

NOTICE OF ACTION.

There are, however, other statutes expressly requiring notice of action to be served in the particular cases therein referred to. For instance, the Division Court Act, R. S. O. c. 47, s. 231, which applies to actions brought for anything done in pursuance of that Act; the Special Constables Act, R. S. O. c. 83, s. 22; the Municipal Act, 46 Vict. c. 18, s. 340; the Customs Act, 46 Vict. c. 12, s. 226 (D.); the Militia Act, 46 Vict. c. 11, s. 89, ss. 2 (D.); the Crimes Act, 32 & 33 Vict. c. 29, s. 131 (D.); Land for Naval Defence Act, C. S. C. c. 37, s. 42; the General Inspection Act, 37 Vict. c. 45 (D.).

Where notice of action is required, it must strictly comply with the statute which requires it to be given. Where, however, there is a special act relating to the matter, it would seem that the notice of action, if it comply with the latter, will be sufficient, though it may not contain all that is required by the general act, R. S. O. c. 73, to which we have above referred. Thus in *Stephens v. Stapleton*, 40 U. C. Q. B. 353, and *McMartin v. Hurlburt*, 2 App. R. 146, it was held that a notice to a Division Court bailiff which complied with the provisions of the Division Court Act was sufficient, though it omitted some of the particulars required by R. S. O. c. 73, in other words, that the provisions of the two Acts were not cumulative.

When the action is intended to be brought in the High Court of Justice it is sufficient so to state, without going on to specify the particular Division, *Haines v. Johnston*, 3 O. R. 100. With regard to the cause of action, it has been repeatedly held that the notice must specify the time and place, when and where, the injury complained of was committed: *Friel v. Ferguson*, 15 C. P. 584; *Parkyn v. Staples*, 19 C. P. 240; *Sprung v. Ande*, 23 C. P. 152; *Moore v. Gidley*, 32 U. C. Q. B. 233. It is not, however, necessary that the exact time and place should be stated, reason-

able certainty is all that is required; thus where the notice stated the act complained of to have been committed "on or about the 28th of May last," and the place was described as "at or near the west half of lot 31, in the 2nd con. of Mulmur," and the wrong complained of was proved to have been committed on the 23rd and 28th days of May, and on lot 32, in the 2nd concession, the notice was held to be sufficient: *Langford v. Kirkpatrick*, 2 App. R. 513. The nature of the wrong complained of must be explicitly set forth. A letter which merely stated that damages had been sustained, for which the defendants would be held responsible, was held an insufficient notice: *Union Steamship Co. v. Melbourne Harbour Commissioners*, 50 L. T. N. S. 337.

In actions against public officers entitled to notice under R. S. O. c. 73, for anything done by them within their jurisdiction, the notice of action must state that the act complained of was done maliciously and without reasonable or probable cause: *Taylor v. Nesfield*, 3 El. & Bl. 725; *Howell v. Armour*, 7 O. R. 363. But when the act complained of was beyond or in excess of the defendant's jurisdiction, it is not necessary to allege want of probable cause, see R. S. O. c. 73, ss. 2, 20. With regard to the name and address of the plaintiff, and of his attorney, if any, reasonable certainty is also required. R. S. O. c. 73, requires the name and address to be endorsed on the notice, but when the name and place of residence of the attorney were not endorsed on the notice but added inside at the foot of it, it was held to be sufficient: *Bross v. Huber*, 15 U. C. Q. B. 625. But the subscription by the attorney at the foot of the notice, "A. B., attorney for the said C. D., Simcoe, Talbot District," was held insufficient, as not stating the place of residence of the attorney: *Bates v. Walsh*, 6 U. C. Q. B. 498. But a notice describing the plaintiff's abode as