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*June 16.

*Dec. 13.

THOMAS H. McKENZIE.....APPELLANT;

AND

ALFRED H. KITTRIDGE *et al*.....RESPONDENTS

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Corporation—Shareholder in public company, actions against by creditors of Co.—Registration of certificate—Con. Stat. C., ch. 63; secs. 33, 35.

In an action brought by *McK.* under the provisions of Con. Stats. Can., ch. 63, against *K. et al* as stockholders of a joint stock company incorporated under said act, to recover the amount of an unpaid judgment they had obtained against the company, the defendants *K. et al* pleaded *inter alia* that they had paid up their full shares and thereafter and before suit had obtained and registered a certificate to that effect.

Held: affirming the judgment of the Court of Common Pleas, that

*PRESENT:—Ritchie, C. J., and Strong, Fournier, Henry and Gwynne, J. J.

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under sec. 33, 34 and 35, ch. 63 (1), as soon as a shareholder has paid up his full shares and has registered, altho' not until after the 30 days mentioned in sec. 35, a certificate to that effect, his liability to pay any debts of the company then existing or thereafter contracted ceases, excepting always debts to employees, as specially mentioned in sec. 36.

[*Ritchie*, C. J., and *Fournier*, J., dissenting.]

APPEAL from a judgment of the Court of Appeal for *Ontario* (2), affirming the judgment of the Court of Common Pleas (3), in favor of the respondents.

The action was originally brought in the Court

(1) Sec. 33.—"Any shareholder in a company may, at any time within a period of five years from the incorporation of the company, pay up his full shares in the company, and a certificate to that effect shall be made and registered, as prescribed in the twenty-fifth section of this Act, after which such shareholder shall not, except as hereinafter mentioned, be in any manner liable for, or charged with, the payment of any demand due by the company, beyond the amount of his share or shares in the capital stock of the company so paid as aforesaid."

Sec. 34.—"The stockholders of any company incorporated or continued under this Act, shall be jointly and severally liable for all debts and contracts made by the company, until the whole amount of the capital stock of the company, fixed and limited in manner aforesaid, has been paid in, and a certificate to that effect has been made and registered as prescribed in the next section of this Act, after which no stockholder of such company shall be in any manner whatsoever liable for or charged with the payment of any debt or demand due by the company, beyond the amount of his share or shares in the capital stock of the company so fixed and limited and paid in as aforesaid, save and except as hereinafter mentioned."

Sec. 35.—"Within thirty day after the payment of the last instalment in the capital stock of any such company, there shall be made and drawn up a certificate to that effect, which certificate shall be signed and sworn to by a majority of the trustees of the company, including the chairman or president, and shall be registered within the said thirty days in the registry office of the district or county wherein the business of the company is carried on; and the registrar of such district or county, or his deputy, shall administer such oath, and enter and register such certificate in the book to be kept by him for the purposes of this Act as hereinbefore mentioned."

(2) 27 U. C. C. P. 65.

(3) 24 U. C. C. P. 1.

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of Common Pleas. The plaintiff, having obtained a judgment against the *Strathroy* Woollen Manufacturing Company, a joint stock company incorporated under Cons. Stats. *C.*, ch. 63, for the sum of $12,744.21 and $66.75 costs, sought to recover that amount from the defendants under the provisions of said Cons. Stat. *C.*, ch. 63, the defendants being shareholders in the said company.

The defence was, that the defendants had paid up in full their shares of the stock and had registered a certificate to that effect. It was not alleged that the certificates were registered within thirty days after the shares had been paid up.

The principal question which arose on this appeal was, whether a shareholder of a joint stock company incorporated under Cons. Stat. *C.*, ch. 63, who had paid up his shares in full and registered a certificate to that effect, was freed from individual liability for the debts of the company, if the certificate was not registered within the thirty days mentioned in the 35th section?

Mr. *C. Robinson*, Q. C., and Mr. *T. Robertson*, Q. C., for appellant:

The defendants in this suit are and were stockholders in the said company at the time the debts set out in the declaration were contracted, and not having paid up their stock, or if having paid the same, not having registered a certificate of the payment, signed and sworn to as required by the 35th section of the Act, within thirty days after the payment of the last instalment, this action is brought to recover the amount of the said judgment against them under the provisions of the said Act.

Under the said Joint Stock Company's Act stockholders continue liable for all debts and contracts made by the company until the whole amount of the capital stock of the company, fixed and limited as by the said

Act is provided, has been paid in; and to put an end to such liability, a certificate of such payment must, within thirty days after the payment, be made and drawn up; signed and sworn to by a majority of the trustees of the company, including the chairman or president, and registered, within the said thirty days, in the Registry Office of the district or county wherein the business of the company is carried on (1).

If the payment in full of his shares by any shareholder can exempt him from liability before the whole capital stock has been paid in, a certificate of such payment made, signed and sworn to as already mentioned, must be registered within thirty days after the payment (2).

The true construction of the said statute is, that such certificate must at all events be registered before the contracting by the company of the debt for which the shareholder is sought to be held liable; that, if registered within thirty days from the payment, such registration relates back to the time of such payment and exempts from liability from that time; but, if registered after the thirty days, it takes effect and forms an exemption only from the time of such registration. In this way, secs. 33 and 35 of the said statutes may be reconciled and given effect to; and this construction of the Act is in accordance with the opinion of the Court of Queen's Bench for *Ontario* in *McKenzie* v. *Dewan et al.* (3), in which the judgment of the Court of Common Pleas now appealed from, was followed *pro forma*, but dissented from.

The object of the statute in requiring registration was to give notice to those dealing with the company that the shareholders who had paid and registered their certificates were exempt, and thus to prevent credit being given on the faith of their liability, and this

(1) Sec. 34, Con. Stat. C., ch. 63. (2) Sec. 35, Con. Stat. C., ch. 63.
(3) 36 U. C. Q. B. 512.

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intention is defeated, and a door opened to fraud upon the creditors of the company, by exempting shareholders who have neglected to register their certificates of payment.

If a stockholder is desirous of putting an end to his liability, it is incumbent upon him to observe a strict compliance with the statute which enables him to limit his liability.

Acts of parliament which confer exemptions and privileges contrary to general common law rights, as a rule, should be strictly construed: *Maxwell* on statutes (1); *Kraemer* v. *Gless* (2); *Mitchell* v. *Weïr* (3).

Mr. *W. R. Meredith*, Q. C., and Mr. *Osler*, Q. C., for respondents;—

By the provisions of the Consolidated Statutes of *Canada*, chapter 63, any stockholder in a company incorporated under that Act, notwithstanding that the whole capital stock of the company has not been paid in, may, within five years from the incorporation of the company, pay up in full his shares in the company, and upon a certificate of such payment being registered under the provisions of the said Act, he is by the effect of section 33 discharged from all liabilities of the company then existing or thereafter contracted.

By section 4 of the said act, upon compliance with the formalities mentioned in the three preceding sections, the person signing the declaration of incorporation and their successors are made a body corporate by the name mentioned therein.

