That case determines only that, in the circumstances there shewn, the statute had been complied with; whereas, in this case, neither in form nor in substance has there been any attempt, in my opinion, to comply with its provisions. In the first place, there was no by-law whatever by the directors authorising any payment to a director, except by-law 34 in reference to the president; and, when the resolution appointing the plaintiff mineralogist was passed, he was not a director; and, after he became a director, there is no pretence of any resolution or by-law of the directors authorising payment to him of his salary as mineralogist during the time he was also a director.

The purpose or object of sec. 88 is that those who govern the company shall not have it in their power to pay themselves for their services without the shareholders' sanction. . . .

[Reference to and quotations from Birney v. Toronto Milk Co., 6 O.L.R. 1, 5, 6; Beaudry v. Reid, 10 O.W.R. 607, 625; Re Queen City Plate Glass Co., Eastmure's Case, 1 O.W.N. 863.]

In the light of the above judicial opinions, and in the absence of any statutory provision that the individual consent of the shareholders is equivalent to the confirmation of a by-law at a general meeting, I think it cannot be held that the signature of all but one of the shareholders to the minutes in this case—assuming that they knew at the time that they were confirming the resolution in question—is a compliance with either the letter or spirit of sec. 88.

The only section of the Act in which any such provision is made is sec. 138, which provides that where any by-law is required by the Act to be sanctioned by a two-thirds vote of the shareholders at a general meeting, specially called for considering the same, it may, in lieu thereof, be validly sanctioned by the consent in writing of all the shareholders.

The plaintiff retained the office of director until January, 1910, although he attended only one meeting after those in January, 1909; and he did not at any time perform or offer to perform any work for the defendants as mineralogist. So that the case does not even possess the merit of a plaintiff having performed work and services entitling him to a moral, if not a legal, claim against the defendants.

In my opinion, therefore, the appeal should be allowed and the action dismissed with costs.

LATCHFORD, J.:—I agree.

FALCONBRIDGE, C.J.:—I agree in the result.