

RIDDELL, LATCHFORD, and MIDDLETON, JJ., concurred.

LENNOX, J., dissented, upon the ground that the Judge who granted the order had a discretion which should not be interfered with.

*Appeal allowed (LENNOX, J., dissenting).*

SECOND DIVISIONAL COURT.

JANUARY 28TH, 1921.

\*MARKS v. ROCSAND CO. LIMITED.

*Company—Shareholder and Director—Payment for Services as Manager—Authority for—Resolution of Shareholders at Special Meeting—Notice of Meeting—Failure to Specify Matters to Come before Meeting—Right of Plaintiff to Recover Remuneration for Services—Absence of Express Contract—By-law of Company—Implied Contract—Services Rendered while Director—Services Rendered before Appointment.*

Appeal by the defendant company from the judgment of ORDE, J., 48 O.L.R. 224, ante 61.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, MIDDLETON, and LENNOX, JJ.

W. K. Fraser, for the appellant company.

H. J. Martin, for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that the judgment in the plaintiff's favour was based upon an implied contract by the defendant company to pay to him, for his personal services, the amount of the judgment. No such claim was made; the claim was for "6 months' salary" at \$200 a month, based on an expressed contract; and payment was not sought: what was sought was only a judgment "declaring" that the plaintiff was entitled to a salary as alleged in his claim.

The trial Judge evidently considered that the claim on an expressed contract could not be supported, but that the plaintiff could recover on an implied contract; and, if that were so, the judgment for payment of the money due and payable was right. A declaratory judgment is out of the question in such a case.

The judgment upon an implied contract could not be sustained.