

Dryden v. Smith, 18 P. R. 505, at p. 512. At present it is made clear on what ground damages are claimed. The plaintiffs will do well to consider if this should not be rectified.

Plaintiffs should also consider whether the action in its present form can stand as an action brought for the benefit of the company, who are defendants. There should be allegations such as were found in *Mason v. Harris*, 11 Ch. D. 98, that the defendants have control of the company, and so the company have to be made defendants. This was followed and approved in *International Wrecking Co. v. Murphy*, 12 P. R. 423, by Street, J. Such an objection can only be taken by way of demurrer, and is not within the jurisdiction of the Master in Chambers. But it may save time and trouble later on to have this made plain now. It is, no doubt, hinted in the opening words of paragraph 7: "For the purpose of securing control of the defendant company . . . the defendant H. (irregularly and unlawfully) caused his own name to be entered upon the books of the company as the owner of \$500 of preferred stock." And in the 6th paragraph it further says that "said defendant Hutcheson (irregularly and unlawfully) entered upon the books of the company the firm of the defendants H. & H. as owners of the whole of the unissued common stock, \$3,000 in value." But there is no allegation that the defendants did in this way obtain control of the company . . .

The order will, therefore, go that plaintiffs amend their statement of claim in respect of the 5th clause of the prayer for relief and otherwise as they may be advised. The defendants must have a week in which to deliver their statement of defence. But, as the motion has been successful on a ground not taken in the notice, the costs will be in the cause.

APRIL 30TH, 1906.

DIVISIONAL COURT.

GIGNAC v. CITY OF TORONTO.

Way—Non-repair of Highway—Sidewalk—Injury to Pedestrian—Municipal Corporation—Negligence—Inspection—Notice—Indemnity or Relief over.

Appeal by defendants from judgment of BRITTON, J., at the trial, in favour of plaintiffs in an action for damages