

whole or in part, * * * no action shall be brought until one month has elapsed after the by-law, &c., has been quashed or repealed, nor until one month's notice in writing of the intention to bring such action has been given to the corporation; and every such action shall be brought against the corporation alone, and not against any person acting under the by-law, order, or resolution; and, section 837 provides, that proceedings taken against corporations for non-repair of roads, or for damages sustained by reason of their non-repair, shall be commenced within three months after the damages have been sustained.

The reasons which have been assigned by the Queen's Bench why a municipal corporation is not entitled to notice of action are:

1. Because it would be inconsistent with the intent and object of the legislature, as expressed in the preamble [of the act 14 & 15 Victoria, chapter 54, now chapter 126 of the Consolidated Statutes of Upper Canada,] which was to alter, amend, and reduce into one act the various acts, whereby certain protections and privileges were afforded to magistrates and others which were not of a uniform character. *Brown v. Sarnia*, 11 U. C. Q. B. 218.

2. The context of the act shews that the Statute only applies to individual persons; 11 U. C. Q. B. 219.

(a.) The two modes of serving the notice, personally or by leaving it at the usual place of abode, are altogether inapplicable to municipal corporations; *Ibid.* 219.

(b.) The service of a notice of action is not within the meaning of the act, which provides for serving the head of the corporation with "writs and process, and other papers and proceedings before final judgment;" *Ibid.*

(c.) Personal service upon a corporation cannot be interpreted to mean upon the head of the corporation, this would be service only upon a part of the corporation.

3. The 14 & 15 Victoria, chapter 54, did not apply to any of the then municipal acts, 12 Victoria, chapter 81, 13 & 14 Victoria, chapter 64, 14 & 15 Victoria, chapter 109, or 16 Victoria, chapter 181, because it had reference only to "so much of any act now in force as confers any privilege," as to notice or limitation of action, or amount of costs, or pleading the general issue, and giving the special matter in evidence, or venue, or tender of amends, or payment of money into court, while none of these municipal acts gave the municipality any privilege as to notice or limitation of action, or as to amount of costs, &c.; *Snook v. Brantford*, 13 U. C. Q. B. 623.

4. Because none of these municipal acts fall within the description contained in the preamble to the 14th & 15th Victoria, chapter 54, viz, "acts of Parliament in force in Canada, both public, local and personal, whereby certain protections and privileges are afforded to magistrates and others; 13 U. C. Q. B. 624.

5. Because none of these acts "are altered or amended" by this statute.

6. Because, apart from the Interpretation Act, the language of the 14 & 15 Victoria, chapter 54, shewed the Legislature had not municipal corporations in view when they passed it; all the language was applicable strictly to the personal acts of an individual, and cannot be applied to a

corporate body without a strained and unnatural construction; 13 U. C. Q. B. 624.

7. Because the word "person" in the Interpretation Act is not to be extended to corporations, if it be inconsistent with the intent and object of the act, or with the context; and the object and intent of the act and the context shew it was not intended to apply the word "person" to municipal corporations; *Ibid.* 625.

8. Because if the 14 & 15 Victoria, chapter 54, be extended to municipal corporations, it might happen that a party would have little more than a week within which he could bring his suit, for by 12 Victoria, chapter 81, section 155, no action for anything done under a by-law can be brought until the expiration of one month after the by-law has been quashed; one month's notice of action has then to be given, and the action must be brought within six months by the 14 & 15 Victoria, chapter 54; *Ibid.* 626.

9. Because the 13 & 14 Victoria, chapter 15, limiting the time of bringing this action to three months, would have the effect of depriving a party of all remedy if he had to wait until the by-law was quashed before bringing his action, or the time mentioned in the act must be assumed to have been altered by the 14th & 15th Victoria, chapter 54, "a conclusion which [the learned judge said] I am not prepared to adopt;" *Ibid.* 626.

10. Because the three months' limitation in the 13 & 14 Victoria, chapter 15, would be reduced to two months if the 14 & 15 Victoria, chapter 54, be held to apply to corporations, *Ibid.* 627, or the time therein mentioned must be held to be extended to six months; *Ibid.* 628.

11. Because after the passing of the Interpretation Act, and the act of 14 & 15 Victoria, chapter 54, the Legislature "has used the same language as to corporations being entitled to plead the general issue and give the special matter in evidence, as had been used previously without any provision for notice of action to be served," as in the Bytown and Prescott Railway Act, 13 & 14 Victoria, chapter 132, section 50, and in the 16 Victoria, chapter 190, section 53, as to road companies.

The reasons which have been assigned by the Common Pleas why a municipal corporation is entitled to notice of action are:

1. That municipal corporations are fully within the spirit of the 14 & 15 Victoria chapter 54; *Reid v. Hamilton*, 5 U. C. C. P. 290.

2. Individual members of the corporation are entitled to notice, and on the same principle the corporation, when the members act collectively, are entitled to notices; 5 U. C. C. P. 290.

3. The corporation is entitled to notice, notwithstanding the argument that if the party had to wait until the by-law [if one were in question] had been quashed, his right of action might be outlawed.—*Barclay v. Darlington*, 5 U. C. C. P. 290.

4. By-laws bear analogy to convictions, and both afford protection until quashed, and it is clear that justices are entitled to notice of action, and that the action must be brought in a limited time.—*Barclay v. Darlington*, 5 U. C. C. P. 290, 439.

5. If a by-law be quashed the corporation has notice by statute that no action can be brought, for a month, within which time they may tender