

provided, and the 'bus was thrown down some considerable distance. This notice is given pursuant to the Municipal Act." On the 20th January, the town clerk replied: "Yours of the 31st re alleged accident to Young received and considered by the council. I have been instructed to notify you that Bruce township council will not pay any damages, as they do not consider they are liable for any such damages."

The defence, properly speaking, is not that there was no notice, but that the notice was insufficient. And that is a matter which is not to be determined by the mere frame of the notice, but by regarding the circumstances of the case. The language of the statute is, that notice "in writing of the accident and the cause thereof" is to be served: sec. 606, sub-sec. 3; and by the last sub-section it is provided that insufficiency of the notice required shall not be a bar if the trial Judge considers that there is reasonable excuse for the insufficiency, and that the defendants have not thereby been prejudiced in their defence. In this case the accident and the cause of it have been notified, but without such details as are particularised in the statement of claim. The vagueness exists as to the precise locality on the highway, which is said to be some ten miles, to any one who does not know the road and the places where protection is likely to be required; but to the council, who had knowledge of the culverts and hollows and places where protection was needed, and of the place where the stage had overturned on the 8th December, the notice would appear to afford reasonable information to make proper investigations in view of the threatened action. I think the maxim *id certum est* may well be applied to eke out the apparent insufficiency of the notice. The language used in *O'Connor v. City of Hamilton*, 10 O.L.R. 529, is applicable to a case where no notice has been given—a very different situation from this, where the notice was given pursuant to the terms of the statute, apprising the defendants of the injury to the traveller and the existence of the alleged lack of repair and protection at the hollow where the stage was overturned on the specified day. They had sufficient notice to put them upon inquiry, and they did investigate and consider the claim, as appears from their letter and the evidence given. The apparent vagueness as to locality may be excused from the knowledge of the council as to the particular place said to be dangerous and out of repair. . . .

[Reference to *McInnes v. Township of Egremont*, 5 O.L.R. 713, 715; *City of Kingston v. Drennan*, 27 S.C.R. 46, 61.]

The case should have been stopped at the point at which it was; and I think it should be remitted to be tried out on the