

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

books to be called "Beatty's," prepared another series of copy books which differed slightly from those published by the plaintiff, but the Court inclined to the opinion that the differences were merely colourable. These new copy books were styled on the covers "Beatty's new and improved head-line copy book," and were proved to be, and to have been intended to be, in such a form, and in such a cover as to lead the public to believe the books were the books published by the plaintiff, and were so published and sold by the defendant company, to the injury of the plaintiff's business.

*Held*, that the plaintiff had not acquired the right to use the word "Beatty" as a trade mark, but,

*Held* also, that the conduct of the defendants in publishing their books was fraudulent and collusive, inasmuch as they intended, by simulating the plaintiff's books, to deprive him of profits he would otherwise have made, and that the plaintiff was therefore entitled to a perpetual injunction, restraining the defendants from advertising, publishing or selling, or offering for sale, the book "Beatty's new and improved head-line copy book," in and with its present cover, or in any other form, or cover, calculated to deceive persons into the belief that it was the plaintiff's book.

*S. H. Blake, Q.C., and W. Cassels, for the plaintiff.*

*C. Robinson, Q.C., and Davidson, for the defendants the Publishing Company.*

*J. Bethune, Q.C., and C. Moss, Q.C., for the defendant Beatty.*

Proudfoot, J.]

CHRISTOPHER V. NOXON.

[Jan. 10.

*Joint Stock Company—By-law—Annual meeting—adjourned retinue—Shareholders—Voting—Calls—Forfeiture for non-payment of calls—Allotment of stock by directors to co-director—Estoppel—parties—Evidence—Costs.*

A general annual meeting of the shareholders of a joint stock company was held pursuant to a resolution moved by one of several plaintiffs, on another day than that provided by by-law.

*Held*, that the plaintiff moving the resolution, was estopped from objecting to the regularity of the meeting on that ground, and that his co-

plaintiffs by joining in the action were estopped by the conduct of their co-plaintiff.

A shareholder of a company who was in default in payment of his calls, was refused the right of voting on the ground that his stock had been sold by the sheriff, although no transfer had been made in the books of the company.

*Held*, that the default in payment of calls was of itself a sufficient ground for excluding him from voting, and that such ground might be relied on to justify the rejection of his vote, although not the ground assigned at the time.

By law 4 authorized a call on stock. By-law 5 purported to repeal by-law 4. Both by-laws were confirmed at a general meeting.

*Held*, the call authorized by by-law 4 could be made.

Where a call was made for the alleged purpose of liquidating debts due by the company,

*Held*, that the necessity of making the call was a matter affecting the internal economy of the company, which could not, in the absence of fraud, be enquired into at the instance of a dissatisfied shareholder.

*Held*, also, that the directors were under no obligation to assume any personal liability in order to keep the liabilities of the company, for payment of which the call was made, afloat until they could be paid out of the earnings of company, even though such a course were practicable.

Business which could not have been entertained at a special general meeting of a company cannot without due notice be entertained at any adjournment of that meeting.

Thus, where a special general meeting of a company was called to ratify a by-law providing for the appointment of five directors, and the by-law was affirmed, and the meeting adjourned, and afterwards and before the holding of the adjourned meeting, the directors passed a by-law reducing the number of directors to three,

*Held*, that it was not competent, in the absence of any notice of this business being brought up at the adjourned meeting to ratify this by-law at the adjourned meeting.

*Held*, also, that a by-law authorizing the forfeiture of stock for non-payment of calls, passed by a board of three directors, in pursuance of an invalid by-law reducing the directorate from five to three, was also invalid.