

defendant Hinds, secretary; and the plaintiff, general manager. Throughout the period to which this action related, George S. Deeks and Hinds superintended and managed all the business and work of the company, and devoted practically their whole time to its affairs. The payment of \$70,461.43 each to these defendants was authorised by a resolution passed by the directors on the 25th March, 1916, and subsequently confirmed by the shareholders. The plaintiff and the individual defendants each held or controlled one-fourth of the shares. At a meeting of the directors held on the 10th January, 1910, it was resolved that the officers actively engaged in the management of the company should receive a salary to be settled on hereafter, this salary to date from the 1st May, 1909. The remuneration referred to in that resolution was, the learned Judge said, remuneration to Deeks and Hinds not as directors of the company but for services in an executive capacity in managing the company's affairs as employees.

The judgment of the Privy Council in *Cook v. Deeks*, [1916] A.C. 554, was pronounced on the 29th February, 1916. On the 25th March, 1916, a by-law was passed by the directors authorising the payment to George S. Deeks and Thomas R. Hinds of the salaries mentioned above. The plaintiff objected to the passing of this resolution. It was confirmed at a shareholders' meeting held on the 10th April, 1916, all the shareholders except the plaintiff being present.

In the learned Judge's view, the breach of duty of the defendants Hinds and George S. Deeks in taking the Lake Shore contract in their own names, as found by the Privy Council, did not disentitle them to receive the remuneration which had been awarded to them by the company, and which they earned in the subsidiary sphere of employees superintending and managing its works on the ground. The remuneration was not paid to them for winding-up the company's affairs. The plaintiff's action in regard to the remuneration or salary failed.

In regard to the question of the payment out of the company's funds of the costs of the former litigation, the learned Judge was of opinion that these costs were awarded personally against the defendants George S. Deeks, George M. Deeks, and Hinds, for breach of duty committed by them individually, not in the performance of their duty to the company as directors, but adversely to that duty, and that it was therefore improper and unwarrantable that these costs should be paid out of the coffers of the company. It should be declared that the three individual defendants should personally pay three-fifths of these costs.