REPORTS OF CASES

DETERMINED IN THE

HIGH COURT OF AUSTRALIA

1911-1912.

[HIGH COURT OF AUSTRALIA.]

THE MUNICIPAL COUNCIL OF SYDNEY . APPELLANTS;

AND

SIR MATTHEW HARRIS . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *April* 15, 16, 18.

Griffith C.J., Barton and Isaacs JJ.

Local Government—Building in ruinous state—Powers of municipal council—Right of owner to be heard—Sydney Corporation Act 1902 (*N.S.W.*) (1902 *No.* 35), *sec.* 84.

Sec. 84 of the *Sydney Corporation Act* 1902, as amended by sec. 5 of the *Sydney Corporation Amendment Act* 1905, provides that "(1) If any building . . . be deemed by the city surveyor . . . . to be in a ruinous or dangerous state, he may cause a proper hoard or fence to be put up and lights and other appliances to be used for the protection of life and property, all expenses thereof to be paid by the owner or tenant, and shall cause notice in writing, signed by him, to be served upon the owner of such building . . . . and shall also cause such notice to be put on the door or other conspicuous part of the premises or otherwise to be served upon the tenant thereof (if any) by leaving the same on the premises, requiring such owner or tenant to take down, secure, or repair such building . . . . within a reasonable time to be named in such notice. (2) If such owner or tenant does not commence

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within seven days after service thereof, and complete the work therein required to be done within thirty days to the satisfaction of the city surveyor, the said surveyor shall, if so directed by the council, cause all, or so much of such required works as he may deem necessary, to be done, and all expenses thereof shall be paid by the owner or tenant."

The city surveyor having by notice to the owner declared a building to be ruinous, and having required the owner to take it down, and the owner having done nothing within the time appointed by the notice for the commencement of the work,

Held, that the Council were not entitled to direct the city surveyor to take down the building without giving the owner an opportunity of showing cause why it should not be taken down.

Decision of the Supreme Court: *Ex parte Sir Matthew Harris*, 11 S.R. (N.S.W.), 524, affirmed.

APPEAL from the Supreme Court of New South Wales.

On 16th July 1911 W. M. Gordon, City Surveyor of Sydney, purporting to act under sec. 84 of the *Sydney Corporation Act* 1902, gave a written notice, dated 14th July, to Sir Matthew Harris, the respondent, stating that certain stables in Bulwarra Road, of which he was the owner, were in a ruinous state, and requiring him to take down the same within 30 days from the date of the notice, and further stating that if the work required to be done was not commenced within 7 days after the service of the notice and completed within 30 days to the satisfaction of the City Surveyor, he, the City Surveyor would, if so directed by the Council of Sydney, cause the said work to be done, and that all the expenses would be claimed from the respondent. The work was not begun within the 7 days, or at all, but on 31st July the respondent by his solicitor wrote to the Council requesting that he might be heard before the Council "with a view to furnishing evidence to show that the stables in question are not in a ruinous state as alleged in the said notice." Further correspondence followed between the appellant's solicitor and the Town Clerk on behalf of the Council, and in the result the Council refused to accede to the respondent's request and on 29th August passed a resolution that necessary action according to law be taken with regard to the notice of 14th July. On 6th September the City Surveyor sent a notice to the respondent that it was the intention of the Council to proceed forthwith with the work at the respondent's risk and expense.

The respondent thereupon obtained an order *nisi* for a mandamus directing the appellant Council to hear and determine according to law the matter of the proposed demolition of the stables, on the ground (*inter alia*) that they had purported to determine the matter without giving the respondent an opportunity of being heard or putting his case before them. The order *nisi* coming on for hearing before the Full Court was made absolute: *Ex parte Sir Matthew Harris* (1).

From this decision the appellants now by special leave appealed to the High Court.