By the provisions of the Interpretation Act, (Cons. Stats. of *Can.* ch. 5, sec. 6, sub-sec. 24), words making any number of persons a corporation or body politic and corporate exempt the individual members of the

(1) P. 264.
(2) 10 U. C. C. P. at p. 475, per Draper, C. J.
(3) 19 Grant 568.

corporation from personal liability for its debts, obligations or acts. Sections 33 and 34 of chapter 63 are therefore not to be construed as modifying common law obligations in favor of the stockholders, but rather as imposing upon them in certain events certain additional obligations to those to which they were liable *qua* stockholders.

Section 33 is to be read as if it were placed immediately after section 34; a reference to the acts consolidated and forming ch. 63 (13 and 14 *Vic.*, ch. 28, and 16 *Vic.*, ch. 172) makes this clear, and any other interpretation would render the provisions of section 33 insensible. The original acts may be referred to in the construction of the Consolidated Statutes.—*Whelan* v. *The Queen* (1).

The language used in sections 33 and 34 is as strong as possibly could be used to indicate the intention to discharge from existing liabilities. It is declared that the stockholders shall not be *in any manner whatsoever liable for or charged with the payment of any debt or demand due by the company*, and they point rather to a discharge from existing liabilities than an exemption from after contracted debts; probably because there was nothing in the act which imposed any personal obligation after either the stock was paid up in full and the certificate registered—as to the whole body of stockholders—or after payment of the shares of any stockholder and the registration of the certificate of such payment as to that particular stockholder. The language used in other sections of the act shows that, where it was intended to refer to any particular class of debts, plain and unmistakable languge was used. See sections 49, 50, 51 and 52.

The personal liability is, by the provisions of the act,

(1) 28 U. C. Q. B. 108, at page 117; Cons. Stat. *Can.*, ch. 19, sections 8, 9 and 10.

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to exist only *until* the shares are paid up and the certificate is registered, as prescribed in section 35, but the construction put upon section 34 by the Vice-Chancellors in the Court of Appeal, would require a meaning to be given to the word *until* which it does not properly bear, or the addition of another word, so that the section would in effect read *unless and until.*

The provisions as to the mode and time of registration are directory only. The effect of a different construction would be that in the case of a company, the whole of whose capital stock was paid in, the omission to register the certificate for one day beyond the thirty days would, under section 34, take away from the company for all time its character of a limited liability company, and render the company, in effect, an ordinary partnership. An opposite construction would make it necessary for every shareholder, at the peril of personal liability for all the debts, to ascertain when the last payment was made, and to see that the certificate was registered within thirty days thereafter.

It is said that to permit the certificate to be registered after the expiratin of thirty days, would be "to turn the statute into an engine of fraud;" but it is submitted that the opposite construction would afford greater facilities for fraud than that contended for by the respondents.

According to respondents contention, a person proposing to deal with the company, though he searched in the Registry Office and found no certificate registered, would know that if the stock had been paid it would be open to the stockholder at any time to register his certificate and discharge himself from any liability to the company, and would then take the precaution—not an unreasonable one in any case—of searching the record which the company is bound by section 23, under the penalty of the forefeiture of its charter, to keep, and

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he would then know exactly how much of the capital remained unpaid and what, in addition the assets of the company, was available as uncalled for capital for payment of debts.

It is also submitted that the act affords no justification for giving any different effect to the registration of the certificate on existing and after contracted debts as was held in the Court of Queen's Bench in *McKenzie* v. *Dewan* (1); *Queen* v. *Ingall* (2).

Section 33 does not require a registration of the certificate within thirty days from the last payment of the shares, or within any stated period of time; the words "made and registered as prescribed" relate to manner but not to the time of registration. *Hampton* v. *Holman* (1).

The true construction of the statute is, that the liability of the stockholders exists as to the body of them until the whole capital stock of the company is paid in and the certificate is registered, and as to a single stockholder until he pays up his shares and registers his certificate, and that upon this being done—at whatever period it may be done—the whole body of the stockholders in the one case are, and the particular stockholder in the other is, absolutely released and discharged from all liability to pay any debts of the company then existing or thereafter contracted, except those specially mentioned in section 36; that the duty imposed by section 35 is imposed, not upon the stockholders, but upon certain of the officers of the company, and that the omission by them to make and register the certificate within the time prescribed, while it renders them liable to make good any damage sustained by a person dealing with the company and damnified by the non-registration of the certificate, in no way

(1) 36 U. C. Q. B. 512. (2) L. R. 2 Q. B. Div. 199.
(3) L. R. 5 Ch. Div. 193.

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interferes with the operation or effect of the certificate when registered. *Queen* v. *Ingall* (1).

This construction, while it preserves the leading feature of the act—the creation of a company with a limited liability—adequately protects persons dealing with the company from loss by reason of the omission to register the certificate.

RITCHIE, C. J.:—

Mr. Justice *Patterson*, in his judgment in the Court of Appeal, says "the ground of appeal in this case reduces the question before us to much narrower limits than were occupied by the questions argued in the court below," and thus states the points in controversy in the court of appeal.

"The questions presented to us are:

"1. Whether, by paying up his shares and registering a certificate within thirty days, the shareholder is freed from an individual liability for debts already contracted, or only for those contracted after the payment?

"2. If registration of the certificate frees from liability of existing debts, will that be so if the certificate is not registered until after the thirty days?

"The Court of Common Pleas, in the decision now under review, has held that existing as well future debts are discharged by the registration of the certificate, even though not registered till after the thirty days. The Court of Queen's Bench has followed that decision, but Mr. Justice *Wilson*, in delivering the judgment in court, intimated a different opinion as to the true construction of the statute (2)."

In tracing the legislation on this subject we find the words in the 11th sec. of 13 and 14 *Vic.*, ch. 28, are as follows:

(1) Supra.

(2) *McKenzie et al* v. *Dewan et al*, 36 U. C. Q. B. 512.

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And be it enacted, that all the stockholders of any company that shall be incorporated under this act, shall be jointly and severally liable for all debts and contracts made by such company, until the whole amount of the capital stock of such company, fixed and limited in manner aforesaid, shall have been paid in *and a certificate to that effect shall have been made and registered as prescribed* in the next section of this act, after which no stockholder of such company shall be in any manner whatsoever liable for or charged with the payment of any debt or demand due by such company beyond the amount of his share or shares in the capital stock of such company so fixed and limited and paid in as aforesaid, save and except as hereinafter mentioned.

The words are "shall have been made and registered *as prescribed* in the next section of this act." The directions as to making and registering in the next section are: as to the making "that within thirty days after the payment, &c., there shall be made and drawn up a certificate, &c.," which certificate shall be signed and sworn to, &c.;" and as to the registering of the certificate, that it "shall be registered within the said thirty days in the registry office," &c., and the registrar is authorized to administer the oath and enter and register the certificate in a book, &c.," "after which no shareholder shall be liable for or charged with the payment, &c." But what does "after which" mean here? I think, unquestionably, after the certificate has been made and registered as prescribed or directed in the 12th section, that is, after all the directions given in the section have been followed. It seems to me that the time within which the certificate is to be made and registered is an element in the making and registering as much prescribed or directed in the next section as the drawing up, or signing, or swearing, or entering and registering. We have, I think, no right to eliminate from these directions the time within which the legislature has expressly enacted the certificate shall be made and registered. If the certificate can be made at any time and registered at any time, what force and effect is to

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be given to the words thirty days twice repeated in the section? I think we ought not to ignore the clear and explicit language of the legislature and reject a provision which it has thought expedient to enact, and which in its plain unambiguous phraseology involves no doubtful construction.

