the notice of motion, the beginning of the proceeding: Re Shaw and City of St. Thomas (1899), 18 P.R. 454. No doubt, speaking generally, that is so, but I do not think that such a principle is conclusive here. The section cannot be read literally—it cannot be that, after a by-law has been approved by the Board, it is not "open to question in any Court:" if the approval is withdrawn and the order of the Board set aside, no one would argue that "thereafter" a motion could not be prosecuted begun by a notice served thereafter.

Full effect can be given to the section by interpreting it as meaning that the Court cannot question the validity of a by-law which has been approved by the Board if such approval is in existence when the Court is called upon to decide. And this works both ways: if the approval of the Board were obtained after notice served and before the return thereof, I have no doubt the Court could not declare the by-law invalid. This is not quite the same as the case of an applicant who corresponds with a plaintiff—it is well recognised that the rights of the plaintiff are only as of the teste of the writ, that is, he cannot set up rights acquired after the teste of the writ, but the rights of the defendant are as of the day of determination if he has a mind to ask them.

No case has been cited in which a plaintiff, having begun an action, in ignorance of a bar existing to his obtaining his rights, and on discovery of the bar procuring its removal, is then barred because of that previous obstruction.

Were this a case of estoppel, difficult questions might arise; but, even then, there is respectable authority for the proposition that an action begun which can be met by a plea of estoppel will lie if the estoppel be removed before the matter comes to adjudication.

In Goodrich v. Bodurtha (1856), 72 Mass. (6 Gray) 323, a note had been sued upon and judgment given thereon in the Court of Common Pleas. Action was brought upon this judgment, and, while this action was pending, the former judgment was set aside. The defendant thereupon amended his answer, and the plaintiff obtained leave at the trial to add a claim upon the original note. It was held that this was proper. It may, of course, be said that the setting aside of the judgment upon the note was on the ground of want of jurisdiction, and consequently the judgment never had legal validity and could have no effect. But that is not the ground on which the Court proceeds—what is said is (p. 324): "The defendant answered