enables the directors in their discretion to exclude any one from subscribing for stock who in their judgment would hinder, delay, or prevent the company from proceeding with and completing their undertaking under the provisions of the Act. I think the provision contains its own express limitation as to time; the road as then contemplated was finished before their exclusive action was taken. And another limitation is that it applies to new subscribers, and not to those who have the status of shareholders. Being shareholders, the plus-one-third minority had a statutory footing to refuse assent to an increase of capital, and also to refuse sanction to any of the special schemes for extension provided for in sec. 46 of the Act of 1892. It may be that it was not in the immediate and direct contemplation of the directors to oust the minority from their place of vantage, but this was the inevitable effect of what was done; and, while this consideration helps to eliminate the element of fraud, it does not lessen the injurious effect of the partial allotment. I do not find any fraud to be established, and it is not necessary to allege it in order to get relief. The costs have been but little—if at all—increased in this regard, so that costs of the action may be awarded to the plaintiffs, excluding any costs arising from the charge of fraud.

The judgment should be so framed as to restrain voting upon the increased capital shares, and declaring that the allotment to the 5 directors and their appointees was in excess of the powers of the directors. If necessary, the allotment may be vacated so that the whole increased issue may be laid open to be properly disposed of having regard to the interests of all the shareholders.

It has not been necessary to consider the doctrine of "inherent right" which is discussed and upheld in the American cases, but I am inclined to think that the same conclusion as has been arrived at in this case would have held good even if no element of the plus-one-third minority had entered into consideration, on the general principle and guide in dealing with the distribution of new stock and the claims of existing shareholders that "equality is equity."

During the argument I gathered that the money paid for the 350 shares is still unexpended by the company; if this is the case, that money should be refunded. If expended, it should be repaid by the company to the 5 defendants who paid for the same.