

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

testament is a valid condition and not repugnant and void.

The rule is well known that a condition prohibiting alienation attached to an estate in fee, in tail, or for life is void. But if the condition does not take away the whole power of alienation substantially it is good. The alienation may be restricted by prohibiting it to a particular class of alienation, or by prohibiting it to a particular class of individuals, or by restricting it to a particular time.

J. H. Macdonald, for the vendor.
Miller, for the purchaser.

Boyd C.]

[Jan. 14.]

THOMPSON ET AL. V. CANADA FIRE AND
MARINE INS. CO. ET AL.

*Company—Directors—Fraudulent transfer of
shares to man of straw—Acquiescence—Laches.*

When the shareholders of a certain company brought an action against the company and certain of its directors, and alleged that the said directors being a majority of the directorate had negotiated a transfer of a number of shares to one C., knowing C. to be a man of no sufficient means to pay calls thereon, in order to escape liability for certain impending calls, and claimed that the said directors should make good to them the amount of calls due upon the shares so transferred to C., and unpaid by him; and the said directors alleged acquiescence and laches on the part of the plaintiff in respect of the matters complained of; and the plaintiff proved the transfer as alleged.

Held, that the action of the said directors was a breach of their duty, and invalid, except so far as it was subsequently ratified by the plaintiffs, as shareholders.

Speaking generally, if any shareholder was aware of the transaction by which C. obtained the transfer complained of, and became manager of the company, and allowed the affairs of the company to be managed by him thereafter, taking the chance of prosperity attending his conduct of the business, then that "passive acquiescence" (to use Lord Cranworth's expression in *Spackman v. Evans*, L. R. 3 H. L., 193) would preclude such a shareholder from afterwards contesting the validity of

the transfer; but it was not the duty of the shareholders to investigate as to the action of the directors, and they had the right to say that the facts, if not communicated, were concealed from them. On the other hand, if they meant to dissent effectually from what was being illegally done, the shareholders were bound to take active measures to prevent or undo it.

J. Bethune, Q.C., *Mackelcan*, Q.C., and *C. Moss*, Q.C., for the plaintiffs.

D. McCarthy, Q.C., *Laidlaw* and *Tetznel*, for the defendants.

Ferguson, J.]

[Jan. 26.]

SHANAGAN V. SHANAGAN.

*Conveyance void for improvidence—Compensation
for improvements under—Amounts.*

On Aug. 30th, 1875, the plaintiff conveyed a certain farm to the defendants, his sons. On the same day the defendants leased the farm to the plaintiff for the term of his natural life, reserving no rent. On Sept. 23rd, 1875, the plaintiff leased to the defendants the said farm for the term of his (the plaintiff's) life, reserving a rent of \$100 a year, and "the proper board and clothing, and lodging" of the plaintiff, "so long as he remains on the said premises."

The defendants went into possession of the farm, on which the plaintiff also continued to dwell.

Now, in this present action, the plaintiff succeeded in having the grant of Aug. 30th, 1875, and the lease of Sept. 23rd, 1875, declared void, and directed to be delivered up to be cancelled.

The defendants had meanwhile erected a new house on the farm, and made sundry improvements.

Held, that the defendants were entitled to be paid all sums of money laid out in improvements, and repairs of a permanent and substantial nature by which the present value of the farm was improved, with interest from the time these sums were actually disbursed; also to be paid the moneys paid by them to keep down the interest of a certain mortgage, which has existed on the farm ever since the date of the original sale to the plaintiff, and any principal moneys thereof which they may have