

politic." This would be unanswerable, I think, if Rankin had been one of those who signed the memorandum of agreement referred to in the statute. But that memorandum is clearly the memorandum which accompanies the petition for incorporation. This Rankin did not sign. He did not become a shareholder or incorporator by virtue of the statute.

The memorandum signed by Rankin, though probably intended by him to be an application for shares, must be considered to mean what it says. It is an agreement between Rankin and others to become incorporated under a certain name "or such other name as the Lieutenant-Governor in council may give to the company." The subscribers mutually agree to take certain shares "and to become shareholders in such company." In terms it anticipates the formation of a company, and is in fact the form prescribed by the statute to accompany the petition for incorporation. As in *Re London Speaker Printing Co.*, 16 A. R. 508, "the instrument he signed was not an agreement with the company:" per Osler, J.A., at p. 521. It was used, however, without regard to its true purpose or meaning. In fact, all the business of the company relating to its stock appears to have been conducted very loosely. The agreement may be enforceable as between the parties to it, if, by the breach of some, others suffer damage. If it had been followed by allotment to Rankin and participation by him in the affairs of the company, payment by him of calls, or acceptance of a stock certificate, it would not be open to him to deny that he was a shareholder. But no allotment was made to him when shares were allotted to others who had signed when he signed. The company in the beginning appears to have treated his application as an oral one, which he had the right to withdraw and did withdraw before the company was organized on 16th April. Long afterward, when one at least of the officials of the company, with whom Rankin had negotiated, had left North Bay, and the company had become insolvent, an attempt was made to allot stock to him.

It is not necessary to consider the manner in which the second allotment was made. I regard it as wholly ineffective as far as Rankin's case is concerned.

I think the learned Master was right in refusing to place Rankin on the list of contributories, and the motion must be refused with costs.