he is, by the statute, authorized in this very exceptionable manner to inquire into, and the powers which are vested in him in relation to such matters, are, as it seems to me, twofold; the first affecting the persons whose conduct is to be inquired into, and the second affecting the system, practice, or procedure in use in the conduct of the affairs of the municipality, with a view to the improvement of such system, practice or procedure, if necessary, for the good government of the municipality. It is with the first of these alone, namely, the powers vested in the corporation and the judge as affecting persons, that we are concerned in the present case. With reference to the persons affected by the act the resolution which the council is authorized to pass in order to put in motion against them the functions by the act vested in the judge is a resolution requesting him to investigate some matter to be mentioned in the resolution of the nature of malfeasance, breach of trust, or other misconduct supposed to have been committed either by a member of the council, or by some officer of the corporation, or by some person having a contract with the corporation. Legislation of this nature, so open to abuse as, in view of the matters in contestation here, and of the construction put upon it on behalf of the respondents, it appears to me to be, should, in my judgment, be so construed as to confine the powers proposed to be conferred by the act within the strictest construction of its letter.

1890

GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

Gwynne J.

Now, in order to give to the judge any jurisdiction to exercise any of the powers vested in him by the act the resolution of the council must, as it appears to me, specify some act, matter or thing, either in the nature of malfeasance, breach of trust, or other named misconduct, which is charged as supposed to have been committed by some named member of council, or officer of the corporation, or person having a contract with the corporation. A resolution, for example, requesting the judge to inquire whether any malfeasance, breach of trust or other misconduct had been committed by any member of council or officer of the corporation, or any person having a contract with the corporation, would be absolutely void, and under such a resolution the judge would not become vested with any jurisdiction over any person under the act. To call into action the functions vested in the judge by the act some specific matter, act or thing of the nature of malfeasance, breach of trust, or other misconduct must, in my judgment, be mentioned in the resolution as being alleged as supposed to have been committed by some named member of council, officer of the corporation, or person having a contract with the corporation, and no other person is affected by the resolution, nor is any of the above persons, except as to such matters as are specifically stated in the resolution as being supposed to have been committed by some or one of the persons named in the resolution as and being either a member of the council, an officer of the corporation, or person having a contract with the corporation. The act does not, in my opinion, authorize any inquiry in this extraordinarily exceptionable manner into the conduct of a person who had been, but no longer was at the time of the resolution being passed, a member of the council or officer of the corporation, or into the conduct of any person who may have had, but no longer had

when the resolution invoking the judge's jurisdiction was passed, any contract with the corporation, nor into the conduct of any person, although having then a contract with the corporation, in relation to a contract which such person previously had had, but which was then finally determined. It was not the object of the act, in my opinion, that this exceptionable jurisdiction should be invoked for the purpose of inquiry into the conduct of persons having had contracts with the corporation which were completed and finally settled, it may be for years ; for if the jurisdiction extends to affect a contract which had been closed and determined six months previously, it might equally be invoked in relation to the conduct of a person who had had a contract with the corporation which had been closed five or ten years previously to the passing of the resolution of council, to put in action the jurisdiction of the judge.

Then, again, in order to exercise such jurisdiction as is vested in the judge by the act he is empowered to summon before him any party and witnesses, and to require them to give evidence on oath or affirmation, and to produce such documents as the judge shall deem necessary for the full investigation of the matters referred to him ; and for that purpose, all the powers vested in any court in civil cases are vested in him, including committal for contempt, for disobedience of the summons or subpoena issued by the judge,

but no party or witness shall be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution.

