

not the business of the company and when the company as a whole refuses the business there cannot be any fiduciary obligation which prevents the directors from acting as individuals in their own individual interest.

It must also be borne in mind that the right of action which may be asserted by an individual shareholder in a class action is a right of action vested in the company. A minority shareholder may in this way redress a wrong done to the company, or recover money due to the company, where the majority refuses to act; but in this case I think Cook, though he may have shown much to indicate that he was not treated with absolute fairness, has entirely failed to establish any right in the company. The company cannot, nor can the minority shareholders, compel the majority to continue to employ their capital in its ventures; nor can the company or the minority shareholders compel the majority to render those personal services without which the enterprise must be a failure.

For these reasons I think the action fails; and while I could wish that greater candour had been displayed towards Cook, on the whole I think his claim is absolutely devoid of merit. He has himself secured a contract from the railway; all the profit from this will go to him, as in the case of the other contracts he was carrying on; and he has no moral claim to share in the earnings of the defendants.

In a case like this, where there is some conflict of evidence, it is probably my duty to express my opinion as to the weight to be given to the witnesses. Although there has been some failure of memory on the part of the defendants with regard to some minor details, I am satisfied that in the main their statements are entirely correct and that their evidence can be relied upon. I think their personal interest has not affected their evidence to the same extent that Cook's interest has affected his.