NOTES OF CANADIAN CASES

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COMMON PLEAS DIVISION.

Wilson, C. J.] [Dec. 15.

DEVANNEY ET AL V. DORR.

Assessment — Taxes when due—Agreement—Arbitration—Costs.

Under the Assessment Act, the assessment is for the purpose of designating the person to be charged, but no debt is due until the rate on the dollar is imposed, and the amount of taxes thus ascertained and fixed.

By an agreement, dated 4th November, 1881, between one Q. and defendants, for the sale of Q.'s business, after reciting that defendants were to pay, satisfy and discharge all liabilities now due and owing, or hereafter to become due and owing, incurred by the said Q. in the said business, &c., the defendants covenanted to pay, satisfy and discharge all the debts, dues and liabilities, whether due or accruing due, contracted by the said Q. in connection with said business, &c. Q. was assessed for goods sold under the agreement, before the making thereof, but the rate was not imposed until May thereafter.

Held, that this was not a debt, &c., contracted in connection with the business, so as to come within the agreement.

By an order of reference the arbitrator was empowered to certify and amend pleadings and proceedings and otherwise, as a judge at Nisi Prius, and the costs of the reference, arbitration, and award were to abide the result of the award.

Held that the arbitrator had no power to make any disposition of the costs, as they were provided for by the reference.

McClive, of St. Catharines, for the plaintiff.

Aylesworth, for the defendants.

Osler, J.] [Dec. 15.

UNION INS. CO. V. O'GARA.

UNION INS. CO. V. SCHOOLBRED.

Corporations—Calls—Resolutions—By-laws—Notice—Stockholder—Change of head office.

Action to recover calls on stock in the defendants' company.

The defendants' act of incorporation provided that the directors could make calls at such times as they might deem requisite, provided that successive calls should be made at intervals of not less than two months between such calls, and that no call should exceed ten per cent., and that thirty days' notice should be given of every such call.

Held, that it is not necessary that calls should be made by by-law, but that a resolution is sufficient for the purpose; and that the resolution need not name the place of payment of the calls, but that this can be done in the notice.

A resolution was passed by which a call was made of 10 per cent., payable on the 1st March, and it was thereby further resolved that a further call of 10 per cent. be made, payable on the 1st September.

Held, clearly not a call of 20 per cent., but two calls of 10 per cent. each; and that the fact of the second call being illegal did not invalidate the first call, because contained in the same resolution.

The act provided that the head office of the company could be changed to such other place as might be determined by the shareholders at any one of the general meetings.

At its general annual meeting, a resolution was passed authorizing the directors to consummate arrangements for the removal of the head office from Ottawa to Toronto. The directors made the change, and the subsequent annual meetings were held at Toronto, at the first of which so held, the by-law referring to the place of holding the annual meetings was amended by substituting Toronto for Ottawa.

Held, that the change was effectually made.

An alleged third call was objected to as being a fourth call, in that the second illegal call before referred to had never been abandoned; but *held*, that the evidence clearly shewed such abandonment.

The same objection was taken as was done in *Union Ins. Co.* v. *Fitzimmons*, 32 C. P. 602,