THE CANADA WOOLEN MILLS CASE.

Result of the Appeal—The Sale Set Aside.

In last issue a report was given of the proceedings at Osgoode Hall, Toronto, in the case of the Canada Woolen Mills, Limited. It will be remembered that upon the declaration of insolvency of the company and the appointment of George Davidson, the inspector of the company, as liquidator, the Master-in-Chambers, J. S. Cartwright, was appointed referee, and after the failure to secure satisfactory bids from advertisements calling for tenders, it was decided to sell the properties by auction on the 15th September last. At this meeting no bids were made that could be entertained, and the meeting adjourned. In talking the matter over in the Master's office, upon adjournment on this day, W. D. Long, of Hamilton, said he would make an offer himself, provided the offer was either accepted or rejected, and not made the lever upon which some one else might raise the price on him. According to the evidence submitted, it appeared that Mr. Long's offer was not known to some of those concerned, notably to George F. Benson, of Montreal. At the latter meeting, as reported in last issue, Mr. Long bid $250,000, which he afterwards raised to $253,000 for the whole properties, and this offer was accepted by Mr. Cartwright. Mr. Benson strongly protested against selling the mills at that figure, which he considered too low. The liquidator also, it appeared, disapproved of the sale. G. H. D. Lee, the legal representative of the Dominion Bank, advised the acceptance of Mr. Long's offer. Argument was heard on Mr. Benson's protest on the 5th October, and judgment reserved till the 11th, when Mr. Cartwright maintained the validity of the sale, and accepted Mr. Long's cheque, drawn on the Dominion Bank, for $243,000 the balance of the purchase money.

Meantime on the 30th September, Mr. Benson made a formal offer of $275,000 for the properties, and agreed not to withdraw the offer under penalty of the forfeiture of his deposit of $10,000.

Within a week after the referee's decision, W. H. Blake K.C., counsel for Mr. Benson, entered an appeal against that decision on the following grounds:

1st. That the sale was not made by the liquidator, as the statute requires, and that he did not accept the offer of Mr. Long.

2nd. That Mr. Long was and is an inspector of the estate and could not purchase.

3rd. That the sale was made improvidently and at an undervalue, and not in accordance with the practice of the court.

4th. That the offer of Mr. Long and the acceptance by the referee did not constitute a definite bargain capable of being enforced. There was no written evidence of such bargain, and its terms were not enforced

In his argument, Mr. Blake said he had no doubt the referee had acted with the best intentions, but he had misread the language of the Winding-up Act, and had assumed powers not given to him by the statute. According to the evidence it appeared that the properties were originally valued at about $900,000. The liquidator did not expect to realize that sum, but brought them down to something like half a million. What had taken place was that Mr. Long offered $253,000 for assets worth half a million, and then turned around and made use of the knowledge he had acquired as an inspector to sell the properties in detail at a profit of nearly $125,000. When Mr. Long made his purchase there was $40,000 of cash in the bank, $75,000 in bills receivable, $17,000 net in manufactured goods (realized upon at 55 cents on the $1 on $32,000), $1,500 in rebates on insurance. Then there was the following valuation of the mill properties, based on what Mr. Long had been offered or what he had put forward to prospective purchasers as "bargain counter prices:" Lambton Mills, $6,000; Carleton Place, $56,000; Hespeler, $125,000, and Waterloo, $54,000, making in all $377,500. From this deduct the $253,000 accepted by the referee, and there would be left the handsome margin of $124,500. The question, however, was not whether Mr. Long was making an excessive profit by the transaction, but whether the sale took place according to the practice prescribed by the court, whether the usual safeguards had been taken and whether it was a fair and orderly transaction, which the court could support? On these points he directed attention to the evidence of the liquidator, who had said that the reserve bid should not be less than $350,000, and who when asked as to the sale at Mr. Long's figures, said: "I did not approve of the sale. I did not object. I followed the direction of the court, as its servant." Mr. Davidson supposed he was bound to obey the direction of the court, but he disapproved of the sale, but in the face of that disapproval there could be no proper sale under the Act. Section 31 of the Act states that "the liquidator may, with the approval of the court, sell the real and personal property, etc." While he requires the approval of the court it will be seen that the liquidator, not the court, is the contracting party. The liquidator has, in this case, never entered into a contract or sale. He cited the case of the Sun Lithographing Co., which was an appeal from the Master-in-Ordinary, as to whether a compromise could be effected against a dissenting minority of the creditors. It was held that the court had no jurisdiction to effect such a compromise, but that this power was vested in the liquidator with the sanction of the court. The liquidator is not a mere figure-head, but is nominated by the court for his fitness to wind up an estate in the best interests of the shareholders, and he has absolute control of the assets, and the creditors are entitled to the benefit of his experience and judgment. It is he who sells or determines upon a compromise, though his work is not complete without the sanction of the court. Mr. Blake then recounted the steps that led up to the sale on the 22nd September, and remarked on the fact that only about a quarter of the shareholders received notice of this meeting, the notice itself being vague and not stating the definite step that was to be taken of selling the assets without reserve. On that date we have Mr. Long coming and purchasing at a figure which he must have known was utterly inadequate. As an inspector, he was there to get the most for the creditors, and as an inspector he had access to special knowledge of the affairs of the company. It was not fair that he could drop the character of inspector and make use of the knowledge he had gained to become a purchaser. Mr. Long was a shareholder in the Penman Mfg. Co., of Paris, Ont., to the extent of $64,000 or $65,000, and to that company, within two days of his purchase of the properties, he offered the Hespeler mills at what he regarded as a "bargain counter price." The letter was as follows:

"There is in the mills at Hespeler:

Wool	$3,279 08
Shoddy	1,433 53
Rags	905 95
Yarn	1,643 50
Supplies	5,439 69
Dyestuffs	2,543 80
Machine supplies	722 85
Office furniture	329 54
	$16,297 94

As a director of the Penman Co., I would recommend that you offer $130,000 for the mills, houses, lands and everything