

22, and that he had surrendered the agreement pursuant to that by-law, placed the salary at \$5,000 as mentioned above, and repealed the parts of by-law 22 which named the salary.

Plaintiffs allege that while the earlier by-laws were in force certain commissions thereunder were credited to and received by defendant, and that there was also paid to him \$5,000 per year from March, 1882, without having taken into account his receipt of these commissions.

It is quite clear that under the terms of by-law 26, what defendant was there entitled to was \$5,000 per annum from the beginning of his services, and that he was not entitled to any other commissions or allowances in addition to this \$5,000 annual salary. If, therefore, on a proper taking of his salary account, it be shewn he has received for the term commencing with the beginning of his services and down to the end of the time covered by by-law 22 any sum or sums as salary or compensation as managing-director or for said commission, in excess of \$5,000 per year, he should account therefor to the plaintiffs; and if the parties cannot agree upon whether any such payments were so made and their amount, there will be a reference to the Master-in-Ordinary to take an account thereof.

The remaining items of the claim arise from defendant having received and applied to his own use certain assets of the company at or after the time of the release of the equity of redemption in the mortgaged lands to the Leadley estate. Defendant does not deny the receipt of these sums, but contends that plaintiffs authorised the transfer thereof to him in full satisfaction of all his claims and demands as managing-director or otherwise. His warrant for this contention is based on the action of the board of directors at their meeting on March 2nd, 1900, where on the report of what was known as the finance committee it was recommended that it (the committee) be authorised to deal with the situation (that is the demand made by the Leadley estate, the mortgagees, in respect of its overdue mortgage) to the best advantage in the interest of the company and the shareholders, with a view to avoiding unnecessary expense and loss all round, etc., and which recommendation was adopted in its entirety at that meeting. In pursuance of this, the committee on the same day purported to empower and direct the defendant (amongst other things) to release to the mortgagees the company's equity of redemption or otherwise vest the property in the mortgagees, and