The word "party," as twice used in the above sentence as applied to sec. 477 of ch. 184 R.S.O., plainly means, in my opinion, the member of council, officer of the corporation, or person having a contract with the corporation, who is charged with having committed some

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gywnne J.

malfeasance, breach of trust or misconduct "in relation to some duty or obligation," due by such party to the municipality, and whose conduct in breach of such duty or obligation is to be inquired into. The power thus vested in the judge of summoning any party before him is one which, in my opinion, it is imperative upon him to exercise before he can acquire any jurisdiction to inquire into the charge or complaint against such person referred to the judge to be inquired into, because it is contrary to the principles of natural justice, and to the course pursued "by any court in civil cases," that any person should be subjected against his will to any jurisdiction in any person to inquire into his conduct in respect of any matter, and to have evidence taken against him, unless he should be given notice of the particular nature of the charge or complaint made against him, and which he has to meet, and of the time and place of the taking of the evidence against him in relation thereto. As the statute vests in the judge the same powers as are vested "in any court in civil cases," it must be intended that these powers shall be exercised in the same manner as those powers are exercised by all courts of justice in civil cases.

Then upon the evidence given upon oath after due inquiry made the "judge" is required to report to the council the result of the inquiry, and the evidence taken thereon. Now, what possible meaning can be attached to these words, "the result of the inquiry," unless it be the opinion or judgment formed by the "judge" as to the just and legal conclusion from the evidence, which the "judge," as a person qualified by his judicial mind to give, is to report to the council, namely, whether the malfeasance, breach of trust, or other misconduct charged against the person whose conduct in relation to some duty or obligation owed by

him to the municipality has been inquired into by the "judge," has or has not been established by the evidence; in other words, whether the party accused was or was not in the opinion and judgment of the "judge," proved to have been guilty of the malfeasance, breach of trust or other misconduct whereof he was accused? If he was, although true it is that the judge was not empowered to inflict any punishment as consequential upon the opinion or judgment which he had formed as to the guilt of the accused, still the corporation, upon whose behalf the inquiry was made, had such power, as for example, by removal from office of an officer of the corporation, if the accused was an officer of the corporation, or by disqualifying a person having a contract with the corporation, if such a person was the accused, from having any other contract with the corporation. So that although the judge was not himself empowered to inflict any punishment upon the accused as a consequence of his being, in his opinion and judgment, guilty of the malfeasance, breach of trust or misconduct charged, still, as the result of the conclusion so arrived at by the judge, the accused would be subjected to serious consequences affecting his reputation and his business, and to injuries of a pecuniary nature which the corporation might inflict as the result of the opinion and judgment formed by the judge upon the evidence. Now, as regards the observations of Lord Justice Brett in *The Queen v. The Local Government Board* (1), that learned Lord Justice did not say that the jurisdiction of the superior courts over persons vested with limited authority by parliament is confined to cases in which the limited authority is in the nature of a power to impose some obligation upon individuals, and if that was a principle that he was laying down there cannot, I think, be

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

(1) 10 Q. B. D. 321.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

any doubt that the power to subject individuals to pecuniary loss or obligations at the hands of others as the result of the actions of the persons invested with the limited authority would be equally within the principle. But the learned Lord Justice laid down no such principle. He was dealing simply with the case then before the court, and applying his observations to it. The Penarth Local Board had power in certain circumstances to impose pecuniary obligations upon individuals and in the particular case had done so. The person affected had appealed to the Local Government Board, insisting that this Board had a right to review the action of the Penarth Board, and to bind or loose the obligation imposed by the Penarth Board, and invoked the interposition of the Local Government Board to relieve the appellant from the action of the Penarth Board. The latter Board moved for a prohibition. The Court of Queen's Bench refused the writ. The Penarth Board appealed, insisting that the Local Government Board had no jurisdiction to entertain the appeal. The Solicitor-General, on behalf of the Local Government Board, contended that the latter was not a judicial tribunal, that its functions were not of a judicial nature, and that, therefore, prohibition would not lie. It is to this contention that the Lord Justice addresses himself. After saying that it was asserted by the Solicitor-General upon behalf of the Local Government Board, among other things,

that the Board was not a body against which a prohibition can lie, that is, if they exceed their jurisdiction they are not a tribunal or set of persons against whom prohibition will lie at all,

he says that, in the view he took of the case, it was not necessary to decide that point, such view being that the statute did give an appeal to the Local Government Board in the case, and that in entertaining

the appeal, they would be acting within their jurisdiction, and he adds :

1890

GODSON

v.

