

*W. A. Logie*, for plaintiff. *F. F. Treleven*, for defendant corporation.

ANNOTATION ON THE ABOVE CASE.

There is a constantly increasing class of negligence cases under statutes imposing liability for damage on municipalities and on employers in which a condition precedent to a right of action is the service of notice of accident, or of claim. The statute provides in some of the provinces (such as originally in Ontario) for notice of the accident; in others (as Manitoba) for notice of claim.

Sec. 606 of the Consolidated Municipal Act (Ont.) 1903, provided for notice of "the accident and the cause thereof," but sec. 460 of the Municipal Act (Ont.) 1913, amends by requiring notice of "claim and of the injury complained of" (R.S.O. 1914, ch. 192). Sub-sec. 5 of sec. 606 of the 1903 Act dispenses with the notice (a) in cases where death ensues and (b) in all other cases (except snow and ice sidewalk claims) where the Court "considers" (1) that there is "reasonable excuse," and (2) that the defendants have not been "prejudiced in their defence"; but sec. 460 of the Act of 1913 substitutes the phrase "is of the opinion" for the word "considers."

Sec. 13 of the Workmen's Compensation for Injuries Act, R.S.O. 1897, ch. 160 (R.S.O. 1914, ch. 146), into which the notice provision is carried dispenses in sub-sec. 5 of sec. 13 with the notice where "in the opinion" of the Court (trial or appellate) (1) there was "reasonable excuse," and (2) there was "no prejudice to the defendant in his defence."

The Manitoba Municipal Act, R.S.M. 1902, ch. 116, sec. 667, provides for notice of "claim or action."

It will be noted that the Manitoba Act prescribes the period for notice not "30 days" but "one month."

This kind of notice (unknown to common law negligence) is of modern origin dating back only to the year 1892 in Ontario, *Boyd, C.*, in *Longbottom v. Toronto* (1895), 27 O.R. 198, at 199, and *Meredith, J.*, in *O'Connor v. Hamilton* (1904), 8 O.L.R. 391 at 401, taken jointly, are to the effect that the enactment as to highways was introduced in 1894 by 57 Vict. (Ont.) ch. 50, sec. 13, carried with certain amendments into sec. 606 of the Consolidated Municipal Act, 1903, 3 Edw. VII. (Ont.) ch. 19, the idea being probably taken from the Workmen's Compensation for Injuries Act of 1892, 55 Vict. (Ont.) ch. 30, borrowed from the Imperial enactment respecting employers' liability.

The reason for the notice is to give the defendant a chance at once to examine the scene of the accident and to see witnesses; or, as put by *Boyd, C.*, in the *Longbottom* case, to give an opportunity of investigating the matter in all its bearings with the view to settling or contesting the claim. An analysis of those reasons is embraced in the dissenting judgment of *Meredith, J.*, in *O'Connor v. Hamilton* (1904), 8 O.L.R. 391 at 402, 403, 404.