

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

pany, his wife barring dower. On May 21, 1867, M. conveyed to a trustee to the use of his wife in fee. This deed was void as against creditors. On March 14, 1868, M. mortgaged the same land to the company in fee, his wife barring dower. On Dec. 17, 1872, M. again mortgaged the same land to the company in fee, his wife barring dower. These three mortgages to the company represented the same debt. No further advance was made on the second or third mortgage, but they were taken merely in extension of time of payment. On Dec. 21, 1874, M. mortgaged the land in fee to one G., his wife barring dower. On March 6, 1876, G. assigned to the plaintiff. On June 7, 1876, M. and his wife jointly mortgaged in fee to the plaintiff.

At the time the plaintiff took the assignment of the G. mortgage, on March 6, 1876, he had express notice and knowledge of the three mortgages to the company. He knew the company claimed their whole debt against the land, because they had the legal estate by their first mortgage, and he knew also of there being a defect in the title of the company by their second and third mortgages, by reason of M. being the grantor, and not his wife; but he did not know of the circumstances making the deed to the trustee of May 21, 1867, void as against creditors:

Held, the plaintiff was, under the above circumstances, bound, as a subsequent mortgagee, in respect of title, but more especially in respect of the state of accounts between the company and M. and his wife; and the company could maintain their priority in respect of their second and third mortgages as against the plaintiff. The knowledge which the plaintiff had before and at the time of the purchase of the mortgage from G. of the defect of title of the company under their second and third mortgages, by reason of the husband being the mortgagor instead of his wife, did, as a matter of title, while the legal estate was vested in the company, enable the company to maintain their priority in respect of the two mortgages as against the plaintiff. Moreover, the plaintiff acquired his title with a knowledge that the company claimed a debt represented by the three mortgages, and took it, subject to such claim of the company. The three mortgages represented the same debt, and the last mortgage might be taken as a statement of accounts, at the time the last mortgage was taken, between the company and M. The

plaintiff, therefore, could not claim priority as against the second and third mortgages of the company.

McMichael, Q. C., and *Hoskin*, Q. C., for the plaintiff.

Lash, Q. C., for the defendant.

Boyd, C.]

FALKINER V. GRAND JUNCTION RY.

Company — Directors — Solicitor and client — Payment of Solicitors by salary.

Where the directors of a railway company passed a by-law enacting that the salary of the plaintiff, as solicitor of the company, should be fixed at \$1,000 per annum:

Held, the by-law was within the competence of the directors: R. S. O. c. 66, sec. 47. Without express power it is the right of the directors of a railway company to appoint necessary officers and agents of the company, and to provide for their manner of payment. The agreement to pay the solicitor a fixed sum as a yearly salary in lieu of paying items in detail, is neither illegal nor unusual, whether it provides for the past or the future.

Dougall Q. C., and *Cassels*, for the plaintiff.

Cameron, Q. C., for the defendants.

Proudfoot, J.]

COWAN V. PESSERER.

Will — Powers of appointment — Election of Widow — Separate Devises — Construction.

A testator devised certain lands to his wife "to be held and enjoyed by her so long as she shall live and remain unmarried. After my decease and after her decease, or in the event of her marrying again, then from and after such second marriage, I will and devise the same unto my son, who shall be named by my said wife, by deed, under her hand and seal, and to his heirs and assigns, forever."

The widow married again, without having executed the power.

Held, the whole period of the life of the donee was allowed for the execution of the power, for though the power of appointing in respect to her decease must of necessity have been exercised before the event, that could not affect the construction of the second power of appointing in the event of her marrying again. The language would rather seem to indicate that in the latter case the power might be exercised after the

[June 6.]

[June 7.]