

of a manufacturing company, like the one under discussion, there was no principle of law or morality justifying the retention of such an accumulation of undrawn or undistributed profits. The only authority, however, cited for that proposition is a quotation from Brice on *Ultra Vires* (3rd Edition, page 348), where it is stated that mercantile corporations not endowed with express authority to keep a reserve fund, cannot do so, but must periodically divide accrued profits. All other writers on the subject put it in a different light, as they say there is nothing which *requires* a surplus to be accumulated, or *forbids* its division as profits among the shareholders.

The Court then considered that the fraudulent or oppressive character of the directors' action lay in the fact that while Mr. Burland's friends might be willing to entrust him with the management of their share of the accumulations, they had no right to insist that the minority should be placed in the same boat as regards their part, nor were the latter bound to permit their shares to remain tied up at the will of the majority, and to submit to their continued employment in precarious and illegal investments.

It is therefore evident that the point that the formation of a reserve fund was *ultra vires* was not the determining factor, particularly as the accumulated profits had never been called a reserve fund by the directors. The important ground upon which the Court of Appeal based its judgment was the imposition by the majority, through the directors, of their will upon the minority.

The Judicial Committee have laid down a very clear and distinct rule upon this. Having stated that they are not aware of any principle for compelling a joint stock company, while a going concern, to divide the whole of its profits amongst its shareholders, they say that whether the whole or any part should be divided, or what portion should be divided, and what portion should be retained, are entirely questions of internal management which the shareholders must decide for themselves, and for that reason they declined to continue an injunction restraining the directors and president from maintaining the reserve fund as before, from employing it as they had done in the past, and from personally controlling or dealing with the same.

They disposed of the proposition that the loaning of this reserve fund upon bank and other shares was in reality a new and unauthorized branch in which there was engaged a separate