

Q. B.]

NOTES OF CASES.

[Ontario.]

ing done so; and that a verdict for the plaintiffs, therefore, should not be disturbed.

On appeal this judgment was affirmed.

STRONG, J.—It is the duty of the captain not thereby to deliver the goods on the wharf, but as far as possible to separate the different consignments, so as to render them accessible to their respective owners.

S. Richards, Q.C., for plaintiffs.

Robinson, Q.C. and *J. A. Miller*, for defendant.

JONES V. COWDEN ET AL.

29 *Vict.*, c. 24, sec. 57—*Retrospective, operation of.*

Appeal from the judgment of the Court of Queen's Bench, reported 34 U.C.Q.B. 345, and making absolute a rule *nisi* to enter a verdict for the plaintiff.

The judgment of the Court of Queen's Bench. 34 U.C.Q.B. 345, affirmed on appeal.

Bethune and *J. W. Kerr* for plaintiff.

S. Richards, Q.C., and *Benson* for defendants.

QUEEN'S BENCH.

EASTER TERM, 1875.

SCROGGIE ET AL. V. TOWN OF GUELPH.

Town corporation—Drains—Injury by overflow—Gratings in side-walk.

The plaintiffs sued defendants for negligently suffering the drains on their streets to become choked, whereby the waters and drainage overflowed therefrom into the plaintiffs' cellar, and damaged their goods there.

The jury found, upon the evidence set out in the case, and which was held by the Court to warrant their finding, that the defendants had reason to believe the drains might be choked, and remained negligently ignorant of their condition; and a verdict for the plaintiffs was therefore sustained.

There were gratings and trap-doors in the side-walk opening into the cellars of one P., whose premises adjoined the plaintiffs', which the jury found had been placed there many years before without defendants' permission. *Semble*, that if the water had got into the plaintiffs' premises through the plaintiffs' own gratings, defendants would not have been liable; but that as between them and the plaintiffs they were responsible; as they would be if any one had been injured by such gratings, though the

person who placed them there might be liable also.

Harrison, Q.C., for plaintiffs.

M. C. Cameron, Q.C., and *Guthrie*, for defendants.

MCKENZIE ET AL. V. DEWAN ET AL.

Joint Stock Company under C. S. C. ch. 63—Liability of stockholders—Payment of stock—Registration of certificate—Pleading—Departure.

The C. S. C. ch. 63, enacts that the stockholders of any company incorporated thereunder shall be "jointly and severally liable" for all debts and contracts made by the company. *Held*, nevertheless, that a creditor might sue one, or any number more than one, of the stockholders.

In an action by creditors of the company against five shareholders, the declaration, after setting out an unsatisfied judgment recovered, by plaintiffs against the company, alleged that the defendants, before the debt was contracted and before this suit, were stockholders, and had not paid up their shares in full, whereby defendants became liable to pay said judgment.

Three of the defendants pleaded that they were not stockholders when the contracts, in respect of which the notes were given were made, nor from thence until, nor at, the commencement of this suit. The plaintiffs replied that these three defendants were trustees of the company, and omitted to make the annual report required by the statute, whereupon they became individually liable for the debts of the company. *Held*, that the replication was a departure, in alleging a different ground of liability from that taken in the declaration, and a ground which applied only to three out of the five defendants, and that in this latter respect there was a misjoinder.

The second plea, by two of the defendants, alleged that within five years of the incorporation of the company they paid up their full shares, and before this suit, to wit, on the 1st October, 1873, a certificate to that effect was made, &c., and was duly registered, &c. "in the manner required by the statute in that behalf." *Held*, following *pro forma*, the decision in the C.P., in *M'Kenzie v. Küttridge*, 24 C.P. 1, that the plea was good, though not shewing that the certificate was registered before the debts, on which the judgment was recovered, were contracted.

This Court, however, did not agree with that