I think the defendant was not entitled to a salary exceeding $3,000 a year. That was what he was receiving while acting as managing director. Although there were negotiations, no agreement was come to for an increase. The defendant refused to accept an offer of $5,000 for the current financial year as he wished to leave himself free to sever his connection at any time. As a matter of fact he did sever his connection within a week or ten days afterwards.

I agree with the trial Judge and the majority of the Divisional Court that under the circumstances no satisfactory grounds appear for allowing him for the time he remained in the plaintiffs' service a greater rate than his former salary.

An objection was taken that the plaintiff company had before action sold or transferred all its property and rights, including the right to recover from the defendant, to another company. The learned trial Judge in declining to give effect to the objection reserved leave to the plaintiffs to add the other company if necessary. It does not appear that any notice of such an assignment had been given to the defendant by the other company. It had not, therefore, put itself in a position to sue, even if the assignment was such as to pass the right. And there is no reason why the plaintiffs jointly should not be entitled to sue as trustees for the parties beneficially interested: Pringle v. Huston (1909), 19 O.L.R. 652, at pp. 655, 657, and cases cited.

As to the cross-appeal, I agree with the learned trial Judge and the Divisional Court. The item of $437.17 has given me some concern, but upon consideration, I am not prepared to differ from the conclusion reached by my learned brothers.

In my opinion, the judgment should be varied by deducting the two items of $94.56 and $128.81, making together the sum of $223.37; but in view of the defendant's contentions upon the whole case this should not affect the costs of the appeal.

With the above variation in the judgment the appeal should be dismissed, and the cross-appeal should also be dismissed, both with costs.

MACLAREN, J.A., and MAGEE, J.A., agreed.

MEREDITH, J.A., dissented in part, for reasons stated in writing, being of opinion that a further deduction should be made, and that there should be no costs of the appeal or cross-appeal.