Grafton,
Dec., 1899.

BRISTOL CREAMERY CO. *v.* TILTON.
SAME *v.* DALTON.
SAME *v.* EMMONS.

Where subscriptions to corporate stock are in excess of the authorized issue and no allotment has been made, the subscribers are not liable for an assessment upon the shares.

ASSUMPSIT, for an assessment upon corporate stock. Plea, the general issue. Facts found by the court. The corporation was formed under the general law, in May, 1893, with a capital of $2,500, divided into 100 shares of the par value of $25 each. The associates took no steps to have the stock subscribed, but the defendants without authority obtained subscriptions for 107 shares. There was no formal ratification of the defendants' acts, but on September 16, 1893, at a meeting of directors elected by the associates at the first meeting held in May, it was voted "to instruct the secretary to . . . assess the stockholders five dollars per share." No allotment or apportionment of the stock was ever made so as to avoid the over-subscription.

Dearborn & Chase, for the plaintiffs.

Lewis W. Fling and *Leach & Stevens*, for the defendants.

PIKE, J. Even if the vote by which the secretary was instructed to "assess the stockholders five dollars per share" was an implied ratification of the defendants' acts, the subscribers for the 107 shares did not thereby become shareholders in the corporation. There was authority for the issuance of only 100 shares, and until these should be allotted or apportioned no contract of membership could exist upon which either the corporation or subscribers would be liable. *Melvin* v. *Hoitt*, 52 N. H. 61, 67. No allotment or apportionment having been made, the subscribers never became shareholders in the corporation or liable for any of the shares subscribed.

Judgment for the defendants.

CHASE, J., did not sit: the others concurred.