THE

CORPORATION OF  
THE CITY OF  
TORONTO.

Gwynne J.

I think I am entitled to say this, that my view of the power of prohibition at the present day is that the court should not be chary of exercising it, and that wherever the legislature entrusts to any body of persons, other than to the superior courts, the power of imposing an obligation upon individuals [that being the case then before him], the courts ought to exercise, as widely as they can, the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by act of parliament.

The learned Lord Justice, in this manner, intimated his opinion to be that whether the persons exercising limited statutory authority be a judicial tribunal or be invested with judicial functions, in which case there could be no doubt that prohibition should lie if they exceeded their jurisdiction, or be a body of persons not exercising judicial functions but having statutory power to impose an obligation upon individuals, as in the case before him, prohibition would lie against such persons if they should exceed their jurisdiction equally as it would against persons, or a tribunal, exercising judicial functions with limited authority. Now, it is impossible, in my opinion, to entertain the contention that "the judge," in exercising the functions vested in him by the act under consideration, was not acting judicially. The matter is referred to him in his official name only—"the judge of the county court." The matter authorized to be referred to him is in the nature of a complaint against a member of council, or officer of the corporation, or a person having a contract with the corporation, for some malfeasance, breach of trust or misconduct supposed to have been committed by such person in relation to some duty or obligation due from him to the municipality; the matter so referred requires a due inquiry, under oath; the judge is empowered to summon before him the party and witnesses, and to exercise all the powers vested in any court

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

in civil cases for enforcing the attendance of witnesses and the production of documents, and being so empowered he is, in my judgment, bound to exercise the powers so vested in him in the same manner as they are exercised by a court of justice in civil cases. Upon the close of the inquiry, "the judge" is bound to report to the corporation the judgment or opinion formed by him as to the charge or charges referred to him upon the evidence taken before him, and the result of that judgment or opinion, if unfavorable to the accused, may injuriously affect his character, reputation and business prospects, and subject him to pecuniary losses at the hands of the corporation; under all these circumstances, I cannot for a moment entertain a doubt that the judge was, by the act, invested with judicial functions in respect of the matter to be inquired into and reported on by him, and was required to proceed in a judicial manner, and that, therefore, he is subject to prohibition if he exceeded his jurisdiction, or did not exercise his jurisdiction in accordance with the due and ordinary course of procedure in courts of justice. The language of Lord Justice Fry, in *Leeson v. The General Council of Medical Education* (1) is, in my judgment, precisely applicable in the present case.

What the statute under consideration authorizes, in substance, is that upon a resolution of council being passed requesting the judge of the county court to investigate some complaint of malfeasance, breach of trust or other misconduct mentioned in the resolution as having been committed by either a member of the council, an officer of the corporation, or a person having a contract with the corporation, in relation to the duties and obligations owed by such person to the municipality, the judge shall institute a due inquiry

(1) 43 Ch. D. 386.

into such charges, upon oath, and for conducting such inquiry he is invested with the same powers as are vested in any court in civil cases to enforce the attendance of witnesses, the production of documents, &c., &c., and, upon the close of the inquiry, he is required to report to the council the result of the inquiry. That is to say, he is to report his judgment upon the evidence of the guilt or innocence of such accused person of the charges or charge alleged against him in the resolution of council. Such report, if unfavorable to the accused, cannot fail to be attended with consequences injurious to his character and to his business prospects and pecuniary interests. Moreover, the corporation would have it in their power to give effect to the judge's report by removal of the officer, if the officer of the corporation was the accused person, or by disqualifying the person from ever having another contract with the corporation, if the accused person's business was that of a contractor and if he was a person having a contract with the corporation. A person who may be so injuriously affected in his pecuniary interests, his reputation and business prospects by the judgment formed by a "judge" upon such an inquiry had before him must be entitled to have the inquiry conducted in a judicial manner, and "the judge" presiding and making the inquiry and required to report his conclusions or opinion or judgment, or whatever else the result may be called, to the council who have power to act upon it must, beyond all doubt, in my opinion, be considered to be acting in a judicial capacity.

