

benefit a share in the profits, earnings, or receipts of the defendants.

The words "any agreement" contained in sec. 7 must mean any agreement within the corporate capacities of the parties: being both entirely creations of the statute law, endowed with legal existence for certain limited purposes only, their powers must be found in enactments conferring them, including of course the Act in question. Even if not controlled, as they may be, by sec. 15, the words "any agreement" could not include—for one plain instance—a co-partnership agreement for the construction and working of the railway and sharing in the profits and losses of the undertaking.

The highways within a municipality are vested in the corporation thereof, at least largely, to enable them to perform their duties to the public in respect of such ways—mainly to keep them in repair. In days when tolls are commonly called "a relic of barbarism," the purpose of the Legislature could hardly have been to confer on municipalities power to exact a great toll with liberty to apply it at their will; if the imposition of a toll were comprehended, it may well be thought that it would have been accompanied by a provision that the corporation should expend it upon the highways or otherwise in ease of those using them. It is against equity for a trustee to make a profit of his office. It seems against justice that a corporation should be permitted to exact a tax for the use of the highways and to expend it in paying debts incurred by them wholly disconnected from such ways—to use the means thus obtained in filling holes in their financial ways, instead of in the highways, or otherwise in ease of those who have the highest rights in them. The supreme rights in highways are the rights of traffic over them; the rights of all His Majesty's liege subjects to pass and repass over them.

Neither sec. 15 of the enactment in question, nor the general enactments now in force respecting street and electric railways, lend any great encouragement to the exercise of the power in question. In the latter the burden put on the company is applied in ease of the passenger. Nor indeed is there much of such encouragement in the earlier general enactments. Ease of the public in better roads, cheaper fares, and better accommodation, strike one as, generally speaking, the most just way of sharing in the receipts, earnings, or profits of such