

tween the Dominion Construction Company and the Canadian Pacific Railway Company for the construction of a certain line called in the evidence "the Shore Line"—more accurately known as the Campbellford Lake Ontario and Western Railway—and for ancillary relief.

The action was tried without a jury at Toronto.

Wallace Nesbitt, K.C., and A. M. Stewart, for the plaintiff.

E. F. B. Johnston, K.C., and R. McKay, K.C., for the defendants.

MIDDLETON, J. (after stating the facts at length):—These three men (the individual defendants) could not, against their will, be compelled to continue to carry on business for the benefit of an uncongenial associate (the plaintiff). The only question is, whether they are able to free themselves from obligation to him by the course which they have taken. They represent seventy-five per cent. of the share value of the company. They are three directors out of the four. The substantial question is, can they, in this summary way, take, in their own names and for their own benefit, a profitable contract which they might, had they seen fit, have taken for the company? It is conceded that the position is not changed by the formation of the new company and the transfer of the contract to it.

Before considering the legal aspects of the question, the formal proceedings of the Toronto Construction Company ought to be mentioned. At a meeting of the directors on the 20th March, 1912, the question of the undesirability of taking any further contracts was discussed, and a general meeting of the shareholders was directed to be called. A meeting was called, and held on the 5th April, and adjourned till the 9th, when, after discussion, the meeting adjourned without taking any action. The office of general manager was abolished, and the sale . . . of the plant was authorised.

This action was not begun until the 12th March, 1913, almost a year later. The next minutes produced are those of the meeting of the directors held on the 3rd April, 1913. The sale already made of the company's assets was confirmed; the action of the company in not entering into new contracts was confirmed; and the directors declared that the company was not in any way interested in the contract in question. This action is then dealt with, a defence is directed to be made to the action, and the proposed statement of defence is approved of. A divid-