In the particular resolution before us it was an officer of the corporation who was accused of having been guilty of malfeasance, breach of trust, gross negligence and other misconduct, specially named in relation to his duties as such officer, namely, as inspector

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

Gwynne J.

of works, and the judge was required to inquire and report to the council whether these charges were true or false. The resolution of council which prescribed the jurisdiction of the judge is as follows: (1) The resolution refers to the judge.

1st. Certain specific matters charged upon, and affecting the conduct of, a named officer of the corporation; and

2nd. Requests an inquiry into the general system pursued by the corporation in relation to the letting of contracts. The personal charges which the resolution of council purports to authorize the judge to inquire into and to report upon seem to me, I confess, very plainly to involve an inquiry into matters of a criminal nature amounting to charges of larceny, or obtaining money upon false pretences, and a conspiracy between Lackie, the officer named, and Godson, and others not named but whom the judge was to identify and report their names, to defraud the corporation. If the judge should report that the charges were established before him, and such report should be well founded upon the evidence, it cannot, I think, be doubted that persons guilty of the matters charged would be liable to prosecution by indictment. Now, the Provincial Legislatures have, by their constitutions, no power whatever to legislate in any manner in relation to criminal matters otherwise than by establishing courts of criminal jurisdiction. How, then, can it be contended for a moment that when an act of a Provincial Legislature authorises the judge of a county court *eo nomine* to inquire into and to report upon matters involving charges of a criminal nature the judge can act otherwise than in his judicial capacity, and as a court of criminal jurisdiction—a court of limited jurisdiction, it is true, but as a court of criminal jurisdiction specially constituted as such for the express purpose named?

(1) See p. 38.

The only person named in the resolution, as being subjected as a party to the inquiry required to be instituted by "the judge" is an officer of the corporation, William Lackie, into whose conduct, as inspector in relation to the particular matters specified in the resolution, the inquiry is directed. Whether all the charges made against him are made with that precision which would, under the terms of the statute, give the judge jurisdiction over him, personally, as an accused party guilty of some malfeasance, breach of trust, or misconduct in relation to the duties and obligations owed by him to the municipality, we are not concerned at present to inquire, for all that we have to deal with is the jurisdiction assumed to be exercised over Godson, the appellant in the present case, and with respect to him it is to be observed that not one of the personal charges referred to the judge to investigate and report upon is made against him as a party, personally brought under the jurisdiction of the judge, and into whose conduct the statute has authorized any inquiry to be made, otherwise than in connection with the charges specified against Lackie. He is, it is true, named, and liable to be called and examined as a witness in relation to the charges secondly, fifthly, sixthly and eighthly made against Lackie, the officer of the corporation, subject to the qualification contained in the statute that he shall not be compelled to criminate himself. Lackie is the only person named in the resolution as having been guilty of any malfeasance, breach of trust, or other misconduct in relation to the duties and obligations which, as an officer of the corporation, he owed to the municipality, and the only person, therefore, into whose conduct in respect of the charges made, the "judge" is, by the express provisions of the statute, authorized to make any inquiry. Godson is neither a member of council or officer of the corpora-

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

tion, nor, so far as appears, a person having a contract with the corporation. The reference with respect to Lackie, under the paragraph of the resolution numbered "1," however objectionably vague it may be in some respects, as to him is confined expressly into the truth or falsity of the charges previously recited in the resolution as made against him; it in no way affects Godson as a person whose conduct is submitted to the jurisdiction of the judge under the terms of the statute. The reference under the paragraph No. "2" is, in my judgment, altogether too vague to give the judge jurisdiction over any person. That reference does not appear to be authorized by the statute at all, for there is no allegation therein of any malfeasance, breach of trust, or other misconduct supposed to have been committed by any member of council, officer of the corporation, or a person having a contract with the corporation, such persons being the only persons whose conduct is, by the statute, submitted to and brought under the jurisdiction of "the judge." Paragraph No. 3 appears to be objectionable for the same reason, and because it professes to submit an inquiry whether frauds have been committed upon the corporation by some person or persons not named. Paragraph No. 4 relates to the system of awarding contracts, with which we are not concerned in the present case; and the result is that, in my judgment, Godson is not, by the resolution of reference, brought at all under the jurisdiction of "the judge," as a party having a contract with the corporation, or otherwise, and liable to have any conduct of his inquired into, either as being misconduct in relation to any duty or obligation owed by him to the municipality, or otherwise than as incidental to the charges against Lackie.

