

Chan. Div.]

NOTES OF CANADIAN CASES.

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#### CHANCERY DIVISION.

Boyd, C.]

[May 26.]

RE LEWIS AND THORNE.

*Writs against lands—Sale by trustees—Application of purchase money—Vendor and purchaser.*

Where, on a vendor and purchaser application, it appeared that two trustees under the will of F. L. had, as such, contracted to sell certain lands to H. D., and that under the provisions of the said will the vendors were directed to sell the said lands, and, after payment of funeral expenses and debts, divide the balance of the proceeds among certain of the children of the testatrix, amongst whom was one D. V. L., and that there were certain executions against the lands of D. V. L. in the hands of the sheriff issued upon certain judgments obtained against him, whereupon the purchaser objected that the said executions were a charge and incumbrance on the interest in the said lands contracted to be sold of the said D. V. L., and that the vendors were bound to discharge the said executions in order to convey the lands to him, and the vendors submitted on the contrary, and that they could make a good title free from incumbrance without payment of the said executions, and that the purchaser was not bound to see to the application of the purchase-money,

*Held*, that the writs of execution did not interfere with the right of the trustees to sell so as to carry out the directions of the will, and that as a matter of conveyancing, they did not derogate from the right of trustees to convey the estate indefectibly, and that the purchaser was not required to see to the application of the purchase-money in view of R. S. O. c. 107, sec. 7.

*Held*, also, as to executions against lands coming in after the contract to sell, they could not affect the devolution of title as between vendor and purchaser.

Boyd, C.]

[May 30.]

RE BOLT AND IRON COMPANY.

*Corporations—Managing director—Remuneration—Breach of trust—Set off—Winding up—Assignment.*

By-law 17 of the company provided that "the directors and managing director should be paid for their services such sums as the company may from time to time determine at a general meeting." The only provision made at a general meeting was that which was approved on January 27th, 1883, in these words: "The salary of the managing director was fixed until the 31st day of October next, as at the rate of \$4,000 per annum." Beyond October 31st the company had not exercised its discretion under the by-law. L., the managing-director, sought to recover for services rendered as such subsequent to October 31st, 1883.

*Held*, that he could not do so.

The position of L. as managing-director rendering services for which remuneration was given, was not that of a servant hired by the company, but of a working member of the company who got paid for the work he did. The rules as to hiring and notice between master and servant were therefore not applicable, and the measure of the rights of the salaried managing-director had to be settled by what was provided in that behalf by the charter and by-laws of the company, and here there was no provision for remuneration after October 31st, 1883.

L. having withdrawn from the moneys of the company a certain sum on the assumption that he was entitled to it in payment of his services after October 31st, 1883.

*Held*, that this was a breach of trust on L.'s part, and the amount thus withdrawn formed a debt based on breach of trust, recoverable by the liquidator, and as to which no set-off was permissible against any debt due by the company to L. L. was bound to replace the money without any deduction before he could get any dividend from the assets of the company in respect to any other claims he had against it.

*Held*, also, that the fact that L. had assigned his said claim against the company to his wife, after the winding up order had been acted on, made no difference, since any such