

in the absence of such direction and a refusal, the action could not be maintained.

Held, also, that the provision of the statute referred to did not cover a claim for past expenditures.

Chesley, in support of appeal. *F. W. O'Connor*, K.C., *contra*.

Russell, J.] *SILLIKER CAR CO., LTD. v. EVANS.* [Jan. 25.

Company—Subscription to stock—Condition—Removal of name from register.

Defendant was solicited to take shares in a proposed company by H., who had been named a member of a committee appointed to obtain subscriptions to the stock of the company. H., acting under the alleged authorization of defendant to "put him down for \$200" entered his name upon the subscription paper for that amount (defendant being unable to write). Defendant was subsequently notified by the company that the shares applied for had been allotted to him and a call was made for payment of a part of the amount due. The notice of allotment was given and the call made April 9th, 1907, and on May 6th, 1907, defendant wrote the company claiming that his consent to take shares was subject to a condition which had not been fulfilled and repudiating any liability in connection with the subscription.

Held, that as the representative of the company thought defendant was agreeing absolutely to take shares while defendant thought he was only to take them in the event of the stipulated condition being performed, there was no consensus ad idem between the parties and no contract—not even a voidable contract—and under the authority of *Baillie's* case (1898), 1 Ch. 110, defendant was entitled to have his name removed from the register of the company.

Also that the delay mentioned was not fatal to defendant's right to apply to have his name removed, he being entitled to wait a reasonable time to see whether the condition would be performed.

Allison, for plaintiff. *Terrell*, for defendant.