

DEMOLITION OF INSANITARY PROPERTY.

HOUSING OF THE WORKING CLASSES ACT, 1890.

GOVER v. THE VESTRY OF ST. GEORGE THE MARTYR, SOUTHWARK.*

ON November 29th, 1898, an order was made by the Vestry of St. George the Martyr, under the Housing of the Working Classes Act, 1890, for the demolition of the premises Nos. 1, 2, 3, 4, and 5, Red Cow Alley, Tabard Street, in consequence of the same not having been rendered fit for human habitation, and being dangerous or injurious to the health of the inhabitants of the neighbouring dwelling-houses.

Against this order the owners of the property, Messrs. Gover, appealed to the Court of Quarter Sessions, and the appeal was heard at the Newington Sessions House on January 11th, 1899. Mr. Corrie Grant appeared for the Vestry, and Mr. Frank Gover for the appellants. After hearing Dr. Waldo and Dr. Parkes, the Court considered that no further evidence was necessary to prove that the premises were dangerous or injurious to the health of the inhabitants of the neighbouring dwelling-houses.

The witnesses for the appellants having been heard, Mr. Gover contended that the words "dwelling-house" in Section 33 meant an "inhabited" dwelling-house in accordance with the definition contained in Section 29 of the Act, and that only so much of the buildings could be ordered to be demolished as was dangerous or injurious to health. The Court decided that the premises were in such a condition as to be dangerous or injurious to the health of the surrounding population; but they came to the conclusion that in Section 33 the words "dwelling-house" meant an "inhabited" dwelling-house in accordance with the definition contained in Section 29.

On the application of the Vestry, a case was stated for the decision of the Queen's Bench Division.

The case was heard in the Divisional Court on November 7th, 1899, by Mr. Justice Ridley and Mr. Justice Darling. Mr. Corrie Grant appeared on behalf of the Vestry, and Mr. A. Macmorran, Q.C., on behalf of Messrs. Gover. In the course of his argument Mr. Macmorran supported the contention of Mr. Gover in the Court of Quarter Sessions that the words "dwelling-house" in Section 33

* The history of this extraordinary case is taken from a report presented by the Public Health Committee to the Vestry of St. George the Martyr, Southwark, at the meeting of April 24th last.

applied only to an *inhabited* dwelling-house. He also contended that it ought to have been stated in the special case whether the *whole* of the premises or *what part* was dangerous or injurious to the health of the public or to the inhabitants of the neighbouring buildings.

The Court were of opinion that the words "dwelling-house" in Section 33 of the Act applied not only to an inhabited but also to an uninhabited dwelling-house, but remitted the case to the Quarter Sessions "for re-hearing and determination for the purpose of ascertaining whether the whole of each of the five houses above mentioned, or some and what part of any or all of them is dangerous or injurious to the health of the public," etc., and an order of the Court was made accordingly.

The case again came before the Court of Quarter Sessions on January 19th, 1900. Mr. Gover then stated that the w.c.'s had been demolished and the drains sealed, with a view to render the premises not injurious to health, and the case was adjourned to February 16th, so that the Vestry might have an opportunity of inspecting what had been done.

Messrs. Gover having objected to the ground being disturbed, an appointment was made with them to inspect the premises on February 7th as they stood. On that occasion it was discovered that, although the closets had been pulled down, it did not appear that the drains had been properly sealed or removed, as stated by Mr. Gover. Notice was accordingly given by the Vestry, under the Metropolis Management Act, 1855, of their intention to open the ground to inspect the drains, with a view of ascertaining the correctness of Messrs. Gover's statement. The inspection took place on February 14th, when neither the drains at the back of the premises nor those at the front were found to be sealed or in any way dealt with.

The hearing of the case was postponed until March 16th, when Drs. Waldo and Louis Parkes again gave evidence on behalf of the Vestry. Dr. Louis Parkes stated, in the course of his evidence, that the drains having been removed, there was a much greater liability of danger to health arising, as the roofs were partly demolished and the interiors of the houses were rotten, and the rain passing into the filth between the floors and saturating the ground (which already no doubt had become the receptacle of a considerable quantity of filthy matter) would in warm and close weather give off dangerous effluvia, and, in his opinion, the houses ought therefore to be demolished. Mr. Field gave evidence on behalf of the appellants.

After hearing the evidence and the arguments of counsel, the Deputy Chairman stated that he would inspect the premises in view of the contrary opinions expressed by expert witnesses on each side, and that he would take with him a medical man who had been for some years a medical officer of health, and a practical surveyor of his acquaintance, in order to guide him in his judgment.

