1891.
June 16.
„ 26.

Moller *vs.* Height.

Leonard, in reply: An act of insolvency having been once committed, another creditor who has a claim can then obtain sequestration, and subsequent payment or satisfaction of a writ to which a return of *nulla bona* has been made does not deprive the petitioner of his right to apply for provisional sequestration. The provisional order is in the interest of all the creditors, and not only of the petitioner. § 46 of the Insolvency Law shows this clearly. § 20 of the Insolvency Law also shows this, and gives us the right to apply for final sequestration.

[*Per cur.*: § 18 of the Insolvency Law requires proof of the act of insolvency.]

Yes, that is proof at the time of the grant of the provisional order, and not upon the day that defendant appears to answer thereto.

Cur. adv. vult.

Posteà, June 26th, 1891.

KOTZÉ, C.J.: In this application the Court is of opinion that no sufficient proof of the claim has been adduced in terms of § 18 of the Insolvency Law, and, further, that various creditors to the amount of £16,000 object to the sequestration as not being in the interest of the creditors in general, a point which should not be overlooked. In the exercise of its discretion the Court is of opinion that the application for final sequestration must be refused, with costs.

DE KORTE and MORICE, JJ., concurred.

WERDMULLER BUILDING COMPANY, LTD., *vs.* RENS.

Company Law, No. 5, 1874.—Registration with limited liability.—Refusal to pay calls.

The defendant took shares in the plaintiff company, which, according to the prospectus, was to be registered under the Law on limited liability, and which he knew had not been

so registered at the time the shares were allotted to him. He paid 2s. 6d. on application and half of the first call of 10s. per share, and signed the trust deed. It was held *that he could not refuse to pay the second half of the call on the ground that the company had not been properly registered.*

1891.
Feb. 4.
June 26.

Werdmuller Building Co. *vs.* Rens.

This was an action for £125, being the balance due upon shares signed for by the defendant. The circumstances of the case appear sufficiently from the judgment.

Auret, for plaintiffs: The company has been formed and registered. Only eighteen subscribers have paid up their tenth part, as prescribed by the law. All the twenty-five shareholders have not yet paid (*cf. Law* 5, 1874; *Buckley on the Companies Acts*, p. 18; *Broom's Legal Maxims*, p. 182; *Baumen Iron Co.* vs. *Barnett*, 14 Jur., p. 112; *Angle and Aimes on Corporations*, § 86).

Esselen, for defendant: The company is in liquidation. The English Law is not applicable here (*cf.* § 18 *Companies Act*, 1882). How can a certificate from the Registrar of Deeds set aside the precepts of a law? (*cf. Buckley*, p. 19).

Cur. adv. vult.

Posteà, June 26th,

KOTZÉ, C.J.: This is an action instituted to recover payment of £125, being the amount of a certain "call" which the defendant, as a shareholder in the company, was called upon to pay. The defendant contends that he is under no obligation to pay this sum of £125, because he applied for shares in a company with limited liability, and the company has not complied with the provisions of Law No. 5, 1874, art. 2, sub-section 4, where it is laid down that if a company desires to be registered as a company with limited liability, it is necessary, *inter alia*, that twenty-five shareholders should have signed the articles of association, and, further, that each shareholder should have paid not less than one-tenth on his shares. It is common cause between the parties that twenty-five shareholders did sign the articles of association, but that at the time of the regis-

1891.
Feb. 4.
June 26.

Werdmuller Building Co. *vs.* Rens.

tration only eighteen shareholders had paid the required proportion of one-tenth on their shares. Now, the defendant says that no proper registration of the company according to law was effected, and that therefore he cannot be compelled to pay the £125. It appears the 500 shares were allotted to the defendant on application, on which he paid £62 10*s.*—*i.e.*, 2*s.* 6*d.* per share, on application. The defendant also, together with others, signed a list attached to the prospectus binding himself to take 500 shares. Now, at the head of the prospectus I find the following: "Prospectus of the Werdmuller Building Company, Ltd., Johannesburg. To be incorporated (*i.e.*, registered) under the Laws on Limited Liability in the S.A. Republic." After the defendant had signed the list and the shares had been allotted to him he signed the trust deed of the company. Then a "call" of 10*s.* per share was made, that is, £250 on the defendant's 500 shares, whereof he paid £125, but he now refuses to pay the remaining £125, and moreover claims in reconvention a refund of the £62 10*s.* and £125 paid by him. Now, we may assume that registration of the company means proper registration according to law, and that in this case no such registration was effected; in other words, that the registration which was made was not sufficient; but still the defendant ought not, in my opinion, to be able on that ground to refuse to pay the "call" made on him. When he signed the list for 500 shares and they were allotted to him he knew, from the wording of the prospectus, that the company had not yet been registered, but would be registered. He not only paid the sum payable by him on application, but also half of the call of £250, and he cannot now be heard to say that the company is not properly registered, and that therefore he cannot be held liable. The registration may be insufficient, but then the defendant has the means of curing the defect. He did not buy shares in a company which the directors at the time of entering into the contract represented as a registered, that is, properly registered, company, with limited liability. On the contrary, he was well aware that registration had still to be effected, and if he considers that the registration which afterwards took place is not proper or sufficient according to law, he can take steps to have the necessary alteration made therein, but he cannot in this way evade the consequences of

1891.
Feb. 4.
June 26.

Werdmuller Building Co. *vs.* Rens.

a contract entered into by him before registration, and on which he has acted by paying a portion of the call, viz., £125. This would not be fair to the other shareholders, who have fulfilled their obligations. The authorities quoted by Mr. *Auret* seem to go further. Thus we read in *Lindley on Companies* (5th ed., p. 422): "Again in the case of a registered joint stock company, the company being actually created by registration, and having, when created, all the powers conferred upon properly constituted companies, a call upon its shareholders will be valid, although the company ought not to have been registered; and a shareholder in such a company cannot escape from his liability to pay the call upon the ground that things required to be done before registration have never been done at all"; and reference is made to the case of *Baumen Iron Company* vs. *Barnett*, 8 C.B., 406, 433, and 14 Jur. 112. There must be judgment in favour of the plaintiffs in convention for £125, with costs.

DE KORTE and MORICE, JJ., concurred.

AURORA GOLD MINING CO. *vs.* HANAU AND OTHERS.

Advance to shareholder from the funds of the company to maintain price of shares on the market held ultra vires.

Where, in a suit quasi ex delicto *against certain directors, who had consented to advance money to a shareholder to avoid his shares being thrown upon the market and so lowering the price, it was contended that such action was* bonâ fide *and in the interests of the company, the Court* held *that it was* ultra vires, *and that part payment in cash by the shareholder and part by promissory note was no discharge to the said directors, and gave judgment against them, with costs, for the unpaid amount of the promissory note.*

1891
June 12.
" 13.
" 26.

Aurora Gold Mining Co. *vs.* Hanau and Others.

This was an action founded in *delict*, or *quasi-delict*, against four directors of the Aurora Gold Mining Co. for authorising an advance to one of the shareholders from