The 16 *Vic.*, ch. 172, extended the exemption, and sec. 2 provided that, notwithstanding the 13 and 14 *Vic.*, ch. 28, it should be lawful for any shareholder, at any time from and after the said incorporation, and within the period of five years therefrom, to pay up his full shares, to the effect whereof a certificate should be made and registered in the manner provided by the 13 and 14 *Vic.*, ch. 28, and which as to such shareholder should have the same force and effect *from the making thereof* as the making and registering of the certificate of the payment of the whole amount of the capital from "the making and registering of the certificate."

It is to be observed here that the liability by the 13 and 14 *Vic.*, ch. 28, is to continue "until" the capital stock is paid in and the certificate shall have been made and registered, "after which" no stockholder shall be liable; but by the 16 *Vic.*, ch. 172 sec. 2, while the certificate is to be made and registered as by the 13 and 14 *Vic.*, ch. 28, is provided, when so made and registered it is to have force and effect from the making thereof.

Does not this give great force to the view that time was considered by the legislature of the essence of this matter, otherwise a stockholder might pay up his stock and not register for twelve months after, and so give to such registration a retroactive operation from the making of the certificate, for there is nothing whatever in this last act to show that the exemption is to take effect at any other time than the making of the certificate.

This being the state of the law at the time of the con-

solidated statutes, by the consolidated statutes, ch. 63, sec. 33, a shareholder may within five years pay up his full shares "and a certificate to that effect shall be *made* and *registered* as prescribed in the 35th sec., "*after which*" such shareholder shall not be liable, &c. The 35th sec. is, as to the certificate and registering, a copy of the 12 sec. of the 13 and 14 *Vic.*, ch. 28.

The 34th sec. is a copy of the 11th sec. of the 13 and 14 *Vic.*, ch. 28, as to the liability of the stockholders until the whole amount of the capital stock is paid up and a certificate made and registered, &c., and this, it has been argued, is in conflict with and repugnant to the preceding 33rd section. But I think there is no substantial ground for any such contention.

This section (34) must be read as applying to those shareholders who have not availed themselves of the privileges granted under the preceding section 33, by paying up and obtaining a certificate to be made and registered as prescribed, &c. No doubt, the insertion of the clause as it stands, is very inartificial and presents at first sight an apparent contradiction, but the incongruity can properly be thus reconciled, which leaves the law as it was at the time of consolidation; and that it was the intention of the legislature that this should be the case, is evident from the 8th sec. of ch. 29 of the Cons. Stat., which enacts that the said consolidated laws shall not be held to operate as new laws, but shall be construed and have effect as a consolidation, and as declaratory of the laws as contained in the said acts and parts of acts so repealed, and for which the said consolidated statutes are substituted. The statute then expressly says that the stockholders shall be liable for all debts of the company *until* the whole amount of the capital stock has been paid in, *and* a certificate to that effect shall have been made and registered as prescribed, that is, I take it, as directed by section 12, reading the

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section *mutatis mutandis*, in other words, making the necessary changes and altering the terms to make the directions suit the circumstances; "*after which* no stockholder shall be liable," &c., that is to say, exemption from liability is granted to the stockholders, if they do a certain act, and if within thirty days after there shall be drawn up a certificate thereof, signed and attested in a certain way and registered within the said thirty days in a specified office. If these things are not done as prescribed, either in respect to the time, manner or place, how can a court be asked to say that doing similar acts, not within the time specified, or in another manner, or at a different place, shall have the same effect? The legislature had a perfect right arbitrarily to specify the terms and conditions on which such exemptions from liability should take place, and to say, that *until* such terms and conditions have been complied with, the liability of the stockholders should continue, and I know of no principle by which this or any other court would be warranted in relieving the stockholders from lability on any terms other than those expressly sanctioned by the legislature, or to say that their liability should cease *until* what the legislature required to be done was done.

With reference to the consequences of such a construction we have nothing to do. The legislature has chosen in its wisdom to make the discharge of stockholders from liability dependent on a compliance with certain statutory directions, and has used words of a plain and definite character, and we are, I think, bound to give effect to all the words so used, by construing them in their ordinary grammatical signification according to their nature and import.

Mr. *Dwarris* (1), says:

(1) On statutes, 748.

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Wherever a statute imposes terms, and prescribes a thing to be done within a certain time, the lapse of even a day is fatal, even in a penal case, because no inferior court can admit of any terms, but such as directly and precisely satisfy the law (1).

And in *Regina* v. *Justices of Middlesex* (2), where it was held an appeal was too late, as not being "*within* six days after the cause of complaint," within the provisions of the 87th section of 4 *Geo.* 4, ch. 95, it was contended notice of appeal served on Monday was sufficient because the 6th day fell on a Sunday, and that the party had therefore the Monday on which to give his notice of appeal.

Williams, J., says:

The question which I have to determine arises upon the distinct language of the statute: and upon that language how can I say that this notice was given *within six* days? It was indeed conceded that it was not; but it was argued that Sunday ought not to be reckoned in the computation. No authority is cited in support of this argument, and in the absence of one, I think that the plain words of the act are not to be got rid of.

So in this case the defendant's right, to be relieved arises on the distinct language of the statute, and how can I say the certificate was made and drawn up within thirty days of the payment of the last instalment "until which" he was to continue liable, or registered within the said thirty days "from which" he was to be discharged. "The plain words of the act are not to be got rid of."

The liability of the stockholder is fixed by law, and the burthen is on him to get rid of that liability. If he seeks to do it through the instrumentality of this statute, he must, I think, bring himself within the terms of the statute, by shewing a full and complete compliance with its provisions; for it is that, and that alone, that relieves him from liability. If there is any defect which gives rise to a grievance, it

(1) *Atkins* v. *Banwell*, 3 East 91. (2) 2 Dowl. N. S. 719.

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was, as said by *Lawrence*, J., in *Rex* v. *Justices* of *Staffordshire* (1), "in the statute itself," and in which case Lord *Ellenborough*, C. J., said:

> Whatever hardships the parties grieved may labour under in this case, we can only follow the directions of the statute, which has expressly limited the appeal to be made to "the next quarter sessions after such order made or proceeding had," &c. Now it is attempted to substitute the words "after *notice of* such order made," in lieu of the words in the statute "after such order made;" but they are different things, and the legislature having made use of the latter words, we cannot say that the appeal may be made at the next quarter session *after notice* of the order. It is, however, a case of great grievance and hardship where the interests of the parties are thus invaded by an order made behind their backs; and may be a good ground to apply to parliament for a revision of the clause of appeal; but we cannot remedy the abuse.

