

from the date of issue, and to determine by lot or other impartial manner whose stock shall be retired, when any matured stock remains on the books of the company."

On the 20th day of May, 1895, the plaintiff applied for and obtained 10 shares of the prepaid six per cent. stock of the company. The application was on a form sent by the company to Kingston and signed there by the plaintiff.

In the application the plaintiff agreed to abide by all the provisions and conditions and by-laws of the company. The plaintiff has regularly received the dividends of six per cent. per annum upon the prepaid \$50 shares. She did not find to the credit of these shares any profits over and above the dividends, which she received.

Until very shortly before the commencement of this action she did not complain about this, and it does not appear that she made any enquiry.

In a booklet—issued by the company and which the plaintiff received, the following appears—see ex. page 3 of brief:—

"Partially prepaid stock of the par value of \$100 is issued at \$50 a share, on which a portion of the profits earned, not to exceed six per cent. per annum upon the original sum invested is paid to holders in cash semi-annually."

"This stock is entitled to receive in addition, its proportionate share of the entire profits of the company. Profits earned in excess of the six per cent. so paid are retained, and loaned by the company to hasten the maturity of the shares."

On the 11th August, 1899, the present defendants were incorporated by 62-63 Vict. ch. 103 D. By sec. 5 of that "Shareholders of the old company holding shares of fixed and permanent capital stock therein are hereby declared to be holders respectively of shares in the fixed and permanent capital stock of the new company to the same extent and with the same amounts paid up thereon as they are holders respectively of such shares in the old company."

Sec. 10. "The new company shall be liable for, and subject to, and shall pay, discharge, carry out and perform all the debts, liabilities, obligations, contracts and duties of the old company, and any person having any claim, demand, right, cause of action or complaint against the old company or to whom the old company is under any liability, obliga-