

in case the statement of claim is silent on the point, and then the judge can go into the cases (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.

*Municipal election—Personation—Conviction—Prior and subsequent enactment as to same offence—Repugnancy—55 Vict., c. 72, secs. 167 and 210 (O.).*

When a clause in a statute prohibits a particular act, and imposes a penalty for doing it, and a subsequent clause in the same statute imposes a different penalty for the same offence which cannot be reconciled either as cumulative or alternative punishment, the former clause is repealed by the latter. This principle being applied to sections 167 and 210 of the Consolidated Municipal Act, 1892, a person convicted of personation under the former clause was discharged as illegally convicted on a return to a habeas corpus.

*Robinson v. Emerson*, 4 H. & C. 352, and *Mitchell v. Brown*, 1 Ell. & Ell., at p. 275, followed.

*Murphy*, Q.C., for the defendant.

*J. R. Cartwright*, Q.C., for the Attorney-General.

STREET, J.]

[Feb. 18.

JARVIS v. CITY OF TORONTO.

*Municipal corporations—Expenditure of public money—Contribution to costs of private action—Injunction.*

A ratepayer having brought an action against a gas company on behalf of all the gas consumers of the city, for an account of moneys alleged to have been improperly obtained in the past by the company from the consumers of gas, and with the intent of reducing the price of gas to consumers, the defendants' Executive Committee reported in favor of authorizing the counsel to grant money to carry on the action and any other actions which might be brought by ratepayers where the Corporation was interested, or could have brought such action.

*Held*, that the plaintiff was entitled to an injunction to restrain any such payment by the defendants.

If the plaintiff had instituted the action upon the promise on the part of the defendants to indemnify him, it might well be that such a promise would, under the circumstances, have been within their powers; but voluntarily to pay him after litigation the costs which he had incurred, without any obligation to do so, would be ultra vires of the Municipal Council.

*Shepley*, Q.C., and *Lobb*, for the plaintiff.

*Robinson*, Q.C., and *McGregor*, for the defendants.