It has been very strongly urged that a great hardship might arise, because the making out of the certificate and the signing and attesting is to be done, not by the stockholder, but by others who might neglect or refuse to act, though it is not alleged that any such difficulty existed in this case, nor indeed is any excuse alleged or suggested for not having procured and registered the certificate within the period provided. But with the question of hardship or no hardship we have nothing to do. If a party cannot bring himself within the statute, it may be his misfortune, or his fault, or it may be through the negligence or default of those who should draw up and attest the certificate and register the same; if they, or any of them fail in their duty in this respect, he may or may not have a means of compelling them to do their duty; or whether the general rule, that a person damnified by the failure to perform a statutory duty, is entitled to maintain an action, applies in such a case as this; or whether a party aggrieved may or may not have a remedy against the officers of the company for any injury or damage he may sustain or be

(1) 3 East 150.

put to by reason of their misfeasance or nonfeasance, it is not necessary for us in this case to determine. Be this as it may, I do not think we are at liberty to say that in fixing thirty days after the payment as the period in which the certificate is to be made, and again expressly providing that the same shall be registered within the said thirty days, the legislature meant nothing, and did not intend that parties or courts should be bound thereby. I think we are bound to assume they were inserted with an object, and whether the reason for their insertion is obvious or not, it is a plain provision which the legislature have deemed necessary for the protection of creditors and the public, and with which all we as a court of justice have to do, is to enforce the period fixed in the statute within which the certificate is to be made and registered, and is, to use the language of Lord *Denman* in the *Queen* v. *Justices* of *Derbyshire* (1), "too distinct and express to admit of being varied by any gloss or construction."

I express no opinion as to the liability of shareholders who have not registered within, but have after, the prescribed time, for new engagements incurred after such a registration, as that question does not arise in this case; all that I desire to say is that in my opinion, if registration be not made till after the thirty days, there is at any rate no exemption so as to discharge defendants from personal liabilty for debts contracted before such registration.

I think the appeal should be allowed with costs.

STRONG, J., was opinion that the decision of the Court below was right and ought to be affirmed with costs.

FOURNIER, J.:—

Le Demandeur a obtenu, le 15 octobre 1873, devant

(1) 7 Q. B. at p. 199.

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Fournier, J.

la Cour de "Common Pleas" d'*Ontario*, jugement contre la *Strathroy Woollen Manufacturing Company*, incorporée en vertu du ch. 63, S. R. C., pour la somme de $12,744.21, montant de certains billets promissoires, et $66.75 ses frais.

Le capital de cette compagnie était de $75,000, divisé en sept cent cinquante parts ou actions de $100 chacune,—payable en 20 mois après le 1er octobre 1869, par versements de 10 p. c. tous les deux mois.

Aucun prélèvement de deniers n'ayant pu être fait au moyen de l'exécution émanée en vertu du jugement ci-dessus mentionné, le demandeur a intenté la présente action contre les défendeurs (intimés,) comme actionnaires dans cette compagnie pour se faire payer par eux du jugement obtenu contre la dite compagnie, alléguant qu'il avait commencé son action et obtenu jugement contre elle dans l'année après l'échéance de la dette—que les défendeurs et chacun d'eux en étaient actionnaires avant que la dite dette eût été contractée; que tout le capital n'avait pas été payé; qu'aucun certificat à cet effet n'avait été signé et assermenté par une majorité des directeurs—et n'avait pas été non plus enregistré au bureau d'enregistrement du comté où la compagnie faisait ses affaires. Que les défendeurs, (intimés) n'avaient pas payé le montant entier de leurs parts ni enregistré aucun certificat à cet effet, et qu'en conséquence le demandeur avait droit de réclamer contre eux le montant du jugement obtenu contre la dite compagnie.

Les défendeurs ont plaidé en réponse à cette demande que chacun d'eux avait payé le montant de ses actions et avait, conformément à la sec. 35 du statut cité plus haut, enregistré un certificat de ce paiement. Quelques-uns de ces certificats ont été enregistrés dans le mois d'octobre 1873, avant le commencement de la présente action; d'autres l'ont été dans le mois de mars 1874,

après la poursuite commencée; mais les défendeurs n'ont pas allégué dans leur défense que les enregistrements ont eu lieu dans les trente jours après le paiement du dernier versement de leurs parts. Il paraît par la déclaration du demandeur que la dette en question était due et exigible avant que les deux enregistrements aient été faits.

La défense est fondée sur les sections 33 et 35 du ch. 63 S. R. C. qui, avec la 34e sont les seules qui puissent affecter la solution de la question soulevée en cette cause. [L'Honorable Juge fait lecture des sus-dites sections] (1).

La question à décider est de savoir si pour obtenir le bénéfice de la section 33, l'actionnaire qui a payé complètement ses parts doit enregistrer un certificat dans les 30 jours du paiement du dernier versement tel que requis par la 35e sec. ci-dessus citée.

En référant à la sec. 11 de la 13e et 14e *Vict.*, ch. 28, ont voit qu'il est déclaré que les actionnaires sont responsables conjointement et solidairement de toutes dettes et contrats de la compagnie, jusqu'au paiement entier du capital souscrit et à l'enregistrement d'un certificat à cet effet tel qu'exigé par la sec. 12 du même acte. Ce n'était qu'après l'accomplissement de cette formalité qu'ils pouvaient être déchargés de toute responsabilité au-delà du montant de leurs parts.

Par la section 12, un certificat dans la forme qu'elle prescrit devait être enregistré dans les 30 jours après le paiement du dernier versement du capital. En vertu de cet acte un actionnaire qui avait payé toutes ses parts ne pouvait encore être déchargé de toute responsabilité qu'à deux conditions: la 1ère, que tous les autres actionnaires eûssent aussi complètement payé le montant de leurs parts; la 2me, qu'un certificat de ce paiement fût

(1) See page 369 note (1).

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enregistré, en la manière voulue, dans les 30 jours à compter du paiement du *dernier versement.*

Cette dernière condition qui rendait un actionnaire garant de la solvabilité de tous les autres ayant sans doute été trouvée trop onéreuse, et comme telle, nuisible à la formation de sociétés à responsabilité limitée, fut modifiée par la 16e *Vict.*, ch. 172, qui donna à un actionnaire plus de facilité pour limiter sa responsabilité au montant par lui souscrit. La 2me sec. de cet acte déclare :

Provided always and be it enacted, that notwithstanding any thing in the said first cited Act contained, it shall be lawful for any shareholder, at any time from or after the said incorporation, and within the period of five years therefrom to pay up in full his shares in the Company to the effect whereof a certificate shall be made and registered in the manner prescribed by the first cited Act (13 and 14 *Vic.*, ch. 28), and which as to such shareholder and his liability, in virtue of the said Act, shall have the same force and effect from the making thereof, as the making and registering of the certificate of the payment of the whole amount of the capital stock of such company.

L'effet de cette section est de donner à un seul actionnaire le droit de se libérer de toute responsabilité sans attendre l'époque du paiement du dernier versement complétant le paiement du capital entier. Ce privilége lui est accordé à la condition de se conformer, quant au certificat du paiement et à l'enregistrement, aux formalités exigées par la sec. 12 de la 13e et 14e *Vict.*, ch. 28.

Sous l'opération de ces deux actes le mode de libération par paiement et enregistrement qui ne pouvait, avant la 16e *Vict.*, être imployé que par la compagnie au bénéfice de tous les actionnaires, est rendu par ce dernier acte accessible à un seul actionnaire en remplissant les formalités prescrites par le premier acte. Leur accomplissement dans l'un et l'autre cas limite la responsabilité à compter de l'enregistrement fait dans les 30 jours du paiement.

