under R.S.O. ch. 191. The agreement under which the defendant is asked to pay for ten shares of stock was not made until the 7th December, 1906, after such incorporation. The agreement relied upon was not made with the plaintiff company. It was made with the other subscribers to it, and it purports to be—so far as is indicated by the heading— "A memorandum of agreement and stock sheet of Canadian Druggists Limited." There can be no liability to the plaintiffs by the defendant upon the agreement itself. If the defendant had in any way become a shareholder he might be compelled to pay for his stock. Had this agreement been signed before the presentation of the petition for incorporation, then under section 9 of chapter 191, he might, whether named in the letters patent or not, have become one of the body corporate.

The letters patent incorporate five persons by name, and "any others who have become subscribers to the memorandum of agreement of the company."

That memorandum of agreement mentioned was executed in duplicate—one part is filed in the office of the Provincial Secretary and remains there, with the petition, the other is in the plaintiffs' book, filed upon the trial. The defendant did not sign that, but signed the one dated 7th December, 1906.

If the defendant did not become a shareholder by virtue of the agreement, as it is not pretended that in any other way he became one, he cannot be liable in this action. If not a shareholder in fact, and if not in law liable as a shareholder, whatever the company may have done or have attempted to do in the way of allotment, or making out share certificates, or in giving notice of meetings, could not create a liability. The defendant not only never acknowledged any liability, but within a week of his signing the paper he gave notice of repudiation of it. The plaintiffs should have realized that the agreement was not one by the defendant with the company, and should not have brought this action.

Appeal should be dismissed with costs.

FALCONBRIDGE, C.J.K.B., and RIDDELL, J., gave reasons in writing for arriving at the same conclusion.