

shares set opposite his name at 20 cents per share. It is not disputed that under the Companies Act the company has power to issue shares at a discount, and there is in fact no question as to the existence of a by-law. And all parties seemed to take for granted that such was the case, and raised no question about it. It would be unfortunate if the case should now go off upon a mere technical objection. If necessary to supply the proof, it is a proper case under the circumstances for allowing a copy to be put in even at this stage. See *Cooke v. McMillan*, 5 O.W.R. 507; *Hargreaves v. Hilliam*, 58 J.P. 655.

Then, as to the rejection of evidence that what is termed the statutory meeting was not held, that defence was not raised by the defendant's pleading, and no application to amend was made. The learned Chancellor declined to receive the evidence as not relevant to the issues, and it is not a case for interfering with his ruling.

The defendant's object was to endeavour to avail himself of the provision of section 107 of the Act by shewing that he was not precluded by lapse of time from seeking to avoid the allotment of shares to him on the ground that the prerequisites to allotment required by section 106 had not been complied with. The latter enquiry would have opened up an entirely new case, and called for an investigation of matters in regard to which no question had been raised at any time previous to the trial. The allotment to the defendant had been made on the 29th December, 1908, and on the following day he had been notified of the fact, and that the first call of 5 cents per share was payable within 30 days. He made no objection until the 5th March, 1909, when he wrote stating that he was induced to subscribe through representations with which he was not satisfied. This letter was not followed up by any proceedings to avoid the allotment. Section 107 enacts that an allotment made to an applicant in contravention to section 106 is voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later.

The letter of the 5th March, 1909, was of course not an avoidance of the allotment, though it was a sufficient notice of avoidance if followed up with reasonable promptitude by proceedings to avoid: In *re National Motor Mail Coach Company*, [1908] 2 Ch. 228.

Section 108(1) enacts that a company shall not commence business or exercise any borrowing powers unless, (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less on the whole than the mini-