

tically had the management and control of the affairs of the Wm. Hamilton Company, Limited, during the years 1908-9.

On the 15th November, 1909, after considerable negotiation these three entered into an agreement, in writing, that they would procure a new agreement between the defendant and the company. This agreement recited the liability of defendant under the agreement of 31st October, 1908, to secure subscriptions of the amount of \$95,000 of preferred stock in the Hamilton Company, and that it was then in the interest of that company that only \$20,000 more of the preferred stock of the company should be issued and not the \$95,000. This new agreement between defendant and the company, which the three agreed to procure was that (a) Collier, the defendant, should subscribe or procure subscriptions for 200 shares of preferred stock; (b) that Collier should pay to the company \$1,500 in cash, and transfer to a trustee for the company 20 shares of preferred stock; (c) Collier should transfer to the company or to a trustee for the company 200 shares of common stock, and the company should release Collier from all obligations created by that agreement of 31st October, 1908, and from an offer which Collier had made to the company in a letter of 5th January, 1909. Then the agreement of 15th November, 1909, provides for what is to be done by the parties to it, and it contains this clause: "This memorandum of agreement cancels all previous understandings and agreements made between the party of the first part (the defendant and either or both the parties of the second part (Smith and the plaintiff)). Then followed the proposal to the company to make the new agreement and settlement with defendant.

On December 6th, 1909, Mr. Gladman wrote to the defendant—what the committee recommended as to the cancellation of the agreement of 31st October, 1908. This letter is exhibit 15. Gladman's letter contains this clause—after dealing with the matter as between defendant and the company—"We do not take into consideration any private differences that may exist as between yourself and Messrs. Smith and McFarlane, with which we consider the company has nothing to do, and that you must arrange among yourselves."

The defendant says these differences had been arranged by the agreement of 15th November, 1909, and which was substantially carried out by defendant's offer to the company and the acceptance *sub modo* by the company; see