I am of opinion, therefore, that the learned judge of the county court erred in the conclusion arrived at by

him in the very inception of the inquiry instituted by him under the above resolution of the council of the city of Toronto, that he was not acting in a judicial capacity in the exercise of the authority vested in him by the statute.

It appears by the affidavit of the appellant filed upon his motion for a writ of prohibition, and it is not denied, that at the opening of the investigation instituted by the judge he intimated that it was intended in the course of the investigation to inquire into different contracts and dealings which the appellant had had with the city of Toronto, and that he refused to direct any particulars of any charges of misconduct to be delivered to him. I am of opinion that the learned judge erred here also. 1st. Because no charges against Godson were within the terms of the statute as for malfeasance, breach of trust or other misconduct committed by him either as a member of council, an officer of the corporation or a person having a contract with the corporation, referred to the judge to be inquired into, and therefore the learned judge had no jurisdiction to institute the threatened investigation against Godson, and 2nd,—if he had jurisdiction it was contrary to natural justice that any charge against him should be made the subject of inquiry which was not duly notified to him to enable him to meet it. The learned counsel for the corporation appears to have taken what appears to me to be a singular view of the object and intent of the statute, for instead of regarding it as authorizing only an inquiry into some named charge against named persons of having been guilty of some malfeasance, breach of trust or other misconduct in violation of certain duties and obligations owed by such persons to the municipality, he seems to think that what the Legislature contemplated was a sort of secret fishing inquiry to be made by a judge for the

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 —  
 Gwynne J.  
 —

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

purpose of ascertaining whether, at any time, any malfeasance, breach of trust, or other misconduct had been ever committed by any person formerly, but no longer, a member of council, or by any person formerly, but no longer, an officer of the corporation, or some person who formerly had, but no longer had, a contract with the corporation, for he says, in an affidavit filed by him, that he was informed by the judge that his duties would be to assist the judge, and under his direction, so far as might be necessary, to make inquiries and ascertain what evidence could be obtained bearing upon the matters under investigation and to cause the same to be brought before the judge, and he adds :—

It has been and will be necessary in the progress of the said investigation to call witnesses whose evidence I cannot beforehand ascertain, and to inquire into matters where the facts are only partially known or even only suspected, and if I were compelled to take counsel for the parties interested in the results of this investigation into my confidence beforehand, and to disclose to them the object I had in view in making the said inquiries, and calling the said evidence, I have strong belief the result would be to defeat the object the investigation has in view.

The object of the investigation, and of the legislature in authorising the investigation authorized by it, would thus seem to be assumed to be that the judge of the county court should be empowered, with the assistance of a counsel employed by the corporation, to make inquiries whether any charge of malfeasance or misconduct can be discovered against a person who formerly had had a contract with the corporation, in relation to such contract, although such person is not charged, in the resolution of council which puts the judge in motion, with any malfeasance or misconduct in relation to such contract, instead of being simply to investigate such charges of malfeasance or misconduct as are mentioned in the resolution of council and with being guilty of which the person therein also

mentioned is accused. I can only say that I am surprised that any person should construe the terms used in the statute as justifying such a species of investigation.