Knox K.C. (with him *Edwards*), for the appellants. The City Surveyor is by sec. 84 of the *Sydney Corporation Act* 1902 made the final judge as to whether premises are in a ruinous state or not, and the Council is given no jurisdiction to decide whether his determination is correct or not. The words "if so directed by the Council" are inserted for the purpose of giving the Council control over their officer and their funds. They need not undertake the work of demolition unless they choose. Those words are more apt to give that control than to indicate that the Council are to hold an inquiry as to whether the City Surveyor's determination is correct. The effective decision is that of the City Surveyor and that decision remains effective, and the duty is still upon the owner to take down the building, although the Council determine not to do the work. The only thing upon which the respondent wished to be heard by the Council was whether the City Surveyor's decision was right, and as to that the Council had no jurisdiction. The decision of the City Surveyor is final for the purpose of imposing upon the owner the expense of erecting a hoarding, &c., and there is no reason why it should not be final for all purposes. The proceeding before the Council is not in any sense a judicial proceeding and does not come within the principle which entitles the owner of property intended to be affected to be heard. He referred to *Robinson* v. *Corporation of Sunderland* (2); *Perth Local Board of Health* v. *Maley* (3): *Randall* v. *Northcote Corporation* (4); *Bonaker* v.

(1) 11 S.R. (N.S.W.), 524.
(2) (1899) 1 Q.B., 751.
(3) 1 C.L.R., 702.
(4) 11 C.L.R., 100.

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Evans (1); *Cooper* v. *Wandsworth District Board of Works* (2); *Cheetham* v. *Mayor &c. of Manchester* (3); *Lewis* v. *Weston Super Mare Local Board* (4); *Attorney-General* v. *Hooper* (5).

[*Isaacs* J. referred to *Smith* v. *The Queen* (6); *Masters* v. *Pontypool Local Government Board* (7).]

Lamb K.C. (with him *Sheridan*), for the respondent. Where a power is given by Statute to a body to adjudicate upon matters involving civil consequences to an individual that individual has a right to be heard unless that right is expressly or impliedly taken away. The principle is not limited to proceedings which are strictly judicial, but extends to those which are of a judicial nature: *Cooper* v. *Wandsworth District Board of Works* (8); *Smith* v. *The Queen* (9); *Wood* v. *Woad* (10); *Lapointe* v. *Association de Bienfaisance et de Retraite de la Police de Montreal* (11); *Hopkins* v. *Smethwick Local Board of Health* (12).

[*Griffith* C.J. referred to *Capel* v. *Child* (13); *In re Hammersmith Rent Charge* (14).]

Very strong words are required to take away this right: *R.* v. *Cheshire Lines Committee* (15). The respondent was entitled to be heard although the seven days within which the work was directed to be commenced had expired, and to show either that the building was not ruinous or that for some other reason the Council should not direct the City Surveyor to take down the building.

Knox K.C., in reply.

Cur. adv. vult.

April 18.

GRIFFITH C.J. The question for determination in this case arises upon the construction of sec. 84 of the *Sydney Corporation Act* 1902 now amended by a later Act of 1905. The section, as amended, so far as material for the present purpose, is as follows:—"If any building . . . or wall . . . be deemed

(1) 16 Q.B., 162.
(2) 14 C.B. N.S., 180; 32 L.J. C.P., 185.
(3) L.R. 10 C.P., 249.
(4) 40 Ch. D., 55.
(5) (1893) 3 Ch., 483.
(6) 3 App. Cas., 614, at p. 624.
(7) 9 Ch. D., 677, at p. 684.
(8) 14 C.B. N.S., 180.
(9) 3 App. Cas., 614.
(10) L.R. 9 Ex., 190.
(11) (1906) A.C., 535.
(12) 24 Q.B.D., 712.
(13) 2 Cr. & J., 558.
(14) 4 Ex., 87, at p. 97.
(15) L.R. 8 Q.B., 344.

by the City Surveyor (who may for that purpose enter upon the premises and examine the same) to be in a ruinous or dangerous state, he may cause a proper hoard or fence to be put up and lights and other appliances to be used for the protection of life and property, all expenses thereof to be paid by the owner or tenant; and shall cause notice in writing, signed by him, to be served upon the owner of such building or wall, . . and shall also cause such notice to be put on the door or other conspicuous part of the premises, or otherwise to be served upon the tenant thereof (if any) by leaving the same on the premises, requiring such owner or tenant to take down, secure, or repair such building, wall, or other thing as the case may be, within a reasonable time to be named in such notice."

