

Beamsville Electric Railway Company, against J. M. Gibson and others, directors of the company, and against the company, J. W. Nesbitt, and J. G. Gauld, for a declaration of the invalidity of the issue by the directors of 2,000 shares of capital stock of the company, for an injunction, and other relief.

G. T. Blackstock, K.C., and H. E. Rose, for plaintiff.

G. Lynch-Staunton, K.C., and M. J. O'Reilly, for defendants Gibson and others.

A. M. Stewart, for defendants Nesbitt and Gauld and the company.

BOYD, C.:—While many subsidiary questions have been raised and discussed, the main point of controversy rests on the manner of allotment of the new issue of capital stock. The first batch of 350 shares the directors allotted *ex parte* to themselves at par, and also allotted the remaining 1,650 to themselves at par, after issuing a circular to which the objecting plaintiffs made no response except by way of protest. The directors did not wish and did not purpose or intend to allot the new stock among the shareholders *pro rata*, but so to deal with the last 1,650 as to appropriate for themselves enough shares to give them more than a two-thirds majority in value of shareholders.

At the time of the increase of capital there was a distinct cleavage of the shareholders into two bodies: the majority, represented by the directors, advocated a policy of expansion and betterment which would call for large expenditure and a withholding of dividends; the minority, representing over one-third of the whole, were strongly in favour of such management and husbanding of the road and its resources as might secure some return to the shareholders in the way of dividends.

The special Act incorporating the company provides for the substantial action and influence of a minority of the shareholders over one-third in voting value, and in certain cases disqualifies the majority from exercising control unless that majority is of at least the two-thirds in value of the body of shareholders.

Thus the capital stock may be increased upon sanction of two-thirds at least in value of the shareholders: 55 Vict. ch. 95, sec. 15 (O.), as expanded by R. S. O. ch. 170, sec.