

He did investigate; he formed his own opinion; he knew that the statements were in many respects inaccurate and inflated. His letters appear to me to shew that up to this stage, at any rate, he was buying in reliance upon his own judgment and investigation and that the parties were at arms' length; he was with his superior knowledge seeking to drive a hard bargain with the liquidator.

It is of the greatest significance to bear this in mind, when one comes to consider the precise misrepresentation which Smith is said to have made; because although the offer originally made was formally withdrawn, the whole negotiations leading up to the purchase, began in December, had really never ceased until they culminated in the offer which was finally accepted.

As already mentioned, an offer was originally made to pay the creditors 60 cents on the \$1; this was increased to 65 cents; an offer was substituted of \$185,000 at the beginning of February; this was withdrawn, then verbally renewed, and finally increased verbally to \$190,000, and afterwards to \$192,000. It clearly appears that this was the figure verbally agreed upon by the 12th of April, and it was after this that Smith is said to have misled Hall. I think it plain that the delay in reducing the offer to writing, from that date to the date of the formal offer of the 27th of April, was occasioned, not by what was going on between Hall and Smith, but by Hall's desire to be satisfied as to the likelihood of his securing for the flotation of the scheme the financial assistance for which he was then negotiating.

Smith's alleged misrepresentation arose in this way:—

For the purpose of satisfying itself as to the real value of the assets, the liquidator had instructed a valuation to be made by Pendrith. The result of his valuation was disappointing. He reported that the stock on hand was not of the value shewn by the company's balance sheet. This report was made pending the negotiation. Smith had learned of the report by the 15th of April. Apparently Hall had also learned of this report, and was informed of the amount of the valuation. Without in any way disclosing his action to the officers of the liquidator or to its solicitor, with whom he was negotiating, Hall (as he says) asked Smith to prepare for him a statement of the company's affairs based upon Pendrith's valuation. A statement was prepared, but it was not based upon this valuation, but upon the old balance