formidable contention is made on behalf of these directors that it was part of the original understanding, upon the transfer of the business, that the company should assume the existing contracts with employees; but I prefer not to base my judgment upon this aspect of the case. . . .

There is much to be said in favour of the contention put forward by the appellants, that sec. 88 relates to the payment of the president or director for his services rendered in his official capacity, and that it was not intended to deal with payments made to him for services rendered in any other capacity. This seems to have been the view entertained by Mr. Justice Meredith in Mackenzie v. Maple Mountain Mining Co., 20 O.L.R. 615. . .

But I think that the Courts have adopted a wider view of the statute, and that it must be taken to apply to all cases in which a by-law is necessary for the payment, and to cover the remuneration of all officers of the company whose appointment should properly be made by by-law: Birney v. Toronto Milk Co., 5 O.L.R. 1. . . .

[Reference to that case and quotation from the judgment of Street, J.]

I have neither the right nor the inclination to narrow this statement of the law, when rightly understood; but, bearing in mind that it was spoken of an employment for which a by-law is necessary, and that the section itself does not prohibit the remuneration of a director, but merely renders invalid any by-law, I do not think that there is any warrant for extending the principle to cases in which the director has acted as a mere workman or clerk and has been remunerated at a rate not exceeding the value of the services rendered at the ordinary market-price.

I think that the principle applicable is analogous to that applied to ultra vires contracts, where the company has received the benefit. It cannot retain the benefit without paying a fair price. If the effect of the statute is somewhat larger than I have indicated, and renders invalid the contract of hiring, then the directors have, as servants of the company, in the discharge of the manual and clerical services which they have respectively rendered to the company, a right to receive a quantum meruit for those services. It is not suggested that they have received more than this. Therefore, they have not been guilty of misfeasance.

I do not find anything in the decided cases opposed to this view. . . .

[Reference to Eastmure's Case, supra; Burland v. Earle, [1902] A.C. at p. 101.]