

end is then declared out of the money on hand, \$400,000 being divided.

The annual meeting of the shareholders was held on the 26th April. The sale of the assets was confirmed by the shareholders, the action of the company in not entering into any new contract, including that in question, was confirmed, and it was declared that the company did not desire any interest in the contract in question; the defence filed in the action on the company's behalf being formally approved. The four parties were again elected directors. At none of these meetings, it may be said, was Cook (the plaintiff) present, although he was duly notified.

There was at the hearing a good deal of discussion as to the exact position occupied by directors. Probably the most accurate statement as to the position of a director is, that he is a trustee for the company of all the property of the company which may come to his hands, and that he is the agent of the company for the transaction of all its business which he is called upon as director to transact. He occupies towards the company a fiduciary relationship, and it matters little whether he is called an agent or a trustee. He is under certain disabilities arising from the position he occupies. He cannot make personal profit out of transactions with the company. In all his transactions with the company he is called upon to act with absolute good faith; but there are many things which his position does not preclude him from doing.

The fundamental principle underlying all company law, that the majority must govern, so long as there is no fraud upon the minority, must be accorded its due recognition; and, when the majority determines that a company shall not go further and shall undertake no new business, this, I think, must bind the minority; and the directors, representing the majority, cannot, by reason of any supposed fiduciary obligation, be compelled to undertake business in behalf of all the shareholders, nor can they be prevented, if they see fit, from themselves undertaking profitable business which might well be undertaken by the company as a whole.

I accept to the full Mr. Nesbitt's statement that the directors, in the discharge of the company's business, must be absolutely loyal to the company; but, when the business is not the business of the company and when the company as a whole refuses the business, there cannot be any fiduciary obligation which prevents the directors from acting as individuals in their own individual interest.