The second paragraph of the section provides that:—"(2) If such owner or tenant does not commence within seven days after service thereof, and complete the work therein required to be done within thirty days to the satisfaction of the City Surveyor, the said Surveyor shall, if so directed by the Council, cause all, or so much of such required works as he may deem necessary, to be done, and all the expenses thereof shall be paid by the owner or tenant."

It is apparent that in the exercise of the powers conferred by that section a very heavy burden may be laid upon the owner of a building. A house from which he derives the greater part of his income may be ordered to be demolished, or he may be required to incur an expenditure in repairs beyond his means. The general rule of law is that a person so circumstanced—that is, who is liable to be called upon by some public authority to incur a heavy burden or loss—is entitled to be heard and to have the opportunity of giving reasons why such an order should not be made and enforced against him. A number of authorities were referred to during the argument, but I only think it necessary to refer to two of them. The first is *Hopkins* v. *Smethwick Local Board of Health* (1), referred to by *Pring* J. in his judgment. That was a case of an order given by a local board of health to pull down a building on the ground that it had been erected in contravention of a by-law of the board. *Wills* J. said (2):—

(1) 24 Q.B.D., 712.

(2) 24 Q.B.D., 712, at p. 714.

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"The only material question is, whether the principle of *Cooper* v. *Wandsworth District Board of Works* (1) applies to the *Public Health Act* 1875, as well as to the *Metropolis Management Act*; if so, the principle there laid down has not been satisfied. In condemning a man to have his house pulled down, a judicial act is as much implied as in fining him £5; and as the local board is the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him; and there is no notice, unless notice is given of time when, and place at which the party may appear and show cause. It is true that there are differences of phraseology in the two Acts, and the phraseology of the later Act is not so strong as that of the *Metropolis Management Act*; but the judgment of *Willes* J. goes far more upon the nature of the thing done by the board than on the phraseology of the Act itself. It deals with the case on principle; from the nature of the thing done it must be a judicial Act, and justice requires that this man should be heard." The case went to the Court of Appeal, and Lord *Esher* M.R. said (2):—"The power which the local board exercised to enter on the property of the plaintiffs and pull down the buildings they had erected is a highly penal one. Those who exercise such a power are bound to act strictly within it. The two cases *Cooper* v. *Wandsworth District Board of Works* (1) and *Masters* v. *Pontypool Local Government Board* (3), show that where there is power to enter and pull down buildings which have been erected in contravention of a by-law, it would be contrary to fundamental justice to allow that course to be taken without giving the owner notice and opportunity to show cause. We have not been asked to overrule those decisions, and we agree with the principles laid down in them."

The other case to which I will refer is *Lapointe* v. *L'Association de Bienfaisance &c. de Montreal* (4), in which Lord *Macnaghten*, delivering the judgment of the Board, after pointing out that the whole of the proceedings complained of were irregular, contrary to the rules of the Society, "and above all contrary to the elementary principles of justice," said:—"It is hardly necessary to

(1) 14 C.B. N.S., 180.
(2) 24 Q.B.D., 712, at p, 716.
(3) 9 Ch.D., 677.
(4) (1906) A.C., 535, at p. 539.

cite any authority on a point so plain. The learned counsel for the appellant referred to two well-known club cases before *Sir George Jessel* M.R., *Fisher* v. *Keane* (1) and *Labouchere* v. *Earl of Wharncliffe* (2). It may be worth while to mention a later case before the same learned Judge, in which he refers to the case of *Wood* v. *Woad* (3), in the Exchequer, and expresses regret that he was not acquainted with that case when those club cases were decided: See *Russell* v. *Russell* (4). 'It contains,' he says, (5) 'a very valuable statement by the Lord Chief Baron as to his view of the mode of administering justice by persons other than Judges who have judicial functions to perform which I should have been very glad to have had before me on both those club cases that I recently heard, namely, the case of *Fisher* v. *Keane* (1), and the case of *Labouchere* v. *Earl of Wharncliffe* (2). The passage I mean is this, referring to a committee: "They are bound in the exercise of their functions by the rule expressed in the maxim *audi alteram partem*, that no man should be condemned to consequences resulting from alleged misconduct unheard, and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."'

