

REPORTS AND NOTES OF CASES

Province of Ontario.

HIGH COURT OF JUSTICE.

Falconbridge, C.J.K.B., Teetzel and Latchford, JJ.] [Aug. 23.

BARTLETT v. BARTLETT MINES, LIMITED.

Company—Director—Salary of, as officer of company—Resolution of director—Confirmation.

Appeal by defendants from the judgment of Sutherland, J., in favour of plaintiff in an action to recover salary as mineralogist for defendants. At the first meeting of the directors the plaintiff being also a director, a resolution was passed appointing plaintiff as mineralogist at a certain salary. All the stock was held by these directors. At a shareholders' meeting held on the same day as the directors' meeting, the by-law of the directors was confirmed. It was contended by defendants that plaintiffs' appointment was not confirmed by by-law as required of s. 88, c. 34, 7 Edw. VII. (Ontario Companies Act) which enacts that "No by-law for the payment of the president or any director shall be valid or acted upon until the same has been confirmed at a general meeting."

Held, 1. The proper finding of fact should have been that the resolution appointing the plaintiff as mineralogist of the company, was not laid before the meeting of the directors, or approved by them.

2. The purpose of s. 88 is, that those who govern the company should not have had any power to pay themselves for their services without the shareholders' sanction. In this case, there was no by-law by the directors authorizing any payment to a director, except a by-law in reference to the president; and when the resolution appointing the plaintiff as a mineralogist was passed (he was not then a director) there was no resolution or by-law of the directors after he became a director authorizing payment to him during the time he was a director.

Mackenzie v. Maple Mountain Mining Co., 20 O.L.R. 615, distinguished. In that case, the statute had been complied with, but