

SEPTEMBER 19TH, 1902.

C. A.

## NELSON COKE AND GAS CO. v. PELLATT.

*Company—Subscription for Shares—Preference Shares—Validity of—Contract by Deed—Issue and Allotment—Necessity for—Calls—Resolutions and Letters—Sufficiency of.*

An appeal by plaintiffs from judgment of LOUNT, J. (2 O. L. R. 390) dismissing action to recover amount alleged to be due by defendant in respect of shares in the plaintiff company subscribed for by defendant.

G. H. Watson, K.C., for plaintiffs.

H. J. Scott, K.C., and H. H. Macrae, for defendant.

The judgment of the Court (ARMOUR, C.J.O., OSLER, MACLENNAN, and MOSS, JJ.A.—LISTER, J.A., having died since the hearing) was delivered by

MACLENNAN, J.A.:—Provision was made for preference shares in the memorandum and articles of association, sec. 5 of the memorandum and sec. 3 of the articles. . . . That these provisions are legal and valid features of the constitution of the company is clear: *Ashbury v. Riche*, L. R. 7 H. L. 653; *In re South Durham Brewery Co.*, 31 Ch. D. 261.

There is, therefore, no distinction between the two classes of shares in question, and if the defendant is liable upon the one class, he is equally liable on the other.

The company was incorporated under the Companies Act of British Columbia, R. S. B. C. ch. 44, on the 26th August, 1899, and the first document signed and sealed by the defendant is dated 1st September, 1899. The second document was also under seal, and bore date the same day and was contained in a stock subscription book. (Both are set out in the report in 2 O. L. R.) . . . The legal effect of both is the same. In both the appellant covenants with the company to become a shareholder, to take 200 shares of each class, when issued and allotted, and to pay for them at par when calls should be made.

The evidence shews that when the appellant executed the agreement he was in constant communication with Dr. Doolittle, a director of the company, and that they were associated together in obtaining subscriptions for shares on behalf of the company. The contract in question is, therefore, one entered into by the appellant with the company, at the request of one of its directors, acting for and on behalf of the company.