detain the animal for the expenses incurred by him in its keep, alleging the request of the plaintiff to provide food and care, etc. He also sets up his right to detain the animal under the provisions of the Poundkeepers' Act (R. S. O. cap. 195), he having asserted his privilege under that statute of retaining the stray animal himself (it having come upon his premises), instead of sending it to the township pound, averring the performance of all the duties cast upon him by the statute in such a case, viz., the giving of all the statutory notices, etc.

It was objected for the plaintiff that the notice given to the clerk of the municipality was not given within forty-eight hours after the horse came upon the defendant's premises, and that the advertisement in the *Era* was not a copy of the notice served upon or left with the Township Clerk, and the plaintiff's counsel argues that by reason of these alleged informalities the defendant is precluded from setting up his right to detain the horse under the statute.

As to the first objection, the notice to the clerk was given on the Tuesday afternoon, 25th September, about 3 o'clock, p.m. The horse came into the defendant's premises about 8 o'clock on the preceding Sunday morning, the 23rd September. The notice was, therefore, not actually given within forty-eight hours.

I think section eight of the statute may be treated as being *directory* only. Not that an entire omission to give the notice might not be fatal, but the giving of it in fifty-five hours instead of within forty-eight hours, where there is yet two months to elapse before a sale of the impounded animal could be legally had, is, I think, a sufficient compliance with the spirit and intention of the statute. It is an Act intended to be administered in country districts, and by local municipal authorities, and not by lawyers; and in some parts of the country where the inhabitants are sparsely settled, and the roads are bad, the distance from and the accessibility of the clerk's office in cases that can readily be imagined, would render a strict compliance with the statute on the mere question of time—as to a few hours—impossible.

Here the notice was given and intended to be a compliance with the statute, and no ill consequence has affected the plaintiff by the few hours' delay. As is said by Chief Justice Wilson in *Cotter* v. *Sutherland*, 18 U. C. C. P. 407, in speaking of the necessity of a strict compliance with the statutory directions to be observed by the treasurer of a municipality in order to effect a valid sale of lands for arrears of taxes. "A total neglect may have a different effect from a partial neglect. The omission to advertise for one day of a certain period would be a different thing from an absolute neglect to advertise at all. Neither of these extreme cases can well be supported when the objection is taken."

Further, at pp. 408, he says: "I do not forget that *shall* is to be construed as *imperative*. I think this is a case in which there is something in the context or other provisions of the Act indicating a different meaning or calling for a different construction."

In construing a statute such as this looking to its object, and the subject matter legislated upon, I think that the rule may perhaps be safely stated in the somewhat broad language of a note to the American edition of Dwarris on Statutes. (Ed. of 1874, pp. 226, note): "That when a statute directs certain proceedings to be done in a certain way or at a certain time, and the form or period does not appear essential to the judicial mind the law will be regarded as directory, and the proceedings under it will be held valid though the command of the statute as to form and time has not been strictly obeyed; the time and manner not being the essence of the thing required to be done."

The second objection taken by the plaintiff was that the advertisement in the *Era* was not a copy of the notice filed with the clerk. As to this objection, I rely upon similar reasoning to that just expressed with reference to the first objection to overrule it also. The advertisement in the newspaper was not an exact or verbatim copy, but it contained all the necessary information that the statute could have intended, viz., the description and marks of the animal; the date of its coming into the defendant's premises, and his address.

Having then disposed of these two objections in favour of the defendant—Had the plaintiff the right to replevy the animal without first paying reasonable charges for his keep from the time it came into the defendant's possession until he (the plaintiff) learned of its whereabouts?

Section 13 of the Act directs that the notices of the sale to be given under the Act "shall specify the time and place at which the animal will be publicly sold if not sooner replevied or redeemed by the owner, or some one on his behalf, paying the penalty imposed by law (if any), the amount of the injury (if any), claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the poundkeeper, and also the fence-viewers (if any), and the expenses of the animal's keeping."

Section 14 imposes the duty upon the poundkeeper or person impounding to furnish "sufficient food, water and shelter during the whole time that such animal continues impounded or confined.