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A ne considérer que ces deux statuts, cette question n'est guère susceptible de difficulté. Malheureusement dans leur consolidation il a été fait quelques changements dans l'ordre des sections, et dans leur rédaction, dont l'effet est de donner lieu à la présente difficulté. C'est ainsi que la sec. 34 correspondant à la 11e sec. du ch. 28, 13 et 14 *Vict.*, concernant les formalités à remplir pour faire obtenir à tous les actionnaires le privilége de la responsabilité limitée, vient après la 33e reproduisant les dispositions de la 2e sec. de la 16e *Vict.*, ch. 177, qui a pour la première fois conféré à un seul actionnaire le privilége de limiter sa responsabilité. Au point de vue de la logique comme dans l'ordre chronologique, il est évident que cette transposition est une erreur. On aurait dû conserver l'ordre suivi dans les deux statuts originaires et ne faire venir la 33e sec. qu'après les 34e et 35e. Si au moins dans cet ordre (que je crois fautif) on eût conservé dans la sec. 33e les expressions de la 2e sec. du ch. 172 déclarant que "le certificat obtenu par un seul actionnaire aurait la "même force et effet que la confection et l'enregistre-"ment du certificat du paiement du montant entier du "capital de telle compagnie," — mais au contraire la référence à la 35e, omet ces expressions qui, dans la 16e *Vict.*, qualifiait la référence faite à la sec. 12 de la 13e et 14e *Vict.*, de manière à ne laisser aucun doute sur la forme du certificat que devait faire enregistrer un actionnaire.

Maintenant, dans le ch. 63, les secs. 33 et 34 réfèrent purement et simplement, pour les formalités à suivre, à la 35e sec. qui est la 12e du ch. 28 de 13 et 14 *Vict.*, établissant les formalités en question. On a évidemment oublié que cette section a été originairement faite pour le cas où il s'agissait seulement de limiter la responsabilité de tous les actionnaires, et qu'il n'y était question que du certificat constatant le paiement du

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dernier versement du capital entier. Cette section ayant été conservée telle qu'elle était dans le premier acte, on prétend maintenant que la conséquence qui en résulte est qu'un actionnaire qui veut limiter sa responsabilité ne peut le faire qu'au moyen d'un certificat constatant le paiement du capital entier.

Il est évident que si l'on exige de l'actionnaire un semblable certificat, il se trouvera par là même, nécessairement privé du bénéfice qui lui est conféré par la 33e sec., de se libérer seul sans égard à l'action des autres actionnaires. Cette interprétation a l'effet de rendre cette section tout-à-fait inexécutable.

Avant d'en arriver à une telle conclusion je me demande s'il y a vraiment incompatibilité et contradiction entre les sec. 33 et 35 et en quoi elle consiste, et s'il n'est pas possible de leur donner effet sans qu'il soit nécessaire d'y ajouter ou retrancher quelque chose.

Pour rendre le sens de ces deux sections très clair et éviter toute difficulté, il eût sans doute été mieux d'ajouter dans la 35e sec. quelques expressions ayant rapport au cas d'un seul actionnaire qui veut se libérer. C'est sans doute une omission mais elle est peu importante. Elle peut se suppléer sans rien ajouter à la disposition. En consultant l'esprit de la loi, et en lisant ces deux sections, ainsi que l'on doit le faire, comme n'en faisant qu'une seule, il est clair que l'enregistrement dans les 30 jours du dernier versement du *capital entier*, doit dans le cas de la sec. 33, signifier le montant entier dû par l'actionnaire. Autrement cette référence n'aurait aucun sens.

A quelles conditions d'après cette section l'actionnaire peut-il obtenir le bénéfice de la responsabilité limitée? A deux seulement, 1o le paiement du montant entier de ses parts dans les cinq ans à dater de l'incorporation; 2o l'enregistrement d'un certificat à cet effet, fait et enregistré tel que prescrit par la 35e sec. La

référence à cette dernière sec. n'est que pour la forme du certificat et les formalités de l'enregistrement et non pour imposer d'autres conditions. Cette sec. 35, contient deux choses bien distinctes, la première est la condition à laquelle tous les actionnaires doivent se soumettre pour arriver à la responsabilité limitée, savoir: celle du paiement du capital entier; la deuxième est la formalité du certificat constatant ce paiement et son enregistrement. La condition de paiement étant déjà imposée à l'actionnaire par la 33e sec., la référence à la 35e sec. n'avait donc pas pour but de lui en imposer une autre, (celle du paiement par tous les actionnaires) qui eut été en contradiction manifeste avec la disposition de la sec. 33. La référence à la sec. 35 ne venant qu'après l'imposition de la condition de paiement, il me paraît clair qu'il n'y a que la partie de la 35e sec. concernant le certificat et son enregistrement qui doit être considérée comme incorporée dans la sec 33 et être lue comme en faisant partie. De cette manière, toute contradiction disparaît et les deux sections ainsi conciliées peuvent recevoir une exécution complète.

Il suit de là, suivant moi, que pour un seul actionnaire comme pour la compagnie l'obligation d'enregistrer est impérative et doit être exécutée dans la forme et dans le délai prescrit par la sec. 35. Le but du législateur en exigeant cet enregistrement était sans doute de donner à ceux qui contractaient avec une compagnie incorporée le moyen de s'assurer de sa solvabilité par les renseignements que l'enregistrement pouvait fournir, et se comporter en conséquence dans ses rapports d'affaires avec la compagnie. Supprimer la nécessité de cet enregistrement sous le prétexte d'incompatibilité entre les deux sections, c'est aller directement contre les termes formels de la loi qui n'exempte les actionnaires de la responsabilité solidaire qu'à certaines conditions, dont l'enregistrement dans un délai fixé est la principale.

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Si l'on reproche à l'interprétation qui concilie ces deux sections de sous-entendre quelque chose, on peut faire à celle qui les déclare inconciliables le reproche bien plus grave de supprimer des expressions formelles comme celles-ci, "l'enregistrement dans les 30 jours," pour arriver à une conclusion manifestement contraire à la lettre et à l'esprit de la loi.

Considérant que dans le ch. 63, de même que dans les deux statuts originaires, la disposition concernant l'enregistrement du certificat dans les trente jours est tout aussi nécessaire que celle du paiement pour obtenir le privilége de la responsabilité limitée, je me suis abstenu de faire aucun raisonnement et de citer des autorités pour démontrer que cette disposition n'est pas simplement directoire, mais impérative dans sa forme et d'après la nature du sujet. Ayant pris communication des notes de l'honorable Président de la cour, je concours pleinement dans les observations qu'il a faites à ce sujet.

En conséquence je suis d'avis que l'accomplissement de ces formalités est de rigueur....."Acts which con-"fer exceptional exemptions and privileges correlative-"ly trenching on general rights are subject to the same "principle of strict construction." "In general then it "seems that when a statute confers a privilege or a "power, the regulative provisions which it imposes on its "acquisition or exercise are essential and imperative (1)."

Pour ces raisons j'en viens à la conclusion que les défendeurs (intimés) ne peuvent avoir le bénéfice des secs. 33 et 35, à moins d'alléguer que l'enregistrement a été fait dans les 30 jours du paiement du dernier versement de leurs parts respectives.

