them in various securities, and on bank and other stocks, and were loaned out practically at the pleasure of the president. Shortly before the suit was instituted the company lost a valuable contract with the Dominion Government, and then some of the minority shareholders instituted the action to secure a distribution of the undrawn profits, or to prevent them being invested through the president, which had been the course pursued by the directors up to that date.

To enable such an action to succeed the minority shareholders endeavoured to establish wrongdoing and illegality on the part of the directors. Their attack was directed to the investment of the undrawn profits, and they insisted that the directors were engaging in a loan and brokerage business with the surplus funds of the company, which they said, in law, ought to be distributed among the shareholders, as there was no provision in the statutes or by-laws for the creation or maintenance of a reserve fund. The Court of Appeal in Ontario, speaking through Mr. Justice Moss in 27 A.R. p. 557, put aside an objection that the retention and continued investment of the accumulations was a matter of internal regulation and management to be determined by the vote of the majority of the shareholders by saying "that there may arrive a time in the management of the company's affairs when the jurisdiction of the Court attaches, in which case it is the duty of the Court to interfere."

It seemed obvious to him, however, that in order that such time should arrive there should be some act done by the company which was in excess of the corporate powers, or which, if not ultra vires, was tainted with fraud or operated oppressively on individual shareholders.

In this view of the law the Privy Council agreed, stating (at page 93) that the cases in which the minority shareholders could maintain an action asking for the interference of the Court in the internal management of the company are confined to those where the acts complained of were of a fraudulent character or were beyond the powers of the company.

It was in ascertaining whether the case complained of did, or did not, fall within these definitions that the Judicial Committee and Court of Appeal differ widely. The view held by the Canadian Court was, that while there was power in the directors to set aside a fair and reasonable sum as a reserve fund, yet in the case