

34 (6). And certain traffic and other arrangements with other companies are permissible only upon terms to be approved of by two-thirds in value of the shareholders: special Act, sec. 46 (1892).

By the allotment of 350 shares of new stock at par by the directors to five of their own number (being the first named 5 defendants), without any intimation of what was being done, the board changed the voting power of the company so that the plus-one-third minority was converted into a minus-one-third, and the former mere majority, represented by the directors and those holding shares in sympathy with them, was enlarged into plus-two-thirds majority. The power of revision and sanction conferred by the statute on the plaintiffs and those they represent as being a plus-one-third minority was by this arbitrary action of the directorate overborne and practically expunged. This was on 2nd April, 1906. Then on 16th October, 1906, the balance of the increased capital (viz., 1,650 shares) was allotted by the directors to the same 5 defendants.

I am of opinion that the minority shareholders were not required to submit to the form of application proposed by the circular letter issued. They were invited to state whether they desired to increase their holdings, and it was on terms that such shares might be allotted as to the directorate seemed desirable and necessary. There was no recognition of any right on the part of existing shareholders to claim a pro rata division of the proposed new issue, and at this time by the appropriation of the 350 shares the minority had become less than one-third in value of the shareholders. Therefore I do not hold the plaintiffs to be precluded by the limited opportunity afforded by the circular from now seeking relief in respect of the total issue and allotment of the new stock. The action of the directors is left open to the investigation of the Court.

The only statutory direction which I can find or to which I have been directed as to the allotment of this stock is the general Act (incorporated with the special), R. S. O. ch. 170, sec. 34, No. 16, which enacts that the directors shall make by-laws for the management and disposition of stock not inconsistent with the laws of the province. I do not find nor was I referred to any by-law of the company with relation to the allotment or disposal of new shares—or indeed as to any stock or shares. The matter then rests on