Then, we find that the first inquiry made by the learned judge was not at all into any one of the charges mentioned in the resolution as made against Lackie, and which were referred to the judge to inquire into, but for the purpose of discovering whether any complaint could be made against Godson in respect of a certain contract which he had had with the corporation in relation to what is called the Eastern Avenue Bridge. The learned judge, Mr. Justice Robertson, before whom the motion for prohibition was made, and who had before him all the evidence taken before the judge of the county court, says that in 71 pages of large foolscap type writing taken upon this inquiry there was not a tittle of evidence that Lackie had anything whatever to do with the subject then under inquiry. I entirely concur with Mr. Justice Robertson that this inquiry into the Eastern Avenue Bridge contract and work was altogether in excess of the jurisdiction vested in the judge, and that Godson was not bound to have submitted to it. He did, however, submit to it, and does not therefore now complain of it, but he does object to being exposed to any similar investigation into his conduct in respect of contracts he has had with the corporation which are not referred to the judge by the resolution of council under which he is proceeding. He appears to have been willing to have had his conduct in respect of such contracts investigated by the learned judge, although not brought within his statutory cognizance under the resolution of council, if only he should be given notice beforehand of the nature of any charge against him which is proposed to be investigated, but this having been refused,

1890

GODSON

v.

THE  
CORPORATION OF  
THE CITY OF  
TORONTO.

Gwynne J.

1890

GODSON

v.  
THECORPORATION OF  
THE CITY OF  
TORONTO.

Gwynne J.

and because of some other extraordinary assumption of authority upon the part of the learned judge, he applied for the writ of prohibition.

After the close of the investigation, which as I have said was, in my opinion, unauthorized, into the conduct of Godson in connection with what is called the "Eastern Avenue Bridge," Godson again applied for particulars of all charges against him, if the judge should assume to investigate any, and was again refused, and, thereupon, he declined to submit to or attend upon the investigation any longer. Thereafter, in his absence, a person whom Mr. Justice Robertson, not inappropriately it would seem, judging from a letter of his to Godson dated the 10th January, 1888, terms the "Informer Cooper," is examined. With reference to this person it may be observed that this letter of his of the 10th January, 1888, seems to justify Godson's declaration on oath, that he believes it to have been written with the view of extorting blackmail from him, and further, that although from the letter itself the council of the municipality, by several of its members, appear to have been placed in possession of the information possessed, or alleged to be possessed, by this man Cooper before they passed the resolution of council of the 12th March, 1888, yet they did not make, in that resolution, any charge of malfeasance or misconduct against Godson, nor authorize any investigation into any such as having been committed by him in relation to any contract he had with the corporation. Again, after Godson had so withdrawn from attending the investigation which was instituted by the judge, and at the close of the month of May, 1888, a letter is written by the counsel acting for the corporation, under the direction of the judge, to the gentlemen who had acted as counsel for Godson

on the inquiry to which he had submitted into the "Eastern Avenue Bridge" matter as follows :

DEAR SIRs,—I hereby notify you that on Monday, at 2 p.m., I will make a special application to His Honor Judge McDougall to go on Wednesday to some place in the States to take the evidence of James Hardy in the investigation now pending in *re* the Board of Works. A large portion of the evidence taken is now ready and can be obtained from the reporter, Mr. Clarke, and the balance will be ready on Monday, and will, I think, sufficiently inform you of the points upon which I propose to examine Mr. Hardy. I also notify you that it is impossible to bring Mr. Hardy here, and if you desire to cross-examine him, I will ask the judge to rule that you will have to do so immediately after the examination-in-chief is concluded. Yours, ———.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 ———  
 Gwynne J.  
 ———

And on the 1st of June, 1888, the following :

I propose to make an application to His Honor Judge McDougall to-morrow, to allow Mr. Cross to examine certain accounts in Mr. Godson's books, other than those that have been referred to in Cooper's evidence to date. By direction of His Honor, I give you notice that such application will be made. Yours, ———.

This assertion of a right to examine the books of a man in business, not for any evidence upon any specific matter as to which a contestation was pending in a court of justice, but to enable the corporation of the city of Toronto to discover whether they could find there any foundation whereon to raise a suspicion, or to rest a complaint, of some misconduct having been committed by Godson in relation to some contract he may have had with the corporation in years past, or to enable them to discover whether the information obtained from Cooper was reliable, seems to me, I must confess, to involve a most singular misapprehension of the statute in virtue of which the right was claimed. The statute invested the judge with only the same powers to compel production of documents as were possessed by courts of justice in civil cases ; but it never has been heard that a court of justice exercised the right which has been here claimed over Godson's books unless in respect of some matter in contestation,

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

or some litigation to which the person whose books are sought to be inspected is a party litigant, or without giving him an opportunity of stating whether he had any books in his possession containing any entries therein in relation to the matters in issue.

