

styled the "brief." These admissions are quite sufficient for the determination of this case.

The Birkbeck Investment Security and Savings Company of Toronto was incorporated on the 10th of May, 1893, under the Act respecting Building Societies, being ch. 169 R. S. O. 1887. That company on the 15th day of February, 1894, before the plaintiff became a member of it, adopted certain rules and passed by-laws for its government and management. It was not argued that these rules or by-laws were in excess of the power of the company. These provided that the capital stock of the company should be five millions of dollars, divided into 50,000 shares of the maturity value of \$100 each, and that the stock was to be issued in three classes, namely, (1) Instalment stock; (2) Pre-paid stock—the prepayment being \$50 for some shares, and \$40 for other shares, and (3) fully paid or permanent stock.

Only the prepaid stock and of that, only the shares on which the prepayment was \$50, each share, is in question in this action.

Section 6 of art. 2 of the by-laws of the old company is as follows:—

"Prepaid stock of the company shall be issued at fifty dollars, and forty dollars per share payable in advance. Holders of the power shall receive a semi-annual dividend at the rate of six per cent. per anum on each sum of fifty dollars, which dividend shall be deducted from the profits earned, the balance of the earnings being credited to the stock. Holders of the latter shall be credited with the earnings accumulated thereon until maturity in like manner as instalment stock."

Sec. 7. "When the amount standing to the credit of any such share of fifty dollars prepaid stock, consisting of the semi-annual dividends paid and the profits apportioned thereto, together, equal one hundred dollars, the said share shall be deemed to have matured, and shall rank thereafter as fixed and permanent capital of the company."

Part of sec. 8. "Prepaid stock shall contribute a *pro rata* sum to the expense fund in the same manner as instalment stock."

Sec. 9. "The board of directors shall have power in their discretion to retire the unpledged instalment and prepaid stock of the company at any time after the fourth year