

tion with the Kenora account, and a number of small sums in connection with minor matters; so that in the result the Master finds that Mr. Hall has overpaid the liquidator on account of his purchase \$36,000.51, which sum he directs the liquidator to refund. It is from this judgment the liquidator appeals. The cross-appeal seeks to increase the award against the liquidator.

Jas. Bicknell, K.C., and F. R. Mackelcan, for the liquidator.

R. J. McLaughlin, K.C., for Hall.

HON. MR. JUSTICE MIDDLETON:—The learned Master has set forth his findings and reasons in a carefully prepared and very elaborate judgment.

After the best consideration I can give to the matter, I find myself unable to agree with him; and, as I think he has approached the matter from the wrong standpoint, it will be necessary for me to give my reasons, and the facts as they appear to me, at some considerable length.

William Hamilton was the main shareholder of the company in liquidation. Smith was, before the liquidation, the general manager and secretary of the company. He had been connected with the company since July, 1901, having then been employed as secretary-treasurer. He did not become general manager until August, 1905. Hamilton himself was the man who had the real charge, oversight and supervision of the company and all its affairs. He was its president; and Smith, notwithstanding his titles, was little more than an employee of Hamilton.

Mr. R. R. Hall was the solicitor for Hamilton; and very shortly before the liquidation he was retained to conduct negotiations by which it was hoped to reorganise the company, and was from the beginning of these negotiations contemplating taking some interest in the company himself.

The liquidation order was made on the 11th of December, and we find that on the 12th of December Mr. Hay, Mr. Hall's accountant, wrote him at Ottawa with reference to the company: "I expect to have the information you require out by Monday night."

On January the 1st, 1907, Hall wrote to Mr. Stewart, of the Bank of Montreal, who, as curator of the Ontario Bank—the chief creditor of the company—had an important voice in the liquidation.