

Province of Nova Scotia.

SUPREME COURT.

Meagher, J., at Chambers.]

[March 20.

OVERMAN WHEEL CO. v. FORBES MFG. CO.

*Company—Judgment creditor's right to execution against shareholder of debtor company for unpaid calls—His right of set-off.*

The plaintiff company recovered judgment against the defendant company on which execution was issued and returned unsatisfied. The plaintiff company then applied for leave to issue execution against one John Peters, a shareholder of the defendant company for the amount of the unpaid calls on his stock in the company. Peters resisted the application on the ground that he had a set-off against defendant company for a larger amount.

MEAGHER, J.: The defendant's position and the rights of the plaintiffs are well stated by Cockburn, C.J., in *Wyatt v. Derwent Valley Railway Company*, 2 C.B.N.S. 110, where during the argument he said: "The judgment creditor has a right to have execution against the shareholder to the extent of his share not paid up. What answer is it for the shareholder to say: The company is indebted to me as well as to you? The one party has a judgment against the company, the other a mere right of set-off." See also Thompson on Stockholders, s. 381. The case of *Jagrow, Bank of P.E.I.*, 11 Sup. C.R. 265, has no application. That was merely an action to recover a debt, and the right to set-off was clear in that case. There was no judgment as here. If Mr. Peters is sued by the company to-morrow for a debt, I take it he would be entitled to set-off the amount he claims to be due him. The plaintiff's application must prevail.

*J. A. Chisholm, for plaintiff. H. Mellish, for Peters.*

Province of New Brunswick.

SUPREME COURT.

Barker, J., in Equity.]

CUSHING v. McLEOD.

[Jan. 12.

*Charter party—Customary despatch—Lay days—Notice of vessel being at berth—Sufficiency—Delivery of cargo—Delay.*

By charter party the defendant's ship was to proceed to the port of St. John for lumber for Buenos Ayres, to haul once to loading berth as