

further particulars are now sought and has, on oath, stated his inability to give them. It is not suggested that there is any other source than the plaintiff's own recollection from which more specific dates could be obtained, and I do not think on this application I should order him to do what he swears he is unable to do, at the penalty of striking out those allegations from the statement of claim. Neither do I think that the particulars of acts occurring since the issue of the writ, should be struck out as they appear to constitute what is called in Rule 552 "a continuing cause of action," for which damages may be assessed in this action.

With regard to the allegations as to the municipal by-law, I have come to the conclusion they ought not at this stage of the proceedings to be struck out. It is said that in determining whether the non-performance of a statutory duty which causes injury to an individual gives him a right of action depends on "the purview of the Legislature in the particular statute, and the language which they there employed." *Cowley v. Newmarket*, L. B. 1892, A. C. 352, and see *Saunders v. Holborne Dis. Bd.*, 1895, 1 Q. B. 64, and *Baron v. Portslade Dis. Ct.*, 1900, 2 Q. B. 588.

The same considerations apply to by-laws which are made in pursuance of statutory powers. Whether this particular by-law gives the plaintiff a right of action I do not think can properly be determined by me on a motion of this kind. I do not think paragraph 17 is clearly irrelevant, on the contrary it appears to me to present a question proper for the decision of the Judge who may try the action. It may be remarked that the by-law does not appear to make something unlawful which before was lawful, but rather imposes a penalty for what was already an unlawful act.

The motion is therefore refused, with costs to the plaintiff in any event.

As Mr. Mills has pointed out, there is here no affidavit filed on the part of the defendants suggesting any difficulty in their pleading in the action for want of the particulars claimed, nor do I perceive any. The motion must, therefore, be refused with costs to the plaintiff in any event.