due by virtue of the contract, and were not "calls" within the meaning of the Act. Assuming that such an agreement was competent, the first question was, whether the liability in respect of the stock brought the case within the prohibition of the statute (Canada Companies Act, secs. 65, 66) against the transfer of stock upon which a call is in arrear.

Reference to Re Peterborough Cold Storage Co. (1907), 14 O.L.R. 475; Halsbury's Laws of England, vol. 5, para. 268; secs. 58 and 59 of the Canada Companies Act; Croskey v. Bank of Wales (1863), 4 Giff. 314, 330, 331; Hubbersty v. Manchester Sheffield and Lincolnshire R.W. Co. (1867), 8 B. & S. 420, 421; Alexander v. Automatic Telephone Co., [1900] 2 Ch. 56, 64.

The learned Judge concluded that the liability of Tudhope upon his subscription was not a liability for "call," and that the stock held by him was not subject to call.

The resolution of the 26th August purporting to make a call could, accordingly, have no operation on Tudhope's stock; but, in the second place, it was not a valid call, for it purported to be a call upon the stock held by the directors. The very essence of a call is that it should bear equally upon all stock allotted. It could not have been intended to be a call, within the technical meaning of the statute, so as to prevent the transfer of Tudhope's stock, for it was contemporaneous with the resolution permitting the transfer.

There was nothing to prevent a novation, and it was clear upon the evidence that there was a novation—the company accepting Lindsay as transferee of the shares, and Lindsay accepting Tudhope's position as holder of the shares. The shares continued to exist—they were not surrendered nor destroyed, but transferred.

Even if there was not a novation, Tudhope's liability was not one that could be enforced as a call; it could be enforced only by an action upon his promise to pay.

Reference to In re Hoylake R.W. Co., Ex p. Littledale (1874), L.R. 9 Ch. 257, an authority binding upon the learned Judge, and to be followed in preference to the dictum of Duff, J., in Smith v. Gow-Ganda Mines Limited (1911), 44 Can. S.C.R. 621, 625, 626.

For these reasons, Tudhope must be considered not liable as a contributory; and it was not necessary to consider fully the other questions argued.

What had been said applied with equal force to the case of Shelden.

The appeals should be allowed, and the liquidator should pay the costs throughout.