

quorum? Section 54 says that the act of a majority of a quorum shall be deemed the act of the directors. And sec. 53, that the directors at any meeting at which not less than a quorum are present shall be competent to use and exercise all or any of the powers vested in the directors. This latter provision seems to require at least a quorum to exist and be present before effective action can be taken. My strong impression is, that neither set of directors can claim to represent the company as a matter of legal right; but it is not necessary, in order to do substantial justice, to decide thus. And as to this contest for the controlling directorate, I make no order and give no costs.

I have not failed to consider, in exercising my discretion, that Mr. Ritchie has expended time, energy, and resources in the development of this enterprise, and he should have a fair chance of obtaining the best return that can be had from the undertaking.

If plaintiffs the trustees cannot collect costs now allowed them in any other way, they should receive these costs from the funds of the railway company.

MARCH 23RD, 1903.

DIVISIONAL COURT.

HAND v. SUTHERLAND.

Sale of Goods—Running Account—Action for Balance—Questions of Fact—Appeal.

Appeal by defendant from judgment of District Court of Algoma in favour of plaintiff for \$481.34. Plaintiff was a wholesale butcher and defendant a retail butcher, both at Sault Ste. Marie. They had formerly been in partnership, but had dissolved, and for a year or two before August, 1900, and down to the latter part of 1901, they had been on friendly terms, and had carried on large transactions with one another in a spirit of mutual trust and confidence. They bought from and sold to one another large quantities of meat, and they frequently borrowed from one another and exchanged meat as they needed it. This action was brought to recover a balance alleged to be due to plaintiff in respect of the transactions between the parties.

W. E. Raney, for defendant.

W. M. Douglas, K.C., for plaintiff.

THE COURT (STREET, J., BRITTON, J.) held that, as the questions involved were purely questions of fact, there were no grounds upon which they could interfere with the conclusions of the Judge of the District Court. Appeal dismissed with costs.