

at the time of the grant used by the owner of the entirety for the benefit of the part granted ; and rights of drainage and of aqueduct are within this category of easements.

The owner of two adjacent semi-detached houses, built upon separate lots, conveyed one house and lot and retained the other. The one conveyed was drained and supplied with water through the other. The plaintiff claimed an easement for the house so conveyed over the other house, which had been subsequently conveyed to the defendant. In the conveyance under which the plaintiff claimed there were general words sufficient to pass the rights claimed by way of express grant. This conveyance was registered before that to the defendant.

Held, that the plaintiff was entitled as against the defendant to the rights claimed, whether these rights were to be treated as arising under an implied or an express grant ; if the Registry Act were to be left out of consideration, the plaintiff claiming under a prior legal grant, although an implied one, would not be effected by the fact that the defendant claiming under a subsequent grant, although an express one, was a purchaser without notice ; if the rights in question were to be treated as arising under an implied grant, they were outside the effect of the Registry Act, and must prevail by reason of priority ; if the rights were to be treated as arising under an express grant, although the Registry Act would apply, there was nothing in it to take away the rights acquired by the plaintiff ; and the conveyance under which the plaintiff claimed, being duly registered, though not directly against the defendant's lot, was notice of the conveyance of everything which, according to law, passed under the description contained in it or as incident thereto.

Dicta of PATTERSON, J.A., in *Carter v. Grasett*, 14 A.R. at pp. 709, 710, dissented from.

Bicknell for the plaintiff.

Kappele for the defendant.

Div'l Court.]

[Dec. 31.

ONTARIO INVESTMENT ASSOCIATION *v.* SIPPI.
Company—Calls—R.S.O. c. 157, s. 45—Validity of transfer of shares.

The plaintiffs, who were incorporated under the Ontario Joint Stock Companies' Letters Patent Act, R.S.O. c. 157, sued the defendant

for a call upon certain shares of their capital stock subscribed for by them at the time of their incorporation in 1880. The defendant made a transfer of these shares in 1887, before any actual call had been made by the directors ; but it was contended that there was a statutory call by virtue of s. 45 of the Act, and that by s. 48 the transfer, otherwise valid, was invalid for non-payment of such call.

It is provided by s. 45 that "not less than ten per centum upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company."

Held, that a call under the Act means a call made by the directors in pursuance of the powers given to them by the Act, s. 44 ; that s. 45 is directory only ; and that the neglect of the directors to make the call thereunder had not the effect of making the defendant in arrear for the ten per centum in respect of his shares so as to prevent his making a transfer of them.

W. R. Meredith, Q.C., for the plaintiffs.

Gibbons, Q.C., for the defendant.

Chancery Division.

Full Court.]

[Jan. 19.

SHORE *v.* SHORE.

Power of appointment—Defective appointment—Appointment by will instead of by deed.

Where one by deed of trust provided that certain lands shall go to his three children in default of appointment by deed, and afterwards made a will under seal, whereby he devised as residue "all the rest of my estate, real and personal, to which I shall be entitled at the time of my decease, to W.," who was one of the three children,

Held, that this could not be regarded as an execution of the power of appointment, nor even as such a defective execution as equity would aid.

Per MEREDITH, J. There is no significance in the fact of the will being sealed, in this province, at all events, when the sealing as well as the signing of wills is so common a practice.

W. Cassels, Q.C., for the plaintiff.

Smith, Q.C., for the executors.

Idington, Q.C., for the other defendants.