

the name and residence of plaintiff's attorney, or agent; that plaintiff did *not* give such notice, and that the pretended notice of 23rd October, 1878, was informal and irregular, and did not even mention the place where the act of defendant (*quasi délit*) complained of, was committed. By his answer to this first plea, the plaintiff says that the notice of action given to defendant was sufficient in every respect.

By other pleas, the defendant alleges that plaintiff was an Orangeman on the 12th of July, 1878; that the Orange Association is dangerous to public order; that in Montreal the Society was and is an illegal one; that before 12th July, 1878, it had announced a determination to have a procession through the streets; that this caused great anxiety among the citizens, disorders usually being the result of such processions; that the magistrates advised the defendant to issue a proclamation against all processions that day, and inviting the citizens to help to preserve the peace; that the City Council also so advised the defendant; that he did as advised; yet the Orangemen met with intention to walk with insignia that day, and the plaintiff was, while organizing or marshalling the parade or procession, arrested by proper authority, and defendant is not responsible; that the plaintiff was arrested by the High Constable, upon a warrant of the Police Magistrate upon the information of one Murphy, which warrant the defendant approved, and plaintiff was, as it were, consenting to his own arrest, that, by or through it, he might raise before the Courts the question of the legality, or illegality, of the Orange Association; that as to the proceedings before the Criminal Courts, whether the plaintiff was acquitted or not cannot affect the defendant; for he did not promote them, and had nothing to do with them, &c.

In disposing of the case we have first to do with the first plea, and the answer to it. That the defendant was entitled to notice of action before suit is plain. We see at the end of the *enquête* that he acted, on the 12th of July, in the execution of his office. He was in the exercise of his functions. The plaintiff admits that he had to give notice of action; he alleges notice, and by his answer to plea insists that the notice given was sufficient.

The defendant says that he has *not* received the required notice; that the causes of ac-

tion were not stated in the notice served; that it did not even state *where* the act of defendant complained of was done; he objects, also, that the names and residence of plaintiff's attorneys, or agents, giving the notice, are not stated in or upon it.

The notice is sufficient, says plaintiff's attorney, "the defendant could not misunderstand it." "It must be read in a reasonable, common sense way," &c.

Art. 22, Code of Procedure, enacts: "No public officer can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any verdict or judgment be rendered against him, unless notice of such suit has been given him at least one month before the issuing of the writ. Such notice must be in writing; it must specify the grounds of the action, and must state the name and residence of the plaintiff's attorney."

Are the causes or grounds of action stated in the notice? The arrest of the plaintiff on the 12th of July is the trespass charged, or offence of the defendant. *Where* it took place or was committed is not stated. In England, whence we have drawn our law, this would be held fatal to plaintiff's case. *Martin v. Upcher*, 3 Q. B. (Ad. & Ellis). So it would be in Ireland. See Fisher's Digest, p. 3, cases of 1877. So in Ontario. *Kemble v. McGarry*, 6 Q. B. Rep. Old Series, and *Madden v. Shewer*, 2 Q. B. Rep., p. 115. (Here the Judge read from these cases.) Our Code of Procedure, Art. 36, orders "Every suit in damages against a public officer, by reason of any act done by him in the exercise of his functions, must be brought before the Court of the place where such act was committed." How can it be seen whether an action is instituted in the proper county if, in the notice of action, no place be stated? The necessity for statement of place in the notice of action is apparent for more reasons than one. Certain is it that our Quebec Courts hold as do those in England, Ireland and Ontario. See *Betterworth v. Hough*, 16 L.C. Rep. Judgment of Stuart, J. (confirmed in the Q.B. afterwards.)

The cause of action, in a notice of action, is not stated within the intent of Art. 22, Code of Procedure, unless place be stated.

In no country possessing the institution of Justices of the Peace, as do the British possessions generally, has it ever been judged,