

HON. MR. JUSTICE MIDDLETON. NOVEMBER 29TH, 1912.

RE HAMILTON MFG. CO. LTD., HALL'S CASE.

4 O. W. N. 421.

Company—Liquidation—Purchase of Assets—Alleged Misrepresentations by Agent of Liquidator—Report of Master—Authority of Agent—Purchaser Relying on Own Judgment—Attempted Variation of Agreement—Parties at Arms' Length.

Appeal by liquidator, and cross-appeal by Hall, an alleged creditor, from report of Local Master at Peterborough, awarding Hall \$36,000.51 against the liquidator. On April 27th, 1907, Hall made an offer of \$192,000 for the assets of the business, which offer was accepted on May 10th, 1907, and a purchase agreement executed. With some delays the purchase was carried out, and the purchase moneys paid. In August, 1909, Hall claimed that he had been grossly deceived by one Smith, acting for the liquidator, as to the extent and value of the assets of the business, and claimed repayment of part of the purchase-money. Smith was the manager appointed by the liquidator to manage the business as a going concern, but he had nothing to do with the negotiation of the sale of the business, although he had furnished Hall, at his request, a statement of its assets. Hall's claim was referred to the Local Master for adjudication, who made the report above referred to.

MIDDLETON, J., *held*, that upon the facts, Hall had as much opportunity as anyone to discover the value of the assets of the business; that he relied upon his own judgment and knowledge in making his offer, and not upon any information or statements furnished by Smith, who, in any case, had no authority to give such information, and that, therefore, Hall's claim for re-payment of any of the purchase-moneys should not be given effect to.

Seemle, that had the facts been otherwise, as a matter of law, in the case of a former agreement entered into under authority of the Court, the purchaser would have no right to set up or attempt to import into the agreement any such term as that suggested by him.

Mowat v. Provident, 32 S. C. R. 147, referred to.

Appeal allowed, and cross-appeal dismissed, with costs.

Appeal and cross-appeal from the report of the Master at Peterborough, dated August 28th, 1911; argued on the 10th, 11th, 12th and 13th of June last.

A winding-up order was made on the 11th December, 1906. On the 27th of April, 1907, Mr. R. R. Hall signed, addressed to the liquidator, a formal "offer to purchase all the assets and property of the William Hamilton Manufacturing Company Limited which have come or may hereafter come to your hands and which were and are within your power and control as liquidator of the company since the liquidation . . . at or for the price or sum of \$192,000." The terms of payment are then set out: \$5,000 being payable as a deposit, the other payments being spread over a time terminating on the 15th of December, 1907.