

The defendant signed and sealed a document in the form of a covenant or agreement with five named persons, described as the applicants for the company's charter, and with the company when incorporated, to become a shareholder in the company to the amount of 200 shares of common and 200 shares of preference stock, when the same should be issued and allotted to him, and to accept the stock when allotted to him, and to pay for the same when a call or calls should be made upon him by the directors.

The defendant afterwards signed and sealed a document contained in a stock subscription book, reading: "We, the undersigned, do hereby severally subscribe for, and agree to take, the respective amounts of the capital stock of the Nelson Coke and Gas Company, Limited, and of the class thereof, set opposite to our respective names as hereunder and hereinafter written, and to become shareholders in said company, to the said amounts, when and as the said stock so subscribed for by us, severally, shall be issued and allotted to us; and we do hereby severally covenant, each with the other and others, with the said company and the directors thereof, to accept the said stock when the same shall be allotted to us, severally, and to pay for the same, to the said company, at par, when and as a call or calls for payment shall be made upon us severally by the directors." The amounts were the same as in the first instrument. The defendant and two other persons who had executed the first instrument, executed the new one a few days after the first. The other two struck their names out of the first instrument, but the defendant did not do so. He said that in executing the second document he did not intend it as a subscription for 400 shares in addition to the former.

*Seemle*, that the appellant's execution of the second document did not supersede the first; but nothing turned upon that question, the legal effect of both being the same.

When the defendant executed the agreement he was in constant communication with a director of the company, and they were associated together in obtaining subscriptions for shares on behalf of the company.

*Held*, that the contract was one entered into by the appellant with the company, at the request of one of its directors, acting for and on behalf of the company; that it was to be treated as an ordinary contract between individuals; that it was something more than an application or request for shares: it had all the elements of a completed contract, by deed, for valuable consideration; the deed was not delivered in escrow, but was delivered to the company through its agent; the contract, being by deed, was not revocable, but was at once operative without the company's acceptance, and, not having been repudiated by the company, was valid and binding on both parties. *Xenos v. Wickham*, L.R. 2 H.L. 296, followed.

The appellant's subscription was made in September, 1899, and on the 4th December following the board passed a resolution that the subscribed