give the special matter in evidence under the plea of general issue in the Superior Courts, and, by analogy, in the D. C. where written pleadings are not in use a general reference to the clause in question would no doubt be deemed sufficient; yet is always better to specify particularly the ground of defence.

We subjoin a general form for the assistance of Bailiffs:—

NOTICE OF DEFENCE UNDER STATUTE.

In the ——— *Division Court for the County of* ———

Between A. B., plaintiff,
and
C. D., defendant.

The plaintiff is required to take notice that upon the hearing of this cause the defendant intends to plead and to avail himself of all and every the provisions of the 107th section of the Upper Canada Division Courts Act; and especially that he intends to insist on the following grounds of defence, viz, that he is not guilty of the matter alleged in the plaintiff's claim against him: that no sufficient notice of this action was given him; (that this action was not commenced in due time: *and that* this action is not laid or brought in the County of ———, where the fact charged is alleged to have been committed.)

Dated this ———day of———. A.D. 185—

To A. B., plaintiff. C. D., defendant.

Care should be taken to have proof at the hearing of the due service of this notice.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page* 202.)

SUMMONS.—It is proper that the precise hour for the defendant's appearance should be fixed in the summons, but the defendant is bound not only to attend at the hour appointed, but to wait during all reasonable hours of the same day until the Justice or Justices are ready to hear the case.[1] The summons may be granted by one Justice even in cases where by the statute two or more are necessary to a hearing, but it should require the defendant to appear before one or more Justices according to the nature of the charge and the number of the Justices necessary to a valid conviction: moreover, as the Justice who issues the summons may be unable to attend at the hearing, it is proper to require the defendant to appear before *such two*, or more *Justices as shall be present* at the time and place appointed.[2]

In issuing a summons the time appointed for the defendant's appearance will generally depend on distance and other circumstances of each particular case; every semblance of improper hurry should be avoided; and the time between the service and hearing must be sufficient to enable a defendant to prepare his defence and for his journey, as well as to procure the attendance of any witness he may require.

The practice as to time of return varies in different places in Upper Canada. In Toronto, Hamilton, and Kingston, we are informed, it is customary, unless under very special circumstances, to allow twenty-four hours between the service and hearing; in the country generally from four to ten days is given. Whenever practicable, it is better to allow an interval of several days, that the defendant may have ample time to prepare himself, and that the necessity for an adjournment may be avoided—for if it should be made to appear to a Magistrate that the defendant had not time for that purpose, the hearing will be adjourned. No precise time can be named, as it will depend on the residence of the defendant and his witnesses, and other special circumstances in each particular case; but a man ought not to be required to lay aside all other business, and instantly answer to a supposed offence that may in the end prove to be groundless. Charges before a Magistrate are frequently made in moments of anger or sudden excitement, and it will be better to allow parties to cool down a little before the hearing; and no inconvenience can result from delay. In civil actions in other Courts a defendant is allowed from six to ten days to prepare for trial; and a charge before a Magistrate may more seriously affect a defendant than a civil suit, and may require fully as much time to answer.

On the whole we would recommend as the safe and more seemly practice, as a general rule, to allow six days in country cases, and full twenty-four hours in city cases, between the service and return of a summons extending the time by adjournment when necessary.

It may be taken as a general rule in summary proceedings before Magistrates as in the Superior Courts that appearance cures the defect and uncertainty either as to time or place,[3] so that if a defendant appears to the summons and enters into his defence, such objections fall to the ground. But a defendant may appear at the return of the summons, for the express purpose of objecting to the service, (it is the most prudent course when served too late) and request from the Justices further time to prepare his defence; in such case if the application appears to be in good faith it ought always to be granted by the Bench. If a Justice should wilfully proceed to convict without enlarging the time when required and necessary to the ends of justice, he would be guilty of a misdemeanor and leave himself open to an Indictment.[4] In case the

[1] Williams v. Frith, 1 Doug. Rep. 198.
[2] See 16 Vic., cap. 178, secs. 25 and 1.
[3] R. v. Johnston, 1 Str. 261. R. v. Stone, 1 East. 464.
[4] R. v. Venable, 2 Lord Raym. 1407. R. v. Simpson, 1 Str. 46.