absence of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue thereof.[1]

2. Forfeiture of Charter.—The question may be raised whether a company, once incorporated under the Companies' Acts, can be disincorporated, and on what grounds and by what means? In a case decided by the House of Lords in 1871,[2] the point arose as to the regularity of the constitution of a company. All the subscribers to the memorandum were foreigners, and there was no intention to carry on business in England. Neither of these circumstances affected its validity, but the articles of association contained provisions contrary to the Companies' Act. The Court decided that if the company had been created, there was no power given by which, through any result of a formal application, like an application for *scire facias* to repeal a charter, the company could be got rid of unless by winding up. In the case of Glover v. Giles,[3] Fry, J., said: "The Court has no power to disincorporate a corporate body because the certificate of incorporation has been improperly obtained. In such a case it is for the Crown to recall the certificate of incorporation." But Halsbury, L. C., in the case of Salomon v. Salomon & Co., decided by the House of Lords in 1896, said[4]: "I do not at all mean to suggest that if it could be established that the provision of the statute . . . . had not been complied with, you could not go behind the certificate of incorporation to show that a fraud had been committed upon the officer entrusted with the duty of giving the certificate, and that by some proceeding in the nature of a *scire facias*, you could not prove the fact that the company had no real legal existence." This view would seem to harmonize with the enactments of our legislatures. The Dominion Act provides[5] that the letters patent shall be conclusive proof of every matter and thing therein set forth, *except in any proceeding by "scire facias" or otherwise for the purpose of rescinding or annulling the same.* The Quebec Code of Civil Procedure[6] provides that any letters

---

[1] R. S. C., ch. 119, sec. 78; R. S. Man., ch. 25, sec. 17; N. B. 1893, ch. 7, sec. 26; R. S. N. S., ch. 79, sec. 76; and see R. S.B. C., ch. 44, secs. 20 and 22.

[2] Princess of Reuss v. Bos., L. R. 5 H. L., 176.

[3] (1881) 18 Ch. Div., 180.

[4] (1897) A. C., at p. 30.

[5] R. S. C., ch. 119, sec. 68.

[6] Art. 1007, and see Banque de Hochelaga v. Murray, 15 App. Cas., 414, P. C. 1890.