

indebtedness to him, and on the day before the trial Plummer gave the plaintiff a reassignment. Even if the objection could be held to be well taken, this would be a proper case for amendment, adding Plummer as a party: *Dawson v. Graham*, 41 U.C.R. 532; *McGuin v. Fretts*, 13 O.R. 699.

Davis v. Riley, (1898) 1 Q.B. 1, distinguished.

Held, also, that upon the evidence the Court could not interfere with the verdict.

W. E. Middleton, for defendants. *W. M. Douglas*, for plaintiff.

Street, J.] IN RE CAMPBELL AND VILLAGE OF SOUTHAMPTON. [March, 3
Municipal corporation—Closing street—By-law—Notice of intention to pass
—Absence of notice as to day on which to be considered—Invalidity of
by-law—Motion to quash—Discretion—Acquiescence—Estoppel.

Motion by William D. Campbell for a summary order quashing by-law No. 297 of the village corporation, being a by-law "for the purpose of expropriating and closing up certain portions of the public streets of the village of Southampton," upon the grounds, among others, that the municipal council had no power to pass the by-law without proper notice, and no notice, as required by law, was given of the intention of the council to pass it; that the notice of the intention of the council to pass the by-law, alleged to have been given, did not fix any time for the by-law being considered and for hearing persons opposed to it or whose rights might be affected thereby; that the applicant, who had bought property affected by the by-law, had no notice or knowledge of the day fixed for the passing of the by-law and had no opportunity of opposing it.

Idington, Q.C., for the applicant.

W. H. Blake, for the village corporation, contended that s. 546 of the Municipal Act, 55 Vict., c. 42, does not require that a time should be fixed by the published notice; that the failure to fix a time was not fatal to the by-law; and that the applicant had waived or acquiesced in the defect, if any, nine months having elapsed since the by-law was passed, and he having bought his property after notice of the proposed by-law had been given.

Held, that, as it was decided in *Re Birdsall and Township of Asphodel*, 40 U. C.R. 149 that the notice of intention to pass the by-law should state the day on which it is to be considered by the council, the statute is to be read as if it contained a direction to that effect, and the notice here not having so stated, the by-law was invalid; and, under *Re Osborn and Township of Sydney*, 15 A.R. 372, and *Re Robertson and Township of North Easthope*, 16 A.R. 214, there was no discretion to refuse to quash such a by-law; and, in fact, there was no acquiescence amounting to an estoppel. Order made quashing by-law with costs.

Street, J.]

HOLMES & BREADY.

[March 8.

Costs—Scale of—Taxation of in Court of Appeal—High Court action.

An appeal by the plaintiff from the taxation of his costs incurred in the Court of Appeal. The plaintiff recovered judgment in this action for a sum within the jurisdiction of the County Court, and was allowed costs on the