others are made or become shareholders by allotment of shares to persons subscribing or applying therefor or otherwise. At this stage the time when it became incumbent upon the company to issue a prospectus had not arrived.

The company assumed, whether regularly or otherwise it is not proper to determine at this stage, to allot to the plaintiff the number of shares for which he agreed to subscribe.

The Chancellor determined that it was not proper to give to the plaintiff a declaration which might have the effect of debarring recovery of calls, leaving open to all parties all grounds of action or defence that might be open in such an action.

In the circumstances, he appears to have adopted the proper course, and his judgment should be affirmed.

The appeal, should, therefore, be dismissed with costs, and the cross-appeal without costs. But both dismissals should be without prejudice to such further steps for recovery of or defence to any claim for calls as either party may be advised to take.

MEREDITH, J.A., for reasons stated in writing, agreed that the appeal should be dismissed.

GARROW, MACLAREN, and MAGEE, JJ.A., also concurred.

JUNE 30TH, 1910.

McLEAN v. TOWNSHIP OF HOWLAND.

Highway — Way Substituted for Original Road Allowance—Payment—Presumption — Lapse of Time — By-law Establishing Deviation Road—User by Public — Dedication—Acquiescence.

Appeal by the plaintiff from the judgment of BRITTON, J., dismissing the action, which was brought to restrain the defendants from breaking down or removing the plaintiff's fences and using his land as a public highway, and for damages, etc.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

M. Wilson, K.C., and C. R. Atkinson jun., for the plaintiff.

W. M. Douglas, K.C., for the defendants.

MEREDITH, J.A.:—I have no manner of doubt that, from the facts proved in this case, there can be no other reasonable conclusion than that there was a sale of the way in question by the