Gwynne J. The Mr. Hardy referred to in the former of the above letters written by the counsel acting for the corporation, and whose evidence was proposed to be taken in Chicago against Godson, against whom no charge had been made, and in relation to some matters not specified, is another person who, as Godson swears, was in his employment formerly, and having been discharged by him, had attempted by threats to levy blackmail from him, and had written to him a threatening letter an extract from which he annexed to his affidavit.

It appears from the judgment of Mr. Justice Robertson that the evidence taken in this manner from Cooper and others extends over 143 pages of type-writing, and from the above letters from the counsel acting for the corporation, to the gentlemen who had been acting as counsel for Godson in the Eastern Avenue Bridge matter, it appears that a portion of this evidence, at least, how much we are not informed, related to charges made, not by the corporation, but by the witness Cooper and others against Godson personally. It is under these circumstances that he moved for the writ of prohibition, and I must say that I entirely concur with the able judgment of Mr. Justice Robertson, that a clear case for the interference of a court of justice by prohibition has been made out, and this, in my opinion, quite apart from the judgment in the case of *The Queen v. Squier* (1).

Otherwise than as a witness against Lackie the learned judge did not, in my opinion, become invested with any jurisdiction over Godson, or acquire any authority to compel an inspection of his books in the

(1) 46 U. C. Q. B. 474.

manner asserted, which could have been for no other purpose than to fish for some ground of complaint against Godson, not to investigate one made against him for in the resolution of council none was made.

1890  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.

It is no answer now to the motion for the writ of prohibition to say as to the examination of Mr. Hardy in Chicago that the learned judge, after Mr. Justice Robertson had rendered his judgment, gave up the idea of taking Hardy's evidence in Chicago, and that his evidence has been otherwise obtained; this is but a portion of the grounds upon which the motion for prohibition rested, for if the investigation against Godson personally, against whom no charge has been made, is unauthorized, he surely must have a right to prevent his character from being assailed, and it may be defamed in this manner by malevolent persons with a corrupt intent. He must surely have a right also to claim relief from having his whole time occupied in watching, and that, too, it may be at very great expense, proceedings instituted, apparently, not to carry out the object expressed in the resolution of council but for the purposes of opening up all the transactions which Godson may have had with the corporation over a course of years, with the view to ascertain whether he may have been guilty of some misconduct in relation to some or one of those transactions; with the view, in short, of fishing for evidence, if any could be found, whereon to rest a charge against him. This is not, in my judgment, what the statute contemplated and has authorized, and as the learned judge has, in my judgment, clearly exceeded his jurisdiction in so instituting an inquiry into Godson's conduct, and as the counsel acting on behalf of the corporation still insist upon the right of carrying on the investigation in the manner it has been carried on, save only as to the taking of evidence outside of the Province of On-

Gwynne J.

1890.  
 GODSON  
 v.  
 THE  
 CORPORATION OF  
 THE CITY OF  
 TORONTO.  
 Gwynne J.

tario, I am of opinion that the appeal should be allowed with costs, and that the writ of prohibition should be issued in accordance with the judgment of Mr. Justice Robertson, prohibiting the judge to proceed in investigating any charges against, and from reporting upon the conduct of, Godson personally otherwise than in so far as his conduct in relation to the particular matters charged against Lackie, mentioned in the resolution of council of March 12th, 1888, warrants and requires.

PATTERSON J.—I concur in the views expressed by the judges of the Court of Appeal, and am of opinion that this appeal should be dismissed.

*Appeal dismissed with costs.*

Solicitors for appellant: *Beatty, Chadwick, Blackstock & Galt.*

Solicitor for respondent, City of Toronto: *C. R. W. Biggar.*

Solicitor for respondent, McDougall: *J. S. Fullerton.*

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