

Section 31 of the Act provides that if any action be brought against any person for anything done in pursuance of the Act, it shall be brought within six months after the act committed, or in case there shall be a continuation of damages then within one year after the original cause of such action arising.

It is to be observed that the water of the river Thames is not conveyed to the city by the waterworks; the use made of it by the commissioners is the generating of power to pump to the city the water obtained from another source. No authority is given to the commissioners by the Act to interfere with any other occupied water power on the river for obtaining such power. It is also worthy of note that in the general statute passed in the same year (ch. 40) for the improvement of water privileges for manufacturing, milling, or hydraulic purposes, it is specially provided that no occupied mill privilege or water power shall be in any manner interfered with or encroached upon under the authority of that Act, without the consent of the owner.

I am of opinion that the defendants had no authority by virtue of their special Act or the general law to back the water up on the plaintiff as they have done, and that their doing so was not something done in pursuance of their special Act within the meaning of sec. 31 so as to enable them to set up the short limitation of six months or twelve months.

By sec. 17 of the special Act the commissioners are to have the like protection in the exercise of their respective offices and the execution of their duties as justices of the peace, and they claim that they were entitled to a month's notice in writing before the bringing of the action, which was not given them. What has just been said about the short limitation is equally applicable to this point; and in addition it is to be observed that this is an action to restrain defendants from continuing a nuisance or trespass. It is well settled that the provision requiring such notice is not applicable where an injunction is sought: *Attorney-General v. Hackney Local Board*, L. R. 20 Eq. 626; *Sellers v. Matlock Bath Local Board*, 14 Q. B. D. 928. This rule applies even when damages are also claimed: *Flower v. Local Board of Low Leyton*, 5 Ch. D. 347; *Bateman v. Poplar District Board*, 33 Ch. D. 360.

Defendants also claimed that they had acquired the right to dam the water as they had done by prescription, and that in any event plaintiff had disentitled himself to relief by laches, acquiescence, and delay. Defendants' dam was erected in 1879, the injury which plaintiff claims he has suffered began in 1880, when defendants placed flashboards upon their