"Then the Master of the Rolls says: 'I am very glad to find that that eminent Judge has arrived at the same conclusion which I arrived at independently, but I should have been still more glad had I been able to fortify my conclusion by citing this, which I may call a most admirably worded judgment.'" That expression of the opinion of *Jessel* M.R. is formally adopted by the Judicial Committee.

The rule may be taken to be thoroughly well established in English law. It is not confined, as pointed out in the judgment just quoted, to strictly judicial proceedings, but applies to any case in which a person or public body is invested with authority to decide. Whenever a public body is entrusted with power to

(1) 11 Ch.D., 353.
(2) 13 Ch.D., 346.
(3) L.R. 9 Ex., 190.
(4) 14 Ch.D., 471.
(5) 14 Ch.D., 471, at p. 478.

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decide whether a person shall suffer pecuniary loss the principle applies. But the principle may be excluded by express words in a Statute. See, for instance, *Cheetham* v. *Mayor &c. City of Manchester* (1) and *Robinson* v. *Sunderland Corporation* (2). It all depends upon the particular enactment, and in this case it depends upon the effect to be given to the words "may if so directed by the Council."

The notice served by the City Surveyor on the respondent recited that the Surveyor considered the stables in question to be ruinous and directed them to be taken down; but that direction was not operative until the Council had directed that it should be carried out. The words "may if so directed by the Council" import a discretion in the Council to give or refuse a direction. That is too plain to need more than statement. But it is contended for the appellants that the City Surveyor's opinion is conclusive upon the Council—that they are bound by his opinion that the premises are ruinous, and, more than that, are also bound by his opinion that they should be taken down. That again depends upon what the legislature has said. No doubt, the opinion of the City Surveyor is conclusive as a sufficient foundation for giving the notice, and is sufficient also to enable the Council to act upon it, if they think fit, without further evidence. As to the cost of a hoarding, when the City Surveyor directs one to be put up, his opinion is also by the amending Act made conclusive as to the liability of the owner to pay the cost, but it is not conclusive to prevent the Council from doing right and justice upon hearing the owner, nor is there anything in the section to prevent them. Quite different provisions are contained in sec. 87, by which, in a case where it is urgently necessary to make immediate provision for the protection of life or property in consequence of a building or place near a public way being dangerous, the City Surveyor is invested with summary powers and the expenses of carrying out the necessary work are to be paid by the owner.

The reasons why the Council should have such a discretion are sufficiently plain. The notice given to the owner under sec. 84 may be to take down the building, or repair it, or secure it. If

(1) L.R., 10 C.P., 249. (2) (1899) 1 Q.B., 751.

the notice requires demolition, surely the owner should be entitled to show that demolition is unnecessary, and that repairing or securing will be sufficient. Or, if the notice requires the building to be repaired, the owner should be entitled, as put by *Mr. Lamb*, to say "I am about to demolish the building altogether." Or again, as I am reminded by my brother *Isaacs*, if the owner had begun, but had not yet completed all that he was required to do, he should surely be entitled to show that what he had already done had made the building safe and that he should not be required to do anything more.

In my opinion the discretion of the Council to do right is unfettered, and the owner is entitled to be heard before the discretion is exercised. There is no dispute that mandamus is the appropriate remedy in such a case. I am therefore of opinion that the judgment of the Supreme Court was right and that the appeal should be dismissed.

BARTON J. read the following judgment:—

I am of the same opinion. In *Bonaker* v. *Evans* (1) *Parke* B. delivering the judgment of the Exchequer Chamber said:—"No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the charge against him, unless indeed the legislature has expressly or impliedly given an authority to act without that necessary preliminary." This, his Lordship continued, was laid down in many cases, which he mentioned, "concluding with that of *Capel* v. *Child* (2), in which *Bayley* B. says he knows of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property without his having an opportunity of being heard." An instance of the exception made by *Parke* B. of cases in which the legislature had given an authority to act without giving the person affected such an opportunity is to be found in the case of *Cheetham* v. *Mayor &c. of Manchester* (3), where the words giving such authority were distinct and emphatic.

That the right to be heard is not confined to cases where the

(1) 16 Q.B., 162 at p. 171. (2) 2 Cr. & J. 558.
(3) L.R. 10 C.P., 249.

