

COMPANY—DEBENTURES—REMUNERATION OF TRUSTEES—REALIZATION OF TRUST PROPERTY BY PRIOR ENCUMBRANCER—LIEN ON PROCEEDS.

*In re Piccadilly Hotel* (1911) 2 Ch. 534. In this case a limited company issued debentures secured by a trust deed which provided that the trust property was subject to a primary trust for conversion in case the security became enforceable. It also provided that the trustees should hold the proceeds arising from conversion first to pay their own remuneration, costs and expenses and apply the residue in payment of the stockholders and the balance, if any, to the company. The deed also fixed the remuneration of the trustees at a specific sum per annum until the trusts should be wound up. The security became enforceable and a receiver was appointed in a stockholder's action; but this receiver was subsequently superseded by a receiver appointed in an action at the suit of prior lien holders, in which action the trust property was realized and the surplus, after satisfying the prior lien, was paid into court, and the question Eady, J., was called on to decide was as to the proper application of the fund, and he held that the trustees were entitled, first, to be paid their remuneration at the rate agreed on up to the final winding up of the trust, and that they had a prior lien therefor on the fund as against the stockholders.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—DEPOSIT—STAKEHOLDER—NO STIPULATION AS TO FORFEITURE OF DEPOSIT—IMPLIED TERM—DEFAULT OF PURCHASER—RESCISSION OF CONTRACT—FORFEITURE OF DEPOSIT.

*Hall v. Burnell* (1911) 2 Ch. 551. This was an action for specific performance of a contract for the sale of lands by a vendor in which judgment had been given for specific performance as prayed, and the defendant having made default in payment of the purchase money the plaintiff moved to rescind the contract and for forfeiture of the deposit. The defendant did not appear on the motion. It appeared that the contract provided that the deposit should be, and had been, paid to a stakeholder, and the contract did not expressly provide for its forfeiture in case of default by the purchaser. Eve, J., however, held that a deposit paid upon a contract between a vendor and purchaser is in the nature of an earnest or guarantee for the fulfilment of the contract as well as a part payment of the purchase money, and, in the absence of a stipulation to the contrary,