

liability of a director, who is a trustee, of a company, and has its property in his hands and under his control, to account to the company for all such property, is undoubted. His right to plead the Statute of Limitations does not exist "where the claim is founded upon any fraud or fraudulent breach of trust to which he was party or privy, or is to recover trust property or the proceeds thereof still retained by him or previously received by him and converted to his own use:" Halsbury's Laws of England, vol. 5, p. 235, sec. 377. . . . See, also, vol. 19, pp. 165-6.

The defendant has counterclaimed in respect of several matters with which I shall deal separately. The first is for commission on sales of the plaintiffs' lands. . . . If any sales of lands were made from the time by-law 30 came into effect until the 30th March, 1900, on which the defendant has not been paid the commission provided by by-laws 30 and 32, he is entitled to the commission thereon; and the reference to the Master in Ordinary will include an inquiry into this. . . . He is not, however, entitled to have taken into account the value of the company's lands for the taking over of which, he says, he had negotiations with the Government. . . .

The defendant contends, too, that he is entitled to commission on sales of lands which he made for the Leadlays. That claim is not sustainable even on the ground that the lands afterwards were dealt with as the company's lands. Moreover, in the taking of the accounts in the former action, substantial allowances were made to the defendant in connection with making sales after the 30th March, 1900; and these allowances were included in the redemption moneys payable by the plaintiffs. As I understand it, the amount so allowed was in excess of the commissions provided by the . . . by-laws. I cannot adopt the position taken by the defendant, that the sales made in such circumstances were made for the plaintiffs, or in such a way as to entitle him to the commission provided by the by-laws.

By-law 31 made provision for compensation to the directors for endorsing commercial paper for the plaintiffs, and the defendant is entitled to compensation in the terms of the by-law. The reference to the Master in Ordinary will include also an inquiry if, in addition to what the defendant has already received for making such endorsements, there be anything further due on this . . . also an inquiry to ascertain if anything is due to the defendant for director's fees as allowed by the company's by-laws.