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proceeding is strictly judicial is shown in the case of *Cooper* v. *Wandsworth District Board of Works* (1). A district board of works was distinctly empowered by Statute, in default of a seven days' notice being given by the owner of property before he commenced building on it, to order the house to be demolished or to make such other order as the case might require. There was no express provision that the owner should be entitled to a hearing before the order of demolition should be made. The plaintiff, an owner, prepared and posted to the defendant Board a notice of his intention to build, but they did not receive it. After the building had progressed up to the first floor joists the defendants instructed their surveyor to demolish the house on account of the plaintiff's default in not giving notice, and without giving any notice to the plaintiff the surveyor did demolish it. The Court held that the plaintiff had a right of action against the Board for this destruction of his building. *Erle* C.J. said in his judgment (2):—"I can see no necessity whatever for giving to the board the large powers which they claim without any qualification whatever, and I do see very strong reasons of public order and convenience, why they should be subject to the reasonable limitation, that a person's property should not be destroyed until he has been heard to show cause to the contrary. That is a qualification which has been recognized in numerous cases, but it was said, in the course of argument, to be limited to judicial proceedings, and that the defendants were not here acting judicially. I do not quite agree that they were not acting judicially, but even if they were not, the rule has been applied to cases other than those which are in the strictest sense judicial. Such is the case of *The King* v. *The Chancellor, Masters and Scholars of the University of Cambridge* (3) referred to in the judgment of *Parke* B., in the case of *The Hammersmith Rent Charge* (4) where all the cases are collected, and which show that the rule is to be applied to proceedings not in any respect more strictly judicial than those of a district board of works, exercising the powers conferred upon them by this section." The principle therefore applies to cases of this class unless it can be gathered

(1) 14 C.B. N.S., 180; 32 L.J. C.P., 185.
(2) 32 L.J. C.P., 185, at p. 187.
(3) 1 Str., 559.
(4) 4 Ex., 87, at p. 96.

from the terms of the Statute that the legislature intended it to be exercised without giving the owner an opportunity of being heard. Further, it is also clear that where the Statute does not expressly provide for such an opportunity the Courts will not assume that the legislature intended to prohibit it, unless such intention can be gathered from the Statute by clear implication.

I have carefully scrutinized the enactment now in question, and I confess my inability to find any term or expression in it which would warrant us in the conclusion that the legislature intended to deprive owners of the right which the Common Law gives them, and which *Willes* J. in *Cooper* v. *Wandsworth District Board of Works* (1) stated in these unequivocal terms: "Every tribunal invested with the power of affecting the property of Her Majesty's subjects is bound to give the parties against whom the powers are to be exercised an opportunity of being heard. This rule," he continued, "is universally applicable, and this district board of works is clearly a tribunal with reference to the powers conferred upon it, and the discretion which it has to exercise." And in respect of this power I think the Sydney Municipal Council is also such a tribunal. Even if the respondent was not entitled to notice before the consideration of the matter by the Council, it seems to me that, upon receiving the notice which his solicitors gave them on his behalf, they ought to have heard him and are now bound to hear him upon it. See *Attorney-General v. Hooper* (2) where *Stirling* J. said, in a case which arose under a provision somewhat like that in question: "If he" (the occupier) "objected to comply with the notice he should have asked them to allow him to be heard, and lay his objections before them, and if they had refused to do so, there might have been some reason for saying that they were acting contrary to justice." I think it clear that the Council did act here in a manner contrary to justice. Without, therefore, referring to any other of the numerous authorities cited, not one of which conflicts with the view I take, I am of opinion that the learned Judges of the Supreme Court were right and that the appeal should be dismissed.

(1) 32 L.J.C.P., 185, at p. 187.

(2) (1893) 3 Ch. 483, at p. 489.

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ISAACS J. read the following judgment:—

The question is what is the true construction of the words "if so directed by the Council" in sub-sec. 2 of sec. 84. Do they mean simply what they appear to carry on their surface, a mere direction to an officer, an authority to involve the Council in expense; or do they involve also a duty towards others which cannot be observed without giving them an opportunity of being heard, and if of being heard at all, then also as to the correctness of the surveyor's opinion?

