

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

rejected the purchase. The evidence showed an entire absence of fraud, or unfair dealing: *Held*, nevertheless, on action brought by a dissentient shareholder, the purchase of the steamship must be rescinded, for the vendor's threefold character of director, shareholder and vendor necessarily involved a conflict between duty and interest, and the rule of the Court is not to permit a man so circumstanced to hold or exercise the balance of power in the conduct of a company's affairs, to the possible prejudice of any of the shareholders. That the directors of a company are in a fiduciary capacity is plain beyond doubt, and *Semble*, that in a case such as this, ratification is required by every individual of the class constituting the *cestui que trustent*. At all events, when a minority is sought to be bound, the vote must be by a disinterested majority. Apart from all statutory regulations, the general law applicable to sales of a director's property to a company of which he is a director appears to be this: if the contract is agreed upon by a vote of the directors in which the vendor joins, the transaction will be altogether invalid until the matter has been brought before a general meeting of the shareholders and approved. *J. Bethune, Q.C., and Marsh*, for the plaintiff. *Robinson, Q.C., and J. H. Macdonald*, for the defendants.

Boyd, C.] [January 19.
CARNEGIE V. FEDERAL BANK.
Stock Broker—Pledge of Stock—Unauthorized sale by Pledge.
The plaintiff pledged with the defendants certain shares of bank stock as security for a loan under an agreement in writing, which provided amongst other things, that he was to keep up a cash margin of not less than 10 per cent. above the market price, and authorized the bank, in the event of default, "to sell or dispose of the said security without notice, and to apply the proceeds in liquidation of the said advance."
The plaintiff claimed that before default was made the defendants wrongfully sold his stock

without his knowledge or consent, and that he was entitled to credit for the amount realized and to a return of interest paid and damages for being compelled to give additional security.

The defendants claimed that, although the stock was transferred backwards and forwards by way of a loan, it was never sold until default made.

Held, that if the stock was sold before default made, such sale was *tortious*, and following *Ex p. Dennison* 3 Ves. 552 a loan of the stock was a sale, and that plaintiff might elect either to claim damages or affirm the sale and claim the proceeds and profits made by the bank, one element of the measure of damages being the highest point of the stock market between the conversion and the default.

Held also, that if default was made the defendants were entitled to sell the stock without notice, but only for the purpose of liquidating the advance, and that credit must be given for the proceeds at the time of the sale.

A reference ordered to take an account. *Moss, Q.C., and J. R. Roaf*, for plaintiff. *Cattanach and Symons*, for defendants.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

CALL TO THE BAR.

(Equity.)

1. An executor receives money which is supposed to be due from a debtor to the estate, and pays it out to the creditors of the estate. It afterwards turns out that the debt which it was supposed was due to the estate had previously been paid. The supposed debtor brings action against the executor to recover the money, and the executor brings a similar action against the creditor. What are the rights of the parties? Give reasons for answer.
2. Distinguish between the nature of the equitable relief, if any, which will be granted in a case where by accident there is a failure to execute a naked power, and in a case where by accident there is a failure to execute a power coupled with a trust, and illustrate each case by an example.
3. An employer seeks and obtains from the father of one of his clerks a bond guaranteeing the honesty of that clerk. Default is subsequently made in