

bind the members, or else it is merely a mandate to the directors. In the latter character such articles are still much in vogue in company circles. The mandate may frequently operate as a moral obligation to which the directors readily give effect, but its legal value is absolutely *nil*. Of course, however, if the solicitor can establish the fact of his employment for or on behalf of the company he would be entitled to remuneration for the work actually done. A company, as Lord Cairns explained, may act under their seal, or by the signature of the directors, or possibly by a resolution of the board. But, unless in either of these ways the solicitor gets his retainer, an article purporting to nominate him as the company's legal adviser will be of no avail if the directors choose to ignore it.

The principle laid down in *Eley v. Positive, etc., Company* (*ubi sup.*), was followed later in *Browne v. La Trinidad* (37 Ch. Div. 1), where the board had removed a director, notwithstanding an article purporting to fix the duration of his office for a number of years. The court refused to give effect to the article notwithstanding the fact that the director in question was a shareholder, and claimed the benefit supposed to be conferred by s. 16 of the Companies' Act, 1862. It was pointed out that there could be no contract between the plaintiff and the company until shares were allotted to him, and that "it would be remarkable that upon the shares being allotted to him a contract between him and the company as to a matter not connected with the holding of shares, should arise." It is therefore well settled that "contracts" of the class referred to cannot be enforced either on the common law side or in equity. It was thought, however, by some persons that a binding contract might be effected if the person intending to claim the benefit of the supposed contract actually subscribed the memorandum of association. This idea was dispelled by the decision of Mr. (now Lord) Justice Kay in *Re Dale v. Plant Limited* (W.N., July 6th, 1889). His Lordship decided that the secretary was not entitled, even in the circumstances mentioned, to prove in the winding up for damages in respect of an alleged agreement made between him and the promoters and confirmed by the directors in conformity with a clause in the articles authorising them to do so. Such a contract is incapable of confirmation. The plaintiff, for his services as secretary, was only entitled to a *quantum meruit* remuneration for work done: and, of course, given the like conditions, the same principle would equally apply in the case of a solicitor.—*Law Times*.