

TAB 10

COURT OF APPEAL.

JUNE 20TH, 1934.

RE THE CHILDREN'S AID SOCIETY OF THE
COUNTY OF YORK.

Public Inquiries—Commissioner appointed pursuant to The Public Inquiries Act, R.S.O. 1927, ch. 20—Scope of enquiry—Method of examination of witnesses—Right of cross-examination of witnesses by solicitor for petitioners—Stated case.

As a result of a petition complaining that The Children's Aid Society of the County of York had discharged its functions under The Children's Protection Act, R.S.O. 1927, ch. 279, in a negligent and incompetent manner, the Lieutenant-Governor in Council pursuant to the provisions of The Public Inquiries Act, R.S.O. 1927, ch. 20, by letters patent appointed His Honour Judge Parker of the County Court of the County of York as a Commissioner "to inquire into the conduct, management and administration of The Children's Aid Society of the County of York and all matters in connection therewith, or incidental thereto and to report upon the evidence and facts brought out by the investigation."

During the course of the inquiry certain questions arose as to the calling and examination of witnesses and the Commissioner was requested by counsel for the petitioners to state a case for the opinion of the Court of Appeal in relation to these questions. The Commissioner refused to state a case. Subsequently, by an order of The Court of Appeal, the Commissioner was directed to state a case upon the following questions, namely:—

1. Has the Commissioner jurisdiction under the commission herein to hear evidence relating to dealings by the said Society or its Local Superintendent with moneys paid to the Society for the benefit of any ward or wards of the Society and should he hear such evidence?

2. Is counsel either for G. B. Little, the Local Superintendent of the said Society, or for the petitioners, entitled to call witnesses and examine them in chief or must all witnesses be called only by the commission counsel?

3. Is counsel for the petitioners entitled to examine or cross-examine witnesses called at the instance of counsel for the commission or persons other than the petitioners?

4. Are the petitioners entitled to have the records of the said Society dealing with matters under review produced before the said commission and should such records be produced?

The Commissioner in stating the case added a fifth question:—

5. A witness who, in my opinion, should have been, but was not, called by counsel for the petitioners, was called and examined by me. Permission was given to all counsel to examine this witness. I refused to allow counsel to cross-examine this witness. As Commissioner had I that right?

The stated case was heard by **Mulock, C.J.O., Riddell and Middleton, J.J.A.**

R. L. Kellock, for the petitioners.

J. D. Lucas, for **G. B. Little**, Superintendent of The Children's Aid Society of the County of York.

K. V. Stratton, K.C., appeared for the Commissioner but the Court was of the opinion that the Commissioner, having stated the questions for the opinion of the Court, was not entitled to be represented on the argument and that it could not hear counsel on his behalf.

Mulock, C.J.O., in an oral judgment delivered at the conclusion of the argument, said that in answering the questions submitted it might be advisable to point out the nature of the inquiry in question. It is one to bring to light evidence or information touching matters referred to the Commissioner. It is not a question between one person and another. There is no issue referred to the Commissioner to determine, and the rules of evidence have no application to such an inquiry. The Commissioner should avail himself of all reasonable sources of information, giving a wide scope to the inquiry. If, for example, some person were to inform the Commissioner where useful documents or other evidence could be obtained, it would seem reasonable that he avail himself of such a source of information. The inquiry is one on behalf of the general public, and should be conducted in public. There are no parties or sides to the proceedings. It is for the Commissioner, from all available sources, to bring to light such evidence as may have a bearing on the matters referred to him. In the conduct of the inquiry, the Commissioner should allow counsel or laymen to assist him.

Certain books or papers of the Society are said to be in the possession of the Superintendent of the Society. Should such be the case, when in his possession they are in the possession of the Society; and it would be not only

highly improper, but illegal, for the Superintendent to refuse to hand over these papers to the Society when required so to do; and if the Society requires them to be produced before the Commissioner, the Superintendent has no right to withhold them.

During the argument, it was said that the Commissioner held that, until some prima facie case was made, he would not require the Superintendent to produce those papers. This is an incorrect view of the position of the matter. In an inquiry such as this no question of a prima facie case arises. There being no parties to the proceedings, there is no one against whom a prima facie case can be made.

As to the questions submitted they must all be answered in the affirmative except number 5 which is answered in the negative.

Riddell, J.A., in an oral judgment, said that he entirely agreed with Mulock, C.J.O. A Royal Commission is not for the purpose of trying a case or a charge against any one, any person or any institution—but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available. It is usual and proper to have counsel appointed to assist in the inquiry, but that does not imply that he alone has the right to call witnesses, or to determine what witnesses are to be heard. The learned Justice of Appeal said that he had had considerable experience on Royal Commissions; in the last instance an article appeared in an important newspaper saying or suggesting that the Commission had not all the facts before it. Thereupon the Commissioners caused a letter to be written to the paper asking it to give any facts not brought out, and inviting information from any source whatever.

Everyone able to bring relevant facts before the Commission should be encouraged, should be urged, to do so.

Nor are the strict rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission. Moreover, everyone should have the right to cross-examine any witness whom he believes to be in error or to be suppressing facts. This right, of course, is not to be abused by irrelevant questioning.

The object of a Royal Commission is to determine facts, not to try individuals or institutions, and this consideration is sufficient to guide the Commissioner in the performance of his duty.

Middleton, J.A., in an oral judgment, said that he entirely agreed with Mulock, C.J.O., and Riddell, J.A.

It must not be forgotten that this is an inquiry directed by the government into the affairs of its own creature, a Children's Aid Society, with the view of ascertaining if it is discharging its true function in the public service. Suspicion of wrong-doing and maladministration exist. Is there any foundation? It is in no sense a trial of any one. It is an inquiry not governed by the same rules as are applicable to the trial of an accused person. The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and in discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exist, may be remedied and misconduct, if misconduct exist, may be put an end to and be punished, not by the Commissioner, but by appropriate proceedings against any offending individual.

This is a matter in which the fullest inquiry should be permitted. All documents should be produced, and all witnesses should be heard, and the fullest right to cross-examine should be permitted. Only in this way can the truth be disclosed.

This is not a matter in which any one should seek, or if seeking should be permitted, to burke the fullest investigation. It would have been wise, and would have saved much time, if the documents and records had in the first instance been examined before taking oral evidence, but this does not seem to have been appreciated by anyone.

Questions 1, 2, 3 and 4 answered in the affirmative; question 5 answered in the negative.