HENRY, J.:

This is an appeal from the judgment of the Court of

(1) Maxwell, pp. 264, 334.

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Appeal for *Ontario* on an appeal to that court from the Court of Common Pleas.

It is an action brought by the plaintiff to recover from the defendants, as stockholders in the *Strathroy Woollen Manufacturing Company* the amount of a judgment they obtained against the company. The plaintiff, after setting out the judgment in the declaration, avers that before the debts were contracted, not when the suit was commenced, the defendants were stockholders of the said company—that the whole amount of the capital stock had not been paid in, nor had a certificate to that effect been signed, sworn to, or registered as required—nor had the defendants paid up the full amount of their shares, nor made nor registered a certificate to that effect, as prescribed by the act referred to in the declaration. Some of the defendants, that is to say, *Alfred H. Kitridge, J. S. Smith, John W. Robson, Arthur Robson* and *Thomas Moyle*, pleaded in substance, that at the respective times when the debts were contracted, or any of them, or at any time afterwards up to the commencement of the suit they were not stockholders in the company, and the defendants *Alfred H. Kitridge, John W. Robson, Arthur Robson* and *Thomas Moyle*, pleaded in substance, that within the period of five years from the incorporation of the said company they paid up their full shares in the said company, and that thereafter, and before the commencement of this suit, to wit on the first day of October, one thousand eight hundred and seventy-three, a certificate to that effect was made and drawn up, signed and sworn to, and on the same day duly registered in *manner* prescribed by the statute in that behalf.

The plea of the other defendants is substantially the same as the last one in every respect, except that it alleges that the full payment of the several shares and the making and filing of the certificate took place *after*

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the commencement of the suit. To these pleas there were replications which were demurred to. The declaration was also demurred to. Notices were also given that objections would on the argument of the demurrers be made to the pleas as being bad in substance. The demurrers were argued and the Court of Common Pleas gave judgment for the plaintiff on the demurrer to the declaration, and for the defendants on the demurrers to the pleas and replications.

The plaintiff subsequently obtained an order on this judgment, by which he was allowed to strike out the second and subsequent counts of the declaration, and all the issues of fact joined in the cause, in order that final judgment might be entered herein on the issues in law, so as to enable the plaintiff to appeal against the judgment without trying the issues in fact, with leave to the plaintiff to sign judgment on the demurrers for the defendants on the issues of fact being struck out; and notice of intention to enter such judgment to be given to the defendants attornies. Such notice was given and the judgment formally entered.

From the judgment in demurrer to the pleas the plaintiff appealed, and the Court of Appeal being equally divided the former judgment prevailed, and it has come to this Court.

The plaintiff says there is error in the record and proceedings which the defendants deny.

The question for our decision is therefore wholly as to the sufficiency of the pleas.

The validity of the first plea does not seem to have been specially considered or adjudicated on by the Court of Appeal, but was by the Court of Common Pleas, and held good. We, therefore, in the interests of those pleading it have a right to consider it. In the peculiar position of the case, from the withdrawal of the issues in fact and the judgment for the defendants thereon,

we must look at the question presented just as if no replications had been put in. If any one of the pleas is a good answer to the plaintiff's claim the general result must be in favor of the defendants pleading it, notwithstanding the other issues in law should be found against them.

Keeping in view the fact that the plaintiff's right to recover depends on the allegations set out in his declaration, that the defendants, before the debts were contracted, and before and at the commencement of the suit, were stockholders in the company, let us see if the plea sufficiently raises in reference thereto an important and material issue. The defendants, who pleaded it, therein say that they were not, at the respective times when the debts were contracted, or at any time from thence until or at the commencement of the suit, stockholders in the said company. This, to my mind, is a complete answer, though in general terms, to the plaintiff's most important allegation, and upon which his right to recover was based. The demurrer admits the truth of the plea, and if the parties were not stockholders in the company when the debts were contracted, and did not become such up to the commencement of the action, and if the declaration shows nothing else (as is the fact) to make them liable, they cannot be adjudged so. If at any time before the debts were contracted, the defendants in question had been stockholders in the company, and had illegally or irregularly transferred their shares, that might have been shown on the trial of the issues in fact raised by the declaration and pleas; or if the facts had been specially alleged in the declaration, then the plea would possibly be wanting in substance if it failed to negative the allegation of them. No such issue is however tendered, or any other but those which I have already concluded to have been sufficiently answered by the plea. There is nothing in the

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whole record, after the general denial that they were at any time stockholders, to found a decision in favor of the general allegation that they were so. It is, therefore, a good answer to the declaration, and consequently a good defence for those who filed it. Our judgment, therefore, as far as those defendants are concerned should be for them.

The objection to the plea is, not that it leaves any allegation unanswered, but that it tenders an immaterial issue, to wit, "whether the defendants in question were stockholders in the company at the time of the commencement of this suit." In taking that objection the substance of the plea is misstated. If it alleged nothing more than that, the objection would be good. It, however, also negatives all the material allegations in the declaration upon which the plaintiff's right to recover is based, including the one that the defendants were stockholders *before and at the several times when the debts were contracted;* thus, as I think, taking away the foundation upon which the plaintiff's claim wholly rests. I think, therefore, that, independently of any other issue before us, the appeal, as to those five defendants, should be dismissed.

The objections to the second and other pleas are: 1st. That they do not show that the stock was paid up within the time mentioned in the declaration of incorporation. On the argument of a demurrer to the pleas, we can only look at them and the declaration. Neither, in this case, refers to the declaration of incorporation, or sets it out, and we cannot say whether or not the stock was paid up *according to it.* That objection cannot therefore be sustained. 2nd. That it does not show that the certificate was filed within the time prescribed by law, which substantially means within thirty days as prescribed by section 35 of the act in question.

That objection necessitates two considerations: 1st.

Admitting that that section requires a stockholder who has paid up his full shares to register his certificate within thirty days, is the plea in that case a good one? Does it in fact sufficiently allege that fact? It states in substance that the full amount of the several shares was paid up, within the prescribed five years, and the certificate duly made and sworn to before the commencement of the suit, to wit, on the first day of October, 1873, and on that day duly registered "*in manner* prescribed by the statute in that behalf." Section 33 of the act in question is the "statute" referred to in connection with section 35, and provides that the certificate shall be made and registered as prescribed in section 35.

Section 35 provides that within thirty days after the payment of the last instalment of the capital stock of the company the certificate shall be made, drawn, sworn to and registered. The plea shows specially that the certificates in question were drawn up, signed and sworn to as section 35 prescribes, and generally that it was duly registered in the proper office *in manner* prescribed by the statute in that behalf. Is it, therefore, sufficient to allege such registry in that general way without the allegation that it was so registered within the thirty days? I think that on the trial of the issue raised on that point, the plaintiff might properly insist that the defence was not made out, if evidence showed the registry after the expiration of the thirty days. The plea referred to a public statute in general terms, but pointing explicitly to the requirements of section 35, not only as to the place but the manner of registry. Section 33 requires it to be registered "as prescribed in section 35." That section (33) imposed the obligation in those words, and the affirmative allegation of the plea is identical with that section. In substance it alleges performance of the requirements of that section.