This question cannot be resolved by looking at these words alone, they must be read and construed in their relation to the rest of the section. I take the section from the beginning and state what seems to me to be its natural operation, and then when we arrive at the words referred to we shall be better able to appreciate their force.

As amended, the section in effect provides that whenever the City Surveyor finds a building or part of a building or a wall or any projection which he considers ruinous or dangerous, he may act promptly and without any formality or reference to anyone for the protection of life and property. He may have a hoarding or fence put up, he may have the place lighted, and he may adopt any other means of guarding against damage. For all this he has the most absolute and unqualified power, and for all this the owner or tenant of the place must pay. The matter is apparently urgent, though it may not be so in fact; but in the meantime no risk is to be run, and whatever measures within reason the surveyor chooses to take are expressly authorized by the section. To this extent and for this purpose his opinion is final, and without appeal. Having done this, another statutory duty is put upon him. His work is only temporary, but he is to give notice to the owner—if known and resident in Sydney—and to the tenant, if any, and by affixing it on the premises, requiring the owner or tenant to take down, secure or repair the building. That is intended to be the permanent protection to the public.

Now the first sub-section stops there. It does not expressly say the owner or tenant shall be bound to comply with that notice and the question then is what is the implication? Does that notice fix the owner or tenant with an absolute, unchalleng-

able obligation to comply? If the section said no more, the implication would be extremely strong that Parliament did not intend an idle notice, and an obligation of compliance might more easily be inferred. But then comes the second sub-section, which enacts what shall happen in case of total failure to comply, or of partial failure to satisfy the Surveyor's requirements.

And the view I take is this. The immediate precautions taken by the surveyor sufficiently secure the public from all possible risks until the extent of actual danger can be fully determined. The Surveyor's notice is the demand made by a competent officer upon the owner or tenant to permanently complete the security to the public. If the owner or tenant feels he cannot dispute the accuracy of the Surveyor's opinion and the justice of his requirements, he may proceed without further consideration to effect the required work. But if he contests the matter, the legislature nowhere having commanded him to do the work himself, the alternative rests with the Council. The Surveyor is certainly commanded to proceed and permanently secure the public safety which so far he has only temporarily guarded, but only after the Council has given its direction that this work shall be done. This direction then interposed between the Surveyor's notice and his subsequent duty is the first effective settlement of a disputed question. Not only so, it is not really a direction which involves the Council in any pecuniary risk. In the first place no doubt the Council incur the obligation, but they are indemnified by the owner and tenant. It is therefore a direction which determines not merely the alteration or destruction of their property but their pecuniary obligation to pay for work and material considered by the Surveyor to be necessary. It is not that the Council are to design or form any expert opinion as to what is necessary—that is left to the surveyor on the side of the Council —but the Council are to consider how far they are to adopt his expert opinion—just as a jury might in a proper case.

And the direction involves also the power of a tenant if he pays to recover over against the owner.

So that it is impossible to read the crucial words as a mere routine or administrative function as between Council and officer ·

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merely to supervise the expenditure of municipal funds the collection of which has already been provided for.

If that is so, if the requirement of a direction by the Council concerns primarily and ultimately the property and mutual obligations of others, it is plain on ordinary principles of construction that the persons affected must have some opportunity to be heard in their own defence. There is a passage I recently had occasion to quote from the judgment of Lord *Lindley*, in *British Equitable Assurance Co. Ltd.* v. *Baily* (1), which is of general application. He said: "Of course, the powers of altering by-laws, like other powers, must be exercised *bonâ fide*, and having regard to the purposes for which they are created, and to the rights of persons affected by them." The power of giving directions vested in a public authority may in some circumstances be a mere internal administrative function, involving no interference by an outsider; it may, however, when what Lord *Lindley* calls "the rights of persons affected by it" are involved, connote the duty of listening to what those persons have to say. And this is one of the latter class. It is required by what Lord *Esher* M.R. in *Hopkins* v. *Smethwick Local Board of Health* (2), calls "fundamental justice." Unless the legislature in such a case has by express words, as in *Cheetham* v. *Mayor &c. of Manchester* (3), or by necessary implication indicated that imminent danger has induced it to depart from the ordinary rule, the application of that rule is understood to be involved in the construction of the Statute. The references that have already been made to authorities I will not repeat, but will read a few words of Lord *Coleridge* C.J. in *Vestry of St. James and St. John, Clerkenwell* v. *Feary* (4). There a vestry gave notice to the respondent to do certain work, he did not comply, but did not appeal to the County Council, and was summoned for non-compliance. The Court (Lord *Coleridge* C.J. and Lord *Esher* M.R.) held that as the respondent had had proper notice he should have appealed, and not having done so was concluded. That is a useful case as showing both the existence and the limitation of the Council's obligation. The Lord Chief Justice said (5):—"It is enough if an opportunity is given

