must be the consent of the two parties to the contract: an offer by one, and an acceptance by the other, or something which satisfies the Court either by words or conduct that the offer has been accepted to the knowledge of the person who made the offer.

There is no evidence that the directors had authority to delegate, or in fact did delegate to the officers named the statutory powers vested in them to allot stock and to make calls. Unless expressly authorized, directors cannot delegate to third parties their power of allotting shares, or of making calls. Under a similar power, a board of directors passed a resolution delegating the allotment of shares "to the discretion of the manager and the two private directors." The court held that the board had no such power, that the maxim *delegatus non potest delegari* applied, and that an allotment made by these delegates was not binding: *Howard's case*, L. R. 1 Ch. App. 561.

In this case I cannot, therefore, hold that the unauthorized act of the general manager in making calls; nor the act of the secretary in notifying this party of such unauthorized calls was such an allotment or notification of an allotment of stock as would bind the company or make this party a shareholder.

A question has been raised whether these proceedings to enforce, the liability of the shareholders should have been taken by the liquidator or by the petitioner.

The English and Canadian Acts are substantially the same as to the powers of the liquidator, (Imp. Act 25-26, Vict. c. 89, ss. 94-5; 45 Vict. c. 23, ss. 33-5, D.) And it would appear from *re Duckworth*, L. R. 2 Ch. App. 578, approved in *Waterhouse* v. *Jamieson*, L. R. 22 H. L. Sc. 29, that in winding up proceedings the liquidator represents the creditors only because he represents the company, and that through the company so represented, the rights of the creditors are to be enforced. Other cases show that proceedings against contributories are taken by the liquidator by his name of office on behalf of the company, and not by the petitioner on whose application the winding up order is made.

The statute (s. 34) directs the liquidator to take into his custody all the property, effects and choses in action to which the company is entitled; and (s. 35) to bring suits in his own name as liquidator or in the name or on behalf of the company. The proceedings to enforce the liability of contributories must therefore be taken by the liquidator and not by the petitioner.

Having found that Hovenden is not a contributory, the proceedings against him must be dismissed with costs, which I award against the liquidator personally, leaving him to apply in respect of the same against the assets of the company as he may be advised: *Ferrar's case*, L. R. 9 Ch. App. 355. A similar rule applies in insolvency proceedings: *Ex parte Angerstein*, L. R. 9 Ch. App. 479.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

Brown v. Nelson.

Statute of Frauds—Contract not to be performed within a year—Part performance—Rescission.

The plaintiff agreed to purchase from the defendant seventy-six shares of stock in the Globe Printing Company, and gave to the defendant his note, payable in two years, for the price of the shares, which were transferred to him. At the defendant's request he then pledged these seventy-six shares, and, as the jury found, lent the defendant forty-four other shares of his own, to pledge to a bank, which discounted the note for the defendant.

The jury also found that it was a condition of the purchase that the defendant, who had a large interest in the Globe Printing Company, should keep the plaintiff in the position which he occupied as managing director of the Globe Printing Company, at a fixed salary. The defendant at the maturity of the note retired it and took an assignment to himself of the one hundred and twenty shares.

The plaintiff having been afterwards dismissed from his position as managing director, brought this action for a return of the forty-four shares, on the ground that the purpose for which they had been pledged, viz.: the raising of money by the defendant for George Brown's estate, had been fulfilled; and for a return of the note, and to be relieved from the purchase of the seventy-six shares, on the ground that the condition of the purchase, viz.: his being retained in office, had not been fulfilled, but had been broken by the defendant procuring his dismissal.