

sum with which to charge the defendant for the bricks, finished and unfinished, was \$6,300, of which sum he directed \$3,000 to be paid into Court to abide further order, to meet any claim to be made by one Zimmerman. No sufficient case was made upon this appeal to justify interfering with the learned Judge's conclusions in that respect.

The machines to which the plaintiff, the liquidator of the Excelsior Brick Company Limited, made claim, were a boiler, a four-mould machine, and a wire-cutting machine, all purchased by the Excelsior company and affixed to the land as part of the permanent plant, in substitution (of which the defendant complained) for old machinery in use when the Excelsior company purchased. As to these, the trial Judge dismissed both complaints—a conclusion with which the Court agreed.

The defendant attempted to justify taking and retaining the goods and chattels under the terms of the charge created by the debentures or bonds of which he was the holder. But, out of a total issue of over \$100,000, he held only \$24,000. The trial Judge was of opinion that the defendant could not so justify; but permitted him to prove before the liquidator *pari passu* with the other bondholders for the amount of his holdings.

The Court agreed that the attempted justification failed; but pointed out that, in the absence of the other bondholders, who were not represented, the judgment should go no further, especially as the defendant did not require the aid of the Court to enable him to prove upon his bonds. Paragraphs 3 and 4 of the formal judgment should be struck out.

The defendant also set up, by way of defence and counter-claim, certain claims against the Excelsior company—some for debt and others for unliquidated damages. Of these, the claims persevered in at the trial were—in addition to the claim under the bonds—a sum alleged to be due upon an account, damages for the conversion of bricks which the defendant had left upon the premises, damages for injuries to the freehold and the fixtures and machinery, and a sum of \$1,925 and interest owing upon two promissory notes made by the Excelsior company.

The trial Judge allowed the defendant's claim upon his account at the sum of \$546.05, but held that the amount could not be set off—that it might rank upon the assets in the liquidation. With both conclusions the Court agreed.

Nothing was allowed by the trial Judge upon the two promissory notes, which were given for the price of a machine bought by the Excelsior company from the defendant to replace