(1) (1906) A.C., 35, at p. 42.
(2) 24 Q.B.D., 712, at p. 716.
(3) L.R. 10 C.P., 249.
(4) 24 Q.B.D., 703.
(5) 24 Q.B.D., 703, at p 709.

of questioning the propriety of the order, and in the present case such an opportunity was given, for the notice to execute the works was given on 21st September, but no summons was taken out until 1st November. Therefore, the respondent had abundant opportunity of calling in question the propriety of the order of the vestry, but he did nothing. Then is there anything in the case of *Cooper* v. *Wandsworth District Board of Works* (1), which shows that what was done in the present case was wrong? That case was decided as it was on the ground that the principles of justice had been violated. In that case the plaintiff's house was pulled down without any notice or any opportunity of being heard having been given to him, the board thinking that, because he had given no notice to them of his intention to build, they were free to act as they thought fit, and need give no notice of their intention to pull down the house, but the Court of Common Pleas decided that, because the plaintiff had had no opportunity of being heard, the defendants were guilty of a trespass, for which the plaintiff was entitled to recover. That is the ground which the Judges took in coming to the conclusion at which they arrived."

Then the Lord Chief Justice quotes *Byles* J. in *Cooper's Case* (2), including the opinion that the result was the same whether the Board acted judicially or ministerially. The justice of the Common Law, not excluded by the words of the Statute, required in either case the necessary opportunity. No formalities are necessary here. All that is required is a full and fair opportunity of putting the case before the Council. In *Spackman* v. *Plumstead District Board of Works* (3), a case relating to the power of the board's architect to decide what is the building line, Lord Selborne L.C., said: "In the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view."

The proper method of procedure depends, of course, largely

(1) 14 C.B.N.S., 180; 32 L.J.C.P., 185.

(2) 14 C.B.N.S., 180, at p. 194.

(3) 10 App. Cas., 229, at p. 240.

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on the nature, constitution and ordinary course of practice of the body to whom the power is entrusted. All that must be taken to be held in view by the legislature when creating the power and the connoted duty, and to be part of the implication. Natural justice looks only to substance, not to form. If form is necessary that must be founded on other considerations than natural justice.

Here the seven days were past, which were allowed by Parliament to the owner to make up his mind to comply or contest; he had full notice both by the law and the actual notice served on him that after the seven days the Council might proceed to give the direction and I do not say what might have been the result—having regard to *Vestry of St. James and St. John, Clerkenwell* v. *Feary* (1) and to *Attorney-General* v. *Hooper* (2)—if the appellant had failed to move in the matter before the direction had been actually given. But that was not so, the application to be heard was given before the determination. And as that determination is final, and no further opportunity exists of questioning its propriety, the Council did not exercise its power as required by the rule laid down by Lord *Lindley* in *British Equitable Assurance Co. Ltd.* v. *Bailey* (3).

No limitations are placed by the legislature on the considerations which may influence the Council in deciding to accept or reject the Surveyor's proposal to do the works, in whole or in part; and therefore it is obvious they cannot shut out an objecting owner from urging either that the work is wholly unnecessary or that the necessity of the case may be met by less extensive operations.

I agree that the appeal must be dismissed.

Appeal dismissed with costs.

Solicitor, for the appellants, *P. S. Dawson.*

Solicitor, for the respondent, *M. J. Harris.*

B. L.

(1) 24 Q.B.D., 703.

(2) (1893) 3 Ch., 483., at p. 489.

(3) (1906) A.C., 35.