

MIDDLETON, J.

MAY 15TH, 1913.

## SHANTZ v. CLARKSON.

*