

*Held*, also, that a power to forfeit must be strictly construed.

*Held*, also, that to an action impeaching the validity of a by-law reducing the number of directors, the company was a proper party.

The allotment of stock by directors to one of their number, for the purpose of raising funds to pay off liabilities of the company, even though it have the effect of giving a preponderance of control of the company to the allottee, is not *per se* void. Where such an allotment was made, and the shareholders knew of it, but no objection to the allotment was made, except by a minority, on the ground that the issue of the stock was unnecessary.

*Held*, that the shareholders could not afterwards object to the allotment on the ground of its giving an undue control over the company to the allottee.

*Held*, also, that to ratify such a transaction, it was not necessary that all shareholders should assent to it, but that it was sufficient that a majority did so.

Where a plaintiff failed to establish his right to relief on certain of the grounds on which his action was based, although some relief was granted, it was under the circumstances granted without costs.

Evidence of an alleged agreement contemporaneous with, and qualifying, and at variance with a written agreement between the same parties, held inadmissible.

*S. H. Blake*, for the plaintiffs.

*Moss, Q.C.*, for the defendants other than the Company.

*Wells*, for the defendants the Company.

Boyd, C.]

[Jan. 12.

KILROY v. LYONS.

*Will—Execution of will—Fraud—Onus probandi—Suspicious circumstances.*

In an action to impeach the validity of a will purporting to have been executed on 2nd November, the plaintiff swore that the signature was not in the hand writing of the testator, and it was also proved that neither of the subscribing witnesses was at the house of the deceased on the day the will impeached bore date, and a letter was produced written at the instance of one of the witnesses, dated the 4th November, in which it was stated that the deceased had not then made any arrangements about his affairs. And

four other witnesses also proved that the deceased had made statements after the date of the alleged will, from time to time, up to the time of his death, to the effect that he had made no will and had not settled his affairs. One of the subscribing witnesses, although duly subpoenaed by the plaintiff, attended and was at the Court House on the day of the trial, but subsequently absented himself before he could be examined as a witness in the action; and an opportunity was given by the Court to the defendants to produce the other subscribing witnesses for examination, which they did not avail themselves of.

*Held*, that a sufficient *prima facie* case had been made invalidating the will, and that the onus of establishing its validity was cast upon the defendants.

*Morton* for plaintiff.

*Sol. White*, for defendant.

Boyd, C.]

[Jan. 12.

GRIP PUBLISHING CO. v. BUTTERFIELD.

*Patent—Patent for improvement—Infringement—Injunction—Combination—Non user of one of the parts of a combination.*

Where there is an original invention and an improvement is made upon it, a patent may be taken out for the improvement, and then, by getting a licence from the patentee of the original invention, the inventor of the improvement may work the whole process.

But a valid patent cannot be obtained for an improvement which is in fact merely one of the several modes in which the invention may be carried out, although one not actually mentioned in the original patent.

A patentable improvement must be something in addition to the first invention and not merely a description of a better mode of applying the first invention.

Thus where the plaintiff had obtained a patent for a counter check book with "a black leaf bound in with the other leaves but next to the cover," and the defendant then patented improvements consisting of (a) the attaching of the black leaf to a membrane, and (b) the binding of the leaves of the book together by an elastic band,—(c) and also in his specifications described the black leaf as bound "between the lower leaf and lower cover."

*Held*, that the defendant was not justified in