

only extends the privileges and protection not conferred on the first section to the officers and persons mentioned therein, "so far as applicable." If this act does apply to corporations, the first section, which expressly mentions all "persons," must be held to include them; it would have done so had the last section not been part of the act, and as a consequence, every action brought against a municipal corporation for anything done in the performance of its duties and, as is urged in the present case, in the execution of its power, must be an action on the case for a tort, and the declaration must allege that the act complained of was done maliciously, and without reasonable or probable cause, and on the general issue this allegation must be proved.

To my apprehension, it is clear that the legislature never contemplated the general application of this section to municipal corporations; and I am equally convinced, that no part of this act ought to be construed as applying to other than natural persons and individuals holding station or office, to which certain public duties are attached; the execution of which, in their official capacity, might expose them to actions.

I agree in the reasons given in the judgments of the Court of Queen's Bench for their construction of the word "persons" in cases like the present, and I cannot but feel, that no small part of the reasoning of the then learned Chief Justice of the Common Pleas in contesting the argument of *Burns, J.*, above referred to, is weakened, if not wholly displaced, by the subsequent action of the legislature.

I am of opinion this appeal should be dismissed with costs.

RICHARDS, C. J., said he was unable to concur in the views just expressed by the learned Chief Justice. The point involved had been frequently discussed by him with the late Sir James Macaulay, and nothing that had since occurred had created any doubt in his mind as to the soundness of the opinions expressed by the judges in the Court of Common Pleas. It was unnecessary for him to say more than that he concurred in the views which were enunciated by Mr. Justice Adam Wilson in the judgment which he had prepared on the present occasion.

A. WILSON, J.—The statutes to be considered are the following: Chapter 126, section 1—Every action brought against any justice of the peace, for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, or against any other officer or person fulfilling any public duty, for anything by him done in the performance of such public duty, whether any of such duties arise out of the common law or be imposed by act of parliament, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged, that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such action upon the general issue pleaded, the plaintiff fails to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

Section 9—No action shall be brought against any justice of the peace [see section 20, extending this and the other sections to every officer and person mentioned in the first section,] for

anything done in the execution of his office, unless the same be commenced within six months next after the act complained of was committed.

Section 10—No such action shall be commenced against any justice of the peace until one month at least after a notice in writing of the intended action has been delivered to him, or left for him at his usual place of abode by the party intending to commence the action, &c.

Section 11—Provides for the venue and pleading the general issue.

Section 12—Provides that the action shall not be brought in any county or division court against a justice of the peace, for anything done by him in the execution of his office, if he object thereto and give a written notice of his objection.

Section 13—Provides, that after notice given, and before an action has been commenced, the justice may tender amends for the injury complained of, or after action he may pay the same into court.

Section 14—Provides, that if the jury think the plaintiff is not entitled to greater damages than have been tendered or paid, they shall find a verdict for the defendant.

Section 15—Provides, that the plaintiff, if he accept of the money paid into court in full, shall be entitled to his costs.

Section 16—Provides, that if at the trial the plaintiff do not prove:—1. That the action was brought within the time limited. 2. That the notice was given one month before the action was commenced. 3. The cause of action stated in the notice. 4. That the cause of action arose where the venue is laid. 5. When the suit is brought in a county or division court, that the cause of action arose within the county for which the court is holden, then the plaintiff shall be nonsuit, or the jury shall find for the defendant.

Section 19—If in any such case it be stated in the declaration that the act complained of was done maliciously, and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit.

Section 20—So far as applicable, the whole of this act shall apply for the protection of every officer and person mentioned in the first section hereof, for anything done in the execution of his office as therein expressed.

The Upper Canada Consolidated Statutes, chapter 2, section 12, provides the word "person" shall include any body corporate or politic.

Chapter 22, section 17, provides, that every writ issued against a corporation aggregate, and in the absence of its appearance by attorney, all papers and proceedings in the action before final judgment may be served on the mayor, warden, reeve, president, \* \* \* or agent of such corporation, or of any branch or agency thereof in Upper Canada; and every person who within Upper Canada transacts or carries on any of the business of, or any business for, any corporation whose chief place of business is without the limits of Upper Canada, shall, for the purpose of being served with a writ of summons issued against such corporation, be deemed the agent thereof.

The Municipal Act, section 202, provides, in case a by-law, order or resolution be illegal in