

sions of the charter as to the assignable character of the stock." Neither was it in *In re Macdonald and Mail Printing Co.*, 6 P. R. 309, where the power to pass the by-law seems to have been taken for granted.

In the present case Teetzel, J., considered himself bound by the decision in *In re Imperial Starch Co.*, 10 O. L. R. 22. But that case, in turn, appears to have been dealt with as governed largely, if not altogether, by the decision in *In re Panton and Cramp Steel Co.*, 9 O. L. R. 3; a case in which there was no by-law, and the decision seems to have turned upon the absence of a by-law. The passage from the judgment of Osler, J.A., to which MacMahon, J., refers in *In re Imperial Starch Co.*, is not correctly given there. In the report in 9 O. L. R. it reads (p. 4): "The transfer being in order and the stock paid in full, the directors, in the absence of a by-law under sec. 4 (a) regulating the transfer, had no discretion to exercise in the matter, or option but to comply with the demand of the transferee to record the transfer." So that the decision of the Divisional Court in this case may be said to be the first determination of the precise question. That, of course, is not in itself a sufficient ground for a further appeal. But it is urged that, as the question is one of much consequence to companies, many of which seem to have a by-law similar to that in question here, the case is one that may well bear further discussion. That may be so. But the position and rights of the proposed respondent must also be considered. He has the judgment of the Judge of first instance and a Divisional Court in his favour, and, according to the general rule, is entitled to claim that there shall be no further appeal, especially as the amount at stake, which is all he is concerned in, is small. If the company desire to obtain a further opinion, the respondent should not be required to incur the expense incidental to that proceeding. The order I make is that upon the company undertaking to pay the respondent's costs of the appeal, as between solicitor and client, in any event of the appeal, they be at liberty to appeal upon the sole question of the power to restrict the transfer of fully paid-up shares in the manner provided by the by-law in question.

The costs of the application will be costs to the respondent in any event.

If this be not accepted, the application is dismissed with costs.