but bound to apply the insurance money received by them in payment of the notes to which, as between Dyson, Gillespie and Courtemanche, it was primarily applicable, Dyson having acted for the firm when he covenanted to insure the goods in the chattel mortgage for the benefit of Courtemanche as mortgagee, and Courtemanche being equitable assignee of the policy under which the money was paid, and which was a renewal of that which had been affected in accordance with the covenant, and entitled to have the money applied in payment of the notes, and the plaintiffs having taken the insurance moneys as assignees thereof of Dyson & Gillespie, subject to the equitable rights of Courtemanche, of which they had notice.

Hewson, for the plaintiff.

O'Connell, for the defendant.

Cameron, for the third party.

BOYD, C.] [Jan. 22.

LONGBOTTOM *v.* CITY OF TORONTO.

Pleading—Notice under 57 Vict., c. 50, sec. 13 (O)—Want or insufficiency of—Enquiry by Judge—Defendant's prejudice.

The want or insufficiency of the notice under 57 Vict., c. 50, sec. 13 (O) is no bar to an action if the Judge is of opinion there was reasonable excuse or that the defendant was not prejudiced.

Held that it is proper practice for the defendant to set up want of notice in case the statement of claim is silent on the point, and then the Judge can go into the circumstances (if any), excusing the want or insufficiency, and as this was not done in this case and the Judge could not say that the defendants were prejudiced, a motion for judgment in favor of the defendants was refused.

A. M. Denovan, for the plaintiff.

H. L. Drayton, for the defendants.

BOYD, C.] [Jan. 22.

REGINA *v.* ROSE.

Criminal law—Prior and subsequent enactments to same offence—Conviction under prior—55 Vict. c. 42, secs. 167 and 210 (O)—Habeas Corpus.

The very essence of criminal law is that it should be certain in its sanctions and so plainly expressed as to be intelligible to the sense of ordinary persons.

On a habeas corpus, where a party was convicted of the offence of applying for a ballot paper in the name of another person, under sec. 167 (e) of 55 Vict., c. 42 (O.)

Held, that in view of sec. 210, s. s. 2, of the same Act, which could not be reconciled with sec. 167, as cumulative punishments for the one offence, or, as standing as alternative punishment for the one offence at the option of the magistrate, the conviction was illegal and the defendant should be discharged.

Robinson v. *Emerson*, 4 H. & C. 352, and *Michell* v. *Brown*, 1 *Ell. & Ell.* at page 275, cited and followed.

Murphy, Q.C., for the defendant.

John Cartwright, Q.C., for the Attorney-General.