

Trial of Actions. Lount, J.]

[August 10.]

NELSON COKE AND GAS CO. v. PELLATT.

*Company—Subscription for stock—Calls—Necessity for allotment.*

The defendant subscribed on September 1st, 1899, for some of the capital stock in the plaintiff company, covenanting with the company and the directors to accept such stock when allotted and pay for the same as calls might be made. The company was incorporated under the British Columbia Companies Act 1899, which so far as affected this case is identical with the English Companies Act 1862.

The first action taken by the company as to stock or allotment of the same was on December 14, 1899, when it was resolved by the directors that the amount of stock subscribed should be paid up in full on or before January 18, 1900, and between that date and November 22nd, 1900, many interviews took place between the president and the secretary-treasurer of the company and the defendant, at which the defendant's liability for the stock subscribed for by him was discussed and demand for payment made, and also several letters were written by them to the defendant demanding payment to which the defendant made no reply. On November 15th, 1900, the defendant wrote to the secretary-treasurer formally withdrawing "the offer which I made in the subscription book, to take certain shares of the capital stock in your company." In reply the treasurer again notified the defendant for immediate payment. On November 29th, 1900, the directors passed by-laws for the issue of shares and for the allotment to the defendant of the number of shares subscribed by him, and also that the whole amount of shares issued and allotted should be at once called up and made payable to the company.

*Held*, that the defendant was not liable on his shares inasmuch as he had withdrawn his subscription before there had been any issue or allotment, and the notices given and sent to the defendant orally or in writing could not be treated as an issue and allotment of shares to him.

G. H. Watson, K.C., and Smoke, for plaintiffs. H. J. Scott, K.C., and H. H. McRae, for defendants.

Falconbridge, C.J., Street, J.]

[August 12.]

PRESTON v. THOMPSON.

*Defamation—Privilege—Judge's charge—Evidence—Cross-examination to credit—Contradiction.*

The plaintiff and defendant were members of the same cheese making association. The plaintiff sued the defendant for slander for saying to the cheesemaker of the association that the plaintiff sent skimmed milk to the cheese factory. The defendant pleaded privilege. The judge charged the jury that the occasion was privileged, and that the defendant was entitled to a verdict unless they came to the conclusion that he was