Mr. Loveland Loveland inspected the premises on the afternoon of Saturday, April 7th, Dr. Waldo acting as shower for the Vestry, and Mr. Field for Messrs. Gover. The names of the gentlemen accompanying the magistrate did not transpire.

Judgment was given by the Deputy Chairman on Wednesday, April 11th, in the following terms:

This is an appeal against an order of the Vestry of St. George the Martyr, Southwark, dated November 29th, 1898, under Section 33 of the Housing of the Working Classes Act, 1890, for the demolition of five houses, being Nos. 1, 2, 3, 4, 5, Red Cow Alley, Tabard Street, Southwark, which was first heard before me on January 13th, 1899, when Mr. Corrie Grant appeared for the Vestry and Mr. Gover for the appellants.

Dr. Frederick Joseph Waldo, medical officer of health, and Dr. Parkes gave evidence on behalf of the Vestry, together with the sanitary inspector and others.

Mr. Debenham, a rate-collector, was called by the appellants, who stated *inter alia* that no complaints as to sickness or a nuisance had been made regarding the premises.

Two tenants of Tabard Street were called on behalf of the appellants, who said they had no complaint, nor had they heard of any, and a surveyor was called also to state that he did not detect any smell of sewer-gas, nor did he see any filth about the place. One of the co-trustees stated that there was no intention of letting the premises, that they were mere ruins, they had not been inhabited since 1895, and there was no intention of making them habitable, but that the ground would be sold with the ruins as they stood.

Previous to the demolition order the premises were closed in pursuance of the closing orders made by the respondents under Section 32 of the said Act, on March 14th, 1895. The orders were not determined by any subsequent order, nor were any notices or complaints in respect of the buildings made by the respondents until the proceedings in this Court. The premises are all closed in, and the only access to them is now obtainable through a shop and back premises in Tabard Street.

The contention of the respondents was that the buildings were dwelling-houses within the meaning of the Act, and the continuation of the said buildings was dangerous or injurious to health, and that the said order of November 29th, 1898, was rightfully and lawfully made under the section in the Act.

The appellants contended that the building and premises were not dwelling-houses either within the meaning of the said section or of the said Act, that the continuance thereof was not

dangerous or injurious, and that even if they were dwelling-houses within the meaning of the Act, only so much of the said building could be ordered to be demolished as were (*sic*) dangerous and injurious to health.

We found, as a fact, at the time of the demolition order that part of the said premises were (*sic*) dangerous or injurious to health, and that the inhabitants of the neighbouring dwelling-houses might be affected thereby, and we settled a case for the opinion of the High Court as to whether Section 33 of the Act applied to inhabited premises which were not intended for occupation as dwelling-houses, and which were, in fact, mere shells or ruins, and we asked whether the respondents had power to make the said order for demolition of the whole premises under the terms of the section—in other words, whether this Act applied to property of this description.

The case came before the High Court, and an order was made, dated November 7th, 1899, to the following effect:

“Upon reading the order of Sessions made upon July 11th, upon the appeal of Elizabeth Gover and others against a certain order made by the respondents on November 29th, 1898, under Section 33 of the Act, for the demolition of certain houses known as Nos. 1 to 5 (inclusive), Red Cow Alley, whereby the said appeal was allowed, and the said order quashed, and a special case stated thereon, it is ordered that the said order of Sessions and the case stated thereon for the opinion of this Court be remitted to the Quarter Sessions for re-hearing and determination by such Court, for the purpose of ascertaining whether the whole of each of the five houses above mentioned, or some of them, and what part, if any, or all of them *is* dangerous or injurious to the health of the public, or of the inhabitants of the neighbouring buildings.”

On January 19th in the present year the appeal came on for hearing in pursuance of the order of the High Court, and was postponed, and in February, owing to there being some misunderstanding with regard to the date of the hearing, and the appellants not having due notice by the officials of this Court when the respondents appeared, Mr. Gover for the appellants did not put in an appearance, the appeal was therefore again postponed, the solicitor for the appellants being present, and Mr. Corrie Grant having stated on behalf of the Vestry that they had not been able or allowed to inspect the premises, the Court ordered the solicitor for the appellant to allow them to see what, if any, works had not been done on the premises, and report to the Court at the next hearing.