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Certainty as to a common intent is all that is necessary. No misapprehension could result as to the meaning of the allegation. In *Beaver* v. *The Mayor, &c., of Manchester* (1), the declaration complained of injuries to real estate to which there was a plea:

> That the several acts, matters and things complained of were lawfully done by defendants under and by virtue of powers given to them by a certain Act of Parliament (setting out the year and title) Held that this general form of plea was good, and that it was not necessary to allege the particular acts upon which the defendants relied as bringing them within the statute.

On the authority of that case and the prevailing rules of pleading, I think the general allegation of compliance with the provisions of the statute sufficient, and that under an issue thereby tendered all necessary proof could have been required. It was, I think, just as necessary under that plea to prove the fact of registry within the prescribed thirty days, as if the fact of such registry had been specifically alleged.

I might rest my judgment here, but as views of a contrary nature have been taken as to the obligation of a stockholder to allege specially that the certificate was filed within the prescribed thirty days I will proceed to give my views briefly on that point.

It will be observed that in reference to the sufficiency of the allegation in the plea, I have assumed that the defence required such a statement and proof of it. Had, however, the plea, in my opinion, not fully covered the ground, I should have had to consider, as I now intend to do, what the obligation upon a stockholder was under the terms of section 33, so as to arrive at the point where he would be free from the debts or liabilities of the company. On a comparison of the three statutes (for by the provision of the Consolidated Statutes and by

(1) 8 El. & Bl. 44.

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long established custom of the courts, we are to look at the two preceding ones,) I can come to but one conclusion, and that is the only one that by any possibility will not render useless the legislation by the Act of 16 *Vic.*, ch. 172, and re-enacted by the 33rd section of the Consolidated Act. No doubt was, or successfully could be, raised, that if the certificate were made and registered according to the 23rd section, and as prescribed in section 35 (whatever the latter may be,) it would bar all debts either present or future; for the provision on that point is quite clear.

I think the true construction of all the Acts shows two ways by which stockholders would be clear of all liability. The one under the provisions of sections 34 and 35, and the other under sections 33 and 35. Whenever the language admits of two constructions, according to one of which the enactment would be unjust, absurd, or mischievous, and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted as that which the legislature intended (1). It is said that as the provision for the limiting of liability is a boon to stockholders and relieves them from personal liability, we should construe strictly against them any enactment as to the conditions required for exemption; such limitation being a relief to them from the common law obligations, that would otherwise press upon them as copartners or joint and several contractors. I must confess I do not see much in that argument. The legislature for the benefit and advancement of public interests, by a general incorporation Act, holds out certain inducements to parties to engage jointly in business transactions and undertakings; one of the greatest of which is immunity from the consequences of a failing partner-

(1) Per Lord Campbell in *R.* v. *Skeen*, 28 L. J. M. C. 98; per Keating, J., in *Boon* v. *Howard*, L. R. 9 C. P. 308.

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ship business; and the limit of the liability is that which attaches according to the amount of stock subscribed for or purchased. The statutes on this point should be construed differently from a special charter granted on the petition of the parties, where they may be said to use their own language in asking exceptional powers or privileges, and when doubt arises as to the construction of that language, the maxim ordinarily applicable to the interpretation of statutes, that *verba chartarum fortius accipiuntur contra proferentem*, or that words are to be understood most strongly against him who uses them, is justly applied (1). No common law liabilities are, therefore, in my opinion, incurred or intended to be by any one becoming a stockholder. No credit is given to the stockholders individually, but to the company. They, in no sense of the word, are debtors, but merely guarantors in a special way. They are only such guarantors or sureties to the extent from time to time of their unpaid stock. *Angel & Ames* in their treatise on corporations say (2):

> That one of the properties of a private aggregate corporation is the irresponsibility of its members for company debts, and that they are not liable beyond the amount invested in their subscription of stock.

That is the general principle. It has been well said, that the object of granting such charters is to shield its members from such personal responsibility; and it was, and is, deemed a matter of public policy so to grant them, to induce individuals to invest a portion of their means for the purposes of trade and public improvement who would abstain from so doing were not their liability thus limited. In joining one of those registered companies, then, no one assumes any common law obligations; and therefore I feel bound to construe the statutes in respect of them without that strict-

(1) Maxwell on statutes, 268. (2) P. 470.

ness which is right enough in cases of a different character and nature. Parties dealing with joint stock limited liability companies, while expecting profits therefrom, must take all the incident risks; they are presumed to judge of the solvency of their immediate debtors and the nature of the liability of their guarantors or sureties; and I know of no principle that calls upon me to put other than a reasonable and fair construction on the statutes through which parties seek to make shareholders pay for over again stock which they have paid for once, and the amount of which in many cases they have wholly lost. I feel bound, for these reasons, to construe the acts so as fairly and reasonably to give effect to the general intentions of the legislature.

By the Act 16 *Vic.*, ch. 172, which amends the Act 13th and 14th *Vic.*, ch. 28, five years are given for the payment in of the whole stock instead of two; and it provides that, notwithstanding anything in the last mentioned Act contained, it should be lawful for any shareholder, within five years, to pay up his full shares "to the effect whereof a certificate shall be made and registered in the manner provided by the said first cited Act, and which, to said shareholder and his liability in virtue of the said Act, shall have the same force and effect *from the making thereof* as the making and registering of the certificate of the payment of the whole amount of the capital of such company." In that case the certificate operates, not from the registry, but *from the making*. It is required that it (the certificate) "shall be made and registered *in the manner* provided by the first recited Act." Under this Act I think the "manner" referred to was not intended to include or limit the "time" for doing it. If so, the liability would cease *whenever it was done* at any time within the five years.

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If the requirement of the statute can be satisfied by the registry of the certificate *in the manner* specified, without regard to the limitation of thirty days, it seems the condition as to the *time* of registry is not necessarily included; and when to have made it plain it was only necessary (as is the usual course pursued in enactments) to have added the words "and within the time limited, &c.," we are the more justified in concluding such was not the intention of the legislature.

A difficulty, however, is said to arise in consequence of the difference in the language of the 33rd section of the consolidated statute. The words there used are that the certificate "shall be made and registered as *prescribed* in the 35th sec. of this Act, *after which* (not *upon* which) such shareholders shall not * * * * * be in any manner liable for or charged with the payment of any debt or demand due by the company, &c." By the later Act the liability continues until the *registration*. The difference in one respect, that is as to the time when the party would be discharged, has, however, no effect in this case, for *both* the making and registration took place before action.

Can the limitation of the "thirty days" in section 35 be applied to the registry of the certificate as mentioned in section 33? The words "as prescribed" in the thirty-third section, refer as well to the *registry* as to the *making* of the certificate, but the prescription of the "thirty days" in section 35 is "*after the payment of the last instalment in the capital stock of any such company.*" That is the only prescription *as to the time of the registry*, and being wholly inapplicable to the circumstances arising under the provision of section 33, how am I to say the legislature in making section 33 intended that as regards section 33 it should mean thirty days from the payment by one shareholder

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of the last instalment of his individual stock. We are not to legislate, but to give effect to the provisions of the statute and cannot, as I think, supply what is clearly deficient. The position and commercial status of the company, from the fact of one shareholder having fully paid up his stock and registered his certificate, is essentially different from what it would be if the whole stock were paid up; and the necessity for a registry, and thereby a publication of the fact, being so much more necessary in the latter event than in the former.

