

Yeates being able to retain the control of the London Machine Tool Company, and also contingent upon the deal going through."

As said in the memorandum, this agreement as to commission was contingent upon the deal going through; and it was made in view of the expected surplus above mentioned.

Thereafter, a formal agreement was drawn and executed between the company and the merger, dated July 29th, 1911. This agreement was upon the very lines of the tentative agreement, and was quite in accord with the expectation of the parties when the agreement of the 14th July was executed.

For some reason, not fully disclosed in the evidence, the merger refused to carry out the agreement of the 29th July. It was suggested that the valuation was not satisfactory, and that in fact the assets had been grossly over-valued. It was also said that the agreement had never been duly executed.

From whatever cause this refusal proceeded, the defendants were advised that they could not enforce it. After its execution and before its repudiation, Strong had gone to England, in the full belief that there was nothing to be done except to carry into effect the agreement executed. The company found itself in a very serious plight. The bank insisted on payment, and the other creditors were restless.

For some time the matter dragged along; and finally Mr. P. M. Yeates, owing to the illness of his brother, took the matter in hand, and sold out to the merger at the best price that could be obtained. Instead of there being a surplus over and above the \$112,000 of stock, the company received only \$55,000 in bonds and \$40,000 in cash or its equivalent; \$95,000 in all; and out of this had to pay some \$18,000, as being the excess of actual liabilities over the scheduled liabilities. To do this, the company had to realize upon some of the bonds at a little over ninety cents on the dollar.

Strong now claims his commission; contending, in the first place, that he should receive what the agreement of the 14th of July called for, because it was the vendors' own fault if the agreement of the 29th July turned out to be unenforceable.

On the other hand, the defendants contend that Strong is entitled to nothing. They also rely upon the terms of the agreement in question, and say that inasmuch as it provides