

3,444 shares common stock subscribed and paid up to the extent of 55 per cent.

175 shares common stock subscribed and paid up to the extent of 35 per cent.

The plaintiff was the owner of 117 shares of common stock on which 55 per cent. had been paid. The first preference shares were issued pursuant to by-law 26 of the company, and were wholly subscribed for by the directors of the company in trust for the company, and no claim in respect thereof was made to the moneys in question. On the 31st January, 1902, all the property, franchises, etc., of the company were sold to the corporation of the town of Peterborough for \$230,000; under the provisions of the Municipal Waterworks Act, and it became impossible for the company to continue its business.

(9) The second preference stock was created and issued pursuant to by-law 27 of the company, passed 16th April, 1895, which by-law provided that such second preference stock should be subject only to the first preference stock issued and subscribed under by-law No. 26, and should have preference and priority over all other stock of the company theretofore created or issued or which should thereafter be created or issued, in the respects following:

(a) Dividends on such preference stock at the rate of 6 per cent. per annum, to be computed from the date such stock should be subscribed for and allotted, were to be paid out of the net profits of the company before any dividends on ordinary stock; and for a period not to exceed five years from 15th April, 1895, the holders thereof should not be entitled to participate further in the profits of the company; in case of default of any such payment, then the deficiency should be paid out of the net profits of succeeding years, and no dividend should be declared or paid on the ordinary capital stock of the company until such deficiency should be fully paid.

(b) On 15th April, 1900, or any subsequent year, the holders of such preference stock should be entitled to surrender the same and receive in lieu thereof the par value, or at their option to surrender the same and receive in lieu the corresponding amount of shares of the ordinary capital stock of the company.

No surrender had ever been made by any of the holders of the second preference stock.