

Province of Manitoba.**COURT OF APPEAL.**

Full Court.]

[Feb. 29.]

MORDEN WOOLLEN MILLS CO. v. HECKELS.

Company—Liability for calls on stock—Allotment—Validity of acts of directors when some disqualified—Election of directors without ballot—Certificate of indebtedness as prima facie evidence.

Appeals heard together from decision of a County Court judge dismissing five actions to recover calls on shares held by the several defendants in the plaintiff company, incorporated under the Manitoba Joint Stock Companies Act. The defendants had all paid the first call of 20 per cent. made by the provisional directors. The latter had also made a second call of 25 per cent. which was paid by three out of the five defendants. At the first annual meeting of the shareholders held in January, 1905, a board of nine directors was elected by unanimous vote and without balloting. The board made a third call of 20 per cent. in September, 1905, but none of the defendants paid this call. At the second annual meeting nine directors were again elected by unanimous vote, but three of them were in arrears for unpaid calls on their stock and so were not qualified to be directors according to the Act. This board afterwards made a fourth call of twenty per cent. At the trial the plaintiffs produced certificates of indebtedness in accordance with section 53 of the Act, which makes them prima facie evidence of the debts. The defendants who had not paid the second call contended that the stock had not been allotted when that call was made. As to the third call the defence was that there was no evidence that notice of it was given and, as to the last call, they claimed that it had been made by an unqualified board of directors and was therefore illegal.

Held, 1. Subscribers who pay a call cannot be heard to deny the allotment of their shares.

2. The production of the certificates was prima facie evidence of notice of the calls.

3. The presence on the board of three unqualified directors was not sufficient to invalidate the acts of the board, since the