

company became vested in him, and the duty devolved on him of receiving offers or tenders for the sale of the estate, and "he may, with the approval of the Court, and upon such previous notice to the creditors, shareholders, or members as the Court orders, sell the real, personal, heritable, and moveable property, effects, and choses in action, by public auction or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels."

It is, I think, reasonably clear that it is upon the liquidator, as one of the officers of the Court, that the duty is cast of recommending—perhaps with the sanction of the inspectors—to the Court that the offer of a particular tenderer for the assets of the estate be accepted or rejected. The liquidator is to dispose of the estate with the sanction of the Court; but the Court cannot dispose of the estate without the sanction of the liquidator.

This, I think, is apparent from the interpretation put upon sec. 33, which provides that the liquidator may, with the approval of the Court, compromise all calls and liabilities to calls, debts, and liabilities, and all claims that are present or future, certain or contingent, etc. . . .

[Reference to sec. 100 of the English Winding-up Act; *In re East of England Banking Co.*, L. R. 7 Ch. 309; *In re Sun Lithographing Co.*, 24 O. R. 200.]

I therefore reach the conclusion that the referee could not dispose of the assets of the estate without the assent of the liquidator.

The offer made by Mr. Long to the learned referee of \$253,000 was not sanctioned by Mr. Davidson, the liquidator. He thought that a better offer could be had, having regard to the prices at which the mills were purchased by the insolvent company (between \$600,000 and \$700,000), and he considered the sacrifice would be too great if Mr. Long's offer was accepted. The opinion he entertained has been fully justified by the celerity with which Mr. Long was able to dispose of some of the mills and other assets and the prices realized therefor. The probable profit to Mr. Long would, if the sale were carried out, be about \$125,000.

The sale must be set aside, and Mr. Long must account to the liquidator for the profits arising from any portion of the assets sold by him.

The costs of the appeal must be paid by Mr. Long.