Subsequently, on March 14th, evidence was taken as to the insanitary state of the buildings at the time when the demolition order was made, and the respondents produced similar evidence to that adduced by them on January 13th, 1899, when Dr. Waldo was of opinion that, although at such time there was no disconnection with the drain, and the w.c.'s were still existing, they had since been pulled down and the drains stopped and sealed, and that no communication existed in March, 1900, but that the ruins were still existing, and that the state of the roof and floors and the filth was such that if they became wet by rain, and dried by the sun, the buildings would give off injurious

effluvia which would be likely to be dangerous or injurious to the health of the public or the inhabitants of the neighbouring buildings. He suggested pulling down the buildings, draining the plot, and taking proceedings against people who threw over vegetable and decayed matter. This evidence was corroborated by Dr. Parkes, and he agreed with Dr. Waldo that the premises were dangerous to health at the time of the demolition order, the interiors of the houses were rotten, no roofs, and that the sides were covered by walls that would give off dangerous effluvia.

Mr. Field was called by the appellants, and stated that he had seen the premises during February and March, was present when the ground was excavated, was shown by Mrs. Dunn, an adjoining tenant, which way the drains ran. He stated that he found no trace of saturation. All connection with the drains at the back of Tabard Street was cut off. There was a surface-drain in the court, and the end was sealed up some 5 feet or more underground. He found no smell; but he had no medical experience, was only a sanitary surveyor. He further stated they were not slightly buildings, and if they were his he should pull them down, but not on account of their being dangerous to health.

Both learned counsel asked that the evidence given on the previous occasion might be taken as given at that hearing, to which the Court assented.

The Court was then asked to go and see the premises, and, in view of the contrary opinions expressed by the expert witnesses on each side, that the Court would judge for itself whether or not the whole or any part of these premises were dangerous or injurious to the health of the public.

The Court suggested that it would like to be assisted by a medical officer of health and a surveyor, and in accordance with that view a visit was made by the Deputy Chairman, accompanied by a medical man who had been for some years medical officer of health, and a practical surveyor of large experience in London. They visited the premises on Saturday, April 7th, and saw that the drains had *now* been sealed up, and that they were 5 feet or so below the surface, holes being left so that inspection could be made, and they visited each of the five tenements.

The Court is of opinion that at the time of the demolition order a part of the tenements, namely, the closets and the drains, were injurious to the health of the public and the inhabitants of the neighbouring buildings, but that now at last the danger arising from that portion had been remedied, and no risk is likely to ensue therefrom. With regard to the dilapidated ruins themselves—namely, the walls of the houses, the floors and staircases—the Court, having carefully gone into the question with the experts before mentioned, is of opinion that such portion of the property was not, nor is likely to be, dangerous or injurious to the health of the public or of the inhabitants of the neighbouring buildings, that portion being easily separable from the sanitary portion of the dwelling. Such being the case, the Court has to see what the High Court mandate orders them to do, and seeing that such order says, "That it is to see whether

the whole of each of the said houses, or some, and what part of any or all of them *is* dangerous," etc.,

We, under the present circumstances, cannot order now any further demolition or work to be done on the property; but, having regard to the state of the premises at the time when the order was made, and if we are allowed so to do by the order of the High Court, and seeing that there was danger then, and that the unsanitary state of things was not amended for a considerable time, and that the appellants put many obstacles in the way of the respondents going upon the site to see the state of the property, and also having regard to the correspondence that passed between the parties, and bearing in mind that the order refers to the total demolition of the ruins, as well as such portion at the back which in their opinion was dangerous to health, the Court thinks that there should be no costs on either side.

It, therefore, need only be remarked upon this question of costs, that the Court has not forgotten the facts with regard to the appointed hearing, when Mr. Gover did not come to Court on behalf of his clients; but it thinks that probably that was due to insufficient notice, and that, although it was not the fault of the respondents, probably it was due to some inadvertence of the officials here, and therefore it would be unfair to give the respondents the costs of that appearance.

The Court has taken all these several circumstances into account in coming to the conclusion on the question of costs.

The Committee conclude their report with the following remarks:

"Your Committee were somewhat surprised that the Deputy Chairman of Quarter Sessions should have taken the exceptional course of accepting the statements of two of his personal friends on so important a case, as against the opinion of medical men of the eminence and experience of Dr. Parkes of Chelsea, and the medical officer of health of this parish, especially as there was no opportunity for counsel to cross-examine them before judgment was delivered.

"Your Committee are advised by Mr. Corrie Grant that there is in this case, unfortunately, no appeal from the decision of the Quarter Sessions.

"The Committee would, in conclusion, point out that the effect of the decision of the learned Deputy Chairman is practically to prevent the carrying out of that portion of the Housing of the Working Classes Act which purports to enable local authorities to demolish dwelling-houses closed by order of the magistrates, inasmuch as it is next to impossible to discover any case of a dwelling-house more likely to be a danger to the inhabitants of the surrounding dwelling-houses than those in this case."