

mun subscription, (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, and (c) there has been filed with the Provincial Secretary a statutory declaration by the secretary or one of the directors in the prescribed form, that the foregoing conditions have been complied with. Sub-section (2) enacts that the Provincial Secretary may on the filing of the certificate certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled; provided, however, that upon its being shewn that any such certificate was made upon any false statement, or upon the withholding of any material statement, the Provincial Secretary may cancel and annul such certificate.

The plaintiffs produced and put in at the trial a certificate of the Provincial Secretary dated the 15th March, 1909, that the company was entitled to commence business, and this has not been impeached before the Provincial Secretary. It is, therefore, final and conclusive as to compliance with all the requirements of sub-section (1) of section 108, and this involves substantially compliance with the conditions of section 106.

The action was commenced on the 6th April, 1909, and was tried on the 29th September, 1910.

Now, if after all that had transpired prior to the commencement of the action, the defendant desired to shew that he was entitled to avoid the allotment, and that notwithstanding his delay he could still do so in these proceedings, it was incumbent upon him to set up distinctly the grounds on which he impeached it, so as to give the plaintiffs a reasonable opportunity of meeting the case made.

No explanation of the neglect to set it up at the proper time was tendered, and no application for leave to amend was made. Under the circumstances the learned Chancellor could do nothing but reject the evidence offered, and it would not now be a proper exercise of discretion to permit the defendant to set up a defence which in any case appears to be beset with difficulties in establishing.

The other evidence rejected was offered for the purpose of shewing non-compliance with the requirements of section 106 as regards payment before the allotment.

All the foregoing considerations are applicable to it, and the learned Chancellor properly declined to permit it to be intro-