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DOMINION LAW REPORTS

COOK v. DEEKS.

Judicial Committee of the Privy Council, The Lord Chancellor, Viscount Haldane, Lord Parker of Waddington, and Lord Sumner. February 23, 1916.

IMP.

P. C.

1. CORPORATIONS AND COMPANIES (§ IV G 4—125)—FIDUCIARY RELATIONSHIP OF DIRECTORS—DIVERTING INTEREST IN RAILWAY CONTRACT BY MAJORITY VOTE—ACCOUNTING FOR PROFITS TO MINORITY.

The majority directors of a corporation formed with an object of undertaking railway contracts, who are entrusted with the conduct of affairs of the company, cannot consistently, before dissolution, deliberately exclude, by using their influence and position, the interest of the corporation in a railway contract they procured, in favour of a company separately formed by them with a similar object, and owe a duty of accounting to the minority in respect of the profits realized from such contract.

[*North-Western Transportation Co. v. Beatty*, 12 App. Cas. 589; *Burland v. Earle*, [1902] A.C. 83, distinguished; *Cook v. Deeks*, 21 D.L.R. 497, 33 O.L.R. 209, reversed.]

2. CORPORATIONS AND COMPANIES (§ V G 2—290)—DEALINGS BY DIRECTORS—VOTING POWER—RIGHTS OF MINORITY.

Apart from the principle of *ultra vires*, directors holding a majority of votes cannot make a gift to themselves of the property belonging to the corporation, and if directors have acquired for themselves property or rights which they must be regarded as holding on behalf of the company, a resolution that the rights of the company should be disregarded in the matter amounts to a forfeiture of the interest and property of the minority of shareholders in favour of the majority, by the votes of those who are interested in securing the property for themselves; such use of the voting power is not sanctioned by the Courts.

[*Menier v. Hooper's Telegraph Co.*, 9 Ch. App. 350, followed.]

APPEAL from the judgment of the Supreme Court of Ontario (Appellate Division), 21 D. L. R. 497, 33 O. L. R. 209. **Reversed.**

Statement

The judgment of the Board was delivered by the

LORD CHANCELLOR:—The appellant in this case is the plaintiff in a suit brought against the respondents, under circumstances to which full reference is necessary; his rights depend entirely upon the fact that he is, and has, throughout the whole history of these proceedings, been a shareholder in the Toronto Construction Co., Limited, one of the defendants in the suit. Between himself and the defendants G. S. Deeks, G. M. Deeks, and T. R. Hinds, there have been at sundry times various business arrangements and relationships outside their association in the Toronto Construction Co.; but, except for the purpose of explaining what may have caused the conduct to which these proceedings are due, it is unnecessary to refer at length to these relationships.

Lord Chancellor