When one accepts and has the benefit of the services of another, and there is no reason why those services should be given gratuitously, ordinarily no other conclusion can be reached than that there was a tacit agreement between the parties that the services should be paid for.

But in this case no such obligation should be implied. And ordinarily there would be great difficulty in finding any contract —tacit or expressed—in any case in which no contract was asserted by either party and of which each party was ignorant. This does not, of course, refer to obligations imposed by law.

The plaintiff was and is a large shareholder of the defendants; he is said to have owned and yet to own about one-fourth of its whole capital stock; and he is, and was during half of the time for which he claims remuneration, one of the defendants' directors. The services rendered were not of an onerous character; they were not more than it might reasonably be expected a large shareholder might do in the interests of his company, and so indirectly for his own benefit, without salary or other remuneration.

Then there are statutory provisions against payment to directors of companies unless such payment is expressly provided for as required by the statute; and in this case the defendants were bound by their own by-law 18, giving power to the directors to grant and fix the amounts of salaries of the president, directors, officers, etc., of the company, including the salaries and remuneration of such officers as may be directors, whether such salary or remuneration be paid to them as directors or otherwise.

The trial Judge was right in finding that the plaintiff could not recover on the ground that an expressed contract was proved.

It was not contended that anything done under by-law 18 helped the plaintiff; but a resolution passed at a general meeting of the shareholders of the company was relied on, and it plainly gave the plaintiff a salary of $200 per month, but payable only "when the finances of the company will warrant so doing." As this was all that the plaintiff could rely upon in support of his claim, and as there was no evidence that, when the action was begun, the finances of the company warranted payment, the action failed and should have been dismissed.

For the reasons stated by the trial Judge, there was no power in the shareholders, at that meeting, to pass such a resolution so as to bind the company.

The appeal should be allowed and the action should be dismissed.

LATCHFORD, MIDDLETON, and LENNOX, JJ., agreed with MEREDITH, C.J.C.P.