

a prospectus. Subsequently the company endeavoured to sell the mine or a controlling interest in it, by selling stock of the shareholders en bloc. The plaintiff at one time succeeded in negotiating a sale of 51% of the stock, but the directors did not consider the price large enough and refused to ratify the sale, and afterwards brought purchasers to inspect the mine. This was in November. During all this period the plaintiff was devoting his time and energies to these efforts to sell the stock in one way or the other. He was in constant communication with the officers of the company. He, however, did not succeed in actually disposing of a single share.

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THE MASTER:—The first question is, was there ever a valid contract binding on the company? I think there was. It seems quite clear from the authorities that no by-law or seal was necessary. The Companies Act, R.S.O. 1897, c. 191, s. 47, provides that the directors may make by-laws for the appointment of "officers, agents, and servants," but it follows from *Bernadin v. Municipality of North Dufferin*, 19 S.C.R. 581, that "may" is permissive only, and does not prohibit corporations from exercising their jurisdiction otherwise than by by-law. This conclusion also follows from *Gold Leaf Mining Co. v. Clark*, 6 O.W.R. 1035. The by-law that was there held to be a condition precedent was a by-law for the issue of stock at less than par, and that has no application here. That a formal resolution was unnecessary is less clear. By s. 46 of the Companies Act, "the directors of the company shall have full power in all things to administer the affairs of the company; and may make or cause to be made for the company any description of contract which the company may by law enter into." A president has unusually wide powers, but these must be conferred by by-law, and no by-law is proved here. Moreover, it was not with the president alone, but with the directors present at the meeting, including the president, that the bargain was made. It was argued on the authority of *D'Arcy v. Tamar Kit Hill and Callington R.W. Co.*, L.R. 2 Ex. 158, that directors exercising their powers must act together and as a board; and the only way a board can speak is by formal resolution; but see the later case of *In re Bonelli's Telegraph Co., Collie's claim*, L.R. 12 Eq. 246, a case very like the present. In that case, by the articles of incorporation of