

the general powers and functions of the directorate of such companies. The underlying principle of action is to be found in the language of Romilly, M. R., in *York v. Hudson*, 16 Beav. 491, where he says: "A resolution by the shareholders that shares shall be at the disposal of directors is that it shall be at the disposal of trustees, i.e., that the persons intrusted shall dispose of them within the scope of the functions delegated to them in the manner best suited to benefit their *cestuis que trust*." Now, the persons to be considered and to be benefited are the whole body of shareholders—not the majority, who may for ordinary purposes control affairs—but the majority plus the minority—all in fact who being shareholders constitute the very substance (so to speak) of the incorporated body. Touched with this test, it would seem very plain that the action of the directorate was to benefit themselves as shareholders—the appropriation of the new shares gave them the absolute control of corporate affairs and removed any opposition that might arise from the united action of the reduced minority. The act of the directors changed the plus-one-third minority into a minus-one-third and enlarged the minus-two-thirds majority into an overwhelming majority, who might act in spite of and overrule all opposition from the dissentient shareholders.

This transaction appears to me in principle to be in excess of the powers of management intrusted to the directors for the benefit of the company. It is a one-sided allotment of stock which ignores the just claims of many shareholders, and in effect amounts to a prejudicial encroachment on the voting power of the minority. The principle of decision in *Punt v. Lynn*, [1903] 2 Ch. 517, and other cases, is applicable to shew that this method of manipulating shares either with a view to or which results in an unfair control of the voting power is *ultra vires* of the directorate and not susceptible of being ratified by the majority of the shareholders. Anything looking to a confiscation of corporate rights or privileges by a majority at the expense of a minority is frowned upon by the Court: *Griffith v. Paget*, 5 Ch. D. 898; *Meunier v. Hooper*, L. R. 9 Ch. 350; *Percival v. Bright*, [1902] 2 Ch. 425.

It was suggested, perhaps rather than argued, that what was done was in pursuance of the discretionary power conferred upon the directors by sec. 6 of the special Act. That