I cannot see my way clear to decide that the legislature intended the prescription of thirty days to apply to a case under section thirty-three. The last Act contains all the guards the legislature thought necessary for the protection of parties dealing with those companies, after the public had nine years acquaintance with the dealings under the previous joint stock companies Acts. It contains provisions for records of payments of stock, by which parties could inform themselves, before dealing as creditors with a company, as to the solvency of the company, and the amount of the guarantee by holders of unpaid stock; and their ability to pay up balances of unpaid stock to a more reliable extent than they could do, as a general rule, in regard to individual traders. If parties choose to deal with legal entities, without the proper inquiry open to them, it would be hardly right by a strict or strained construction of a statute to enforce payment from stockholders who have fully paid up all their stock. The principle that every one must be presumed to know the law in regard to the persons and matters they deal with is applicable to every one dealing with a chartered company, and so dealing are bound to see that they are reasonably safe. In this case the plaintiff must be held to have known before

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he gave the credit, that at any moment he was liable to lose the guarantee of any one or more stockholders by the payment in full of their shares and the registry of their certificates. A company composed of shareholders, some of whom are wealthy, and who are presumed to stand as sureties for the whole liabilities of the company, obtains a standing and credit it otherwise would not have, but outside parties should be held to know that the guarantee is but a contingent one, and that at any moment such sureties may by payment and registry cease to be such. Suppose the statute expressly prescribed the registry of the certificate within thirty days, as contended for in this case, outside parties are required to take notice that under the act a stockholder, even after the company had become hopelessly insolvent, might pay up the balance of his stock and by registering his certificate within thirty days afterwards, (all which might be done in a few hours,) get relieved from the payment of anything further. It cannot, therefore, be contended that the guarantee of the unpaid shares of any particular individual for anything beyond the amount due on them, is one of the main reliances of a party giving credit to a company. If, then, the whole of the individual stock be paid in the creditors get about all they could reasonably expect. It is claimed to be better in all such cases to rule against the stockholder on the ground that he has all the chances of gain, and should also bear the losses of the speculations of the company. To that, however, it is fairly answered that he became a guarantor merely, and that having paid up all he promised within the terms of his contract, no creditor should complain that he refuses to pay more. The only just way, then, is to ascertain the nature of the contract binding on all persons becoming parties to it, and by a reasonable construction of it give effect to what we must assume to have been under the law their

intentions and reasonable expectations. By the terms of the constating documents, in the case of the great majority of joint stock companies in *England* and other countries, shareholders are only liable to be made contributories to the extent of the balances due on shares, and payment alone is sufficient to discharge them from all further liability. To that extent they are strictly held, but here, where a party who never owned possibly over two or three hundred dollars worth of shares, is claimed to be retained as a guarantor for several thousand dollars, equity and common honesty require that before he is so declared liable, *the law plainly makes him so.* If it do not, I feel myself powerless to decree it.

The provision in regard to the registry of the certificate under section 34 was called for to enable the public to know, within a reasonable time, that all guarantees were at an end and that the only reliance of a creditor was on the fund so provided, if any balance of it remained. If of any service as a *notice*, it was but a very uncertain one in practice, as a small balance might remain due up to any time within five years. One day the absence of any certificate from the registry might induce the belief that a large amount of stock was due, and credit might thereupon be given to the company; and before liabilities ripened, the small balances might be paid up and the certificate registered, and with it, recourse upon the stockholders at an end. I have, however, just stated a possible but not a probable case. It is, nevertheless, one which the provision of the statute could not prevent. If registry of the certificate of the payment in of the whole capital stock was intended as a notice, it might have some result as to parties from whom the company sought credit, but the registry of the certificate of one shareholder would change, in few cases, the commercial standing or position of the company or lessen its claims for credit.

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Taking, then, every view of the legislation and the interests of all the parties in their several relations to each other, I do not feel justified in enforcing the claims of the appellant. It is to be regretted that innocent creditors should suffer, but it should be equally regretted that innocent stockholders should lose what they never received value for or agreed or expected to pay.

Some of the defendants set up a defence by alleging the payment in full of their shares within five years, and the registry of the certificates, not before, but after the commencement of the suit. If I am right as to the issues on the pleas generally then those in question are, in my opinion, good. By section 97, ch. 22, of the consolidated statutes of *Upper Canada* "any defence arising after the commencement of any action may be pleaded according to the fact without any formal commencement or conclusion, &c. (1)." The defence here arose after the commencement of the action, and if the plaintiff was satisfied with the truth and legal effect of the matters therein alleged he could have so said, and he would have, in that case, been entitled to his costs up to that time; but the rule is, I think, "if the plaintiff replies or demurs to the plea the defendant will be entitled to his costs if he succeeds" —excepting, however it may be, "the costs incurred prior to the plea." The objection that the plea is not "to the further maintenance of the suit" and is therefore bad, because it would be no defence as regards the costs incurred previous to right of defence arising from the registration, cannot be accepted as a valid one. The law makes it a good defence pleaded in that way; and I think the question of the previous costs depends on the action of the plaintiff subsequent to the plea. It cannot, in my judgment, affect the issues raised.

(1) See also *Todd* v. *Emly*, 9 M. & W. 606.

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On the whole case, after much reflection and research, I feel that my judgment should be for the respondents, and that the appeal should be dismissed with costs.

GWYNNE, J.:—

For the reasons given by the learned Chief Justice of the Court of Common Pleas in his judgment, and by Mr. Justice *Patterson* in the Court of Appeal, I am of opinion that the true construction of the acts which raise the question before us, is that put upon them by the judgment of the Court of Common Pleas.

I see nothing in the Acts which expresses the intention of the legislature to have been, that payment in full by a shareholder of all his stock should have effect, but of a greater or less degree, according as registration of the certificate of payment should take place within, or after, the expiration of, thirty days from the payment. If such had been the intention of the legislature, it should have been, and, no doubt, would have been so expressed; so that the question really is, as it is put by the demurrer, whether payment by a shareholder of his stock in full shall have any operation at all as a discharge of such shareholder from unlimited liability for all the debts of the company, unless he *obtains and registers a certificate of such payment within* 30 *days from payment.* We cannot, I think, put such a construction upon the statutes as that the obtaining and registering a certificate of payment in full by a shareholder upon the thirtieth day from payment, should discharge him from all liability beyond the amount so paid; and that the obtaining and registering such certificate upon the thirty-first day after such payment in full should have no operation whatever, but would leave him equally liable for all debts of the company as if he had not paid anything on his shares. The spirit of the statute is, in my opinion, as stated by the learned Chief Justice of

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the Common Pleas, in whose judgment, and in that of Mr. Justice *Patterson*, I entirely concur. We give, I think, full effect to the letter also, by holding that, as to a shareholder paying in full, registration of the certificate of payment within thirty days does not constitute an essential element to give to payment in full the operation of a discharge from all liability, excepting always the excepted demands.

Appeal dismissed with costs.

Solicitors for appellant: *Robertson & Robertson.*

Solicitor for all respondents except *Rumsey: W. R. Meredith.*

Solicitors for respondent *Rumsey: Osler, Wink* and *Gwynne.*