the proceeds to first repay himself the amount so advanced by him, with interest from the date of the sale, then to pay A. M. his claim on the property, with interest, and then to pay T. his claim, with interest. C. M. accordingly advanced sufficient to buy in the property as aforesaid. In 1864 a formal deed of trust was drawn up and executed by the first mortgagee, and by C. M., A. M. and T., whereby the property was conveyed to C. M. on trust to sell "without delay," and apply the proceeds as aforesaid, and giving him power to lease in the meanwhile, and making him answerable only for loss resulting from his own "wilful neglect and default."

C. M. leased the property from time to time, but he did not sell it until 1883, when T.'s executrix brought an action charging him with default and breach of trust, and claiming an account and damages.

The evidence showed that the property had all through been of a very unsaleable kind, consisting of a farm, very stumpy, and badly fenced, and an old mill which had quite lost its value for milling purposes. It also appeared that C. M. had never advertised the property for sale, but at the same time that it was well known in the neighbourhood that it was for sale, and that it was not the sort of property that was likely to be bought by a stranger. There was, also, no positive evidence that at any time C. M. could have effected a more advantageous sale than that he effected in 1883; and it appeared that up to 1880 neither A. M. nor T. had complained of the delay, but if anything, acquiesced in it.

Held, under all the circumstances of the case, affirming the decision of the Master in Ordinary, that C. M. was not proved to have been guilty of neglect and default as trustee, nor did the evidence afford any basis for assessing damages against him.

It also appeared that in 1880, on T.'s solicitors demanding an account from C. M. of his dealings with the trust estate, C. M. employed S., a professional accountant, to make out from his books a detailed account, and S., in so doing, applied receipts from time to time in liquidation of the principal moneys due to C. M. under the trust deed, instead of applying them in the first instance in liquidation of the interest accruing due thereon, and the account so drawn up was delivered to the solicitors of T. An affidavit of C. M., moreover, was produced in the Master's office, wherein he stated that this account was correct, and made out under his supervision. After judgment in this action, which referred it to the Master in Ordinary to take the account of C. M.'s dealings as trustee, and before the same was taken into the Master's office, C. M. died, and on return of the Master's warrant to bring in the account C. M.'s executors brought in a new account, differing from that rendered as aforesaid to T.'s solicitors, in that they applied receipts in liquidation in the first instance of the interest accruing on C. M.'s claim, which method made a difference in the result of many thousand dollars. No account had been rendered to A. M.

Held, that as against T., C. M. and his executors were bound by the account previously rendered to T.'s solicitors and by the method of appropriation of receipts to principal contained therein, but were not so bound as against A. M., as against whom the account brought in by C. M.'s executors could stand.

McGregor v. *Gaulin*, 4 U. C. R. 380, distinguished.

C. Moss, Q.C., and *Lefroy*, for the executors of C. M.

Lash, Q.C., and *H. Cassels*, for the plaintiff.

McPhillips, for A. Mitchell.

Boyd, C.,] [November 11.

BANK OF TORONTO v. COBOURG AND PETERBOROUGH R. W. CO.

Company—Directors—Issue of debentures to directors at discount—Locus standi of other creditors.

The judgment in this action directed an enquiry as to who, other than the plaintiffs, were the holders of the bonds of the same class of the defendant company, and an account of what was due to such bondholders.

It appeared that the managing director of the company issued a great number of debentures to J. H. S., G. J. S., and J. S., who were themselves directors of the company, at a discount of 25 per cent. The plaintiffs, who were also debenture holders of the same class, contended before the Master that these parties could only claim the amount actually advanced by them, and that they could not, as directors, sell the debentures to themselves at a discount.