

powerless to accept the transfers or to release the appellants without payment. And, in the total absence of facts or circumstances indicating intention or even consideration of the matter by the learned Referee, to ascribe to his act in approving of the first list the wide effect contended for, seems quite out of the question.

Nor, in my opinion, is there in the alleged estoppel sought to be set up any answer to the liquidator's claim to aid the appellants. He asserts and relies upon a legal cause of action arising under the provisions of the statute. To such a claim mere delay in asserting it is no defence. But, in addition, there is no reasonable evidence that what delay there was, was prejudicial to the appellants. Their transferees, to whom they look for indemnity, were upon the list, were proceeded against, and judgments against them obtained, apparently in due course. And there is a total absence of anything but suggestion that the appellants could have done more to compel payment if they had themselves been originally upon the list.

And, finally, there is, in my opinion, grave doubt if estoppel could be successfully pleaded to such a claim, under any circumstances. The proceeding is a compulsory winding-up, under the direction and control of the Court. The liquidator was appointed by the Court, is an officer for the time being of the Court, and except in minor matters acts entirely under its direction. See *In re Gooch*, L.R. 7 Ch. 206. So limited are his powers that it has been said that he cannot even make a formal admission (sometimes said to be the foundation of an estoppel in pais) which will bind the creditors and contributories. See *In re Empire Corporation Limited*, 17 W.R. 431. Under sec. 36 of the Winding-up Act, he may, with the approval of the Court, compromise calls, etc., upon the receipt of such sums as are agreed upon; but, without the consent of the Court, he could not lawfully accept less than payment in full.

It would certainly be an odd result to hold that he could, by mere laches, accomplish that which he could not with deliberation and intention do. . . .

[Reference to *In re National Bank of Wales*, [1907] 1 Ch. 582, distinguishing it.]

See for a different view as to the effect of the lapse of time in the case of a compulsory liquidation, the *Sands Case*, 32 L.T. N.S. 299, 301. I would dismiss the appeal with costs.