

At a meeting of the directors, on the same day, a resolution was passed accepting the application in the following words:—

“Moved by Mr. Hazlett, seconded by Mr. Rutherford, that the application of Mr. W. E. Davis for 130 shares of the 10 per cent. stock of the company (being the stock upon which has been paid only 10 per cent.) be accepted, and that the said shares be and the same are hereby allotted and issued to him, for and in consideration of the sum of \$1,300, to be paid upon demand, and that a certificate be forthwith issued to the said W. E. Davis.”

Then follows this entry in the minutes: “The said shares were allotted and issued on the condition that no further call would be made thereon.”

Davis was notified by Hutchinson of the acceptance of his application. On 11th February, 1907, Davis sent his cheque to the company for \$1,300, and also gave to a shareholder a proxy to vote on the shares allotted to him, which proxy was exercised at the shareholders' meeting that day on the election of directors.

Some dispute arose at the meeting in regard to Davis's stock, and, on this being reported to Davis by Hutchinson, Davis decided to have nothing further to do with it, and he telephoned the bank to stop payment of the cheque. The evidence establishes that Hutchinson concurred in the payment of the cheque being stopped, and that he instructed the company's secretary not to present it for payment.

There is no minute of any subsequent meeting of the directors, and nothing further was ever done by Davis in the way of repudiation.

The winding-up order was made on 14th May, 1907.

Davis's name is entered on the company's register of transfers as the holder of 130 shares, as of 9th February, 1907, and there is with the company's papers a certificate, which was never delivered to Davis, signed by the president and secretary, dated 9th February, 1907, certifying that Davis is the owner of 130 shares of the company's stock, but not stating that they are fully paid, or not subject to call.

The questions for determination are: first, whether the condition attached to this application, not being within the power of the directors to legally comply with, though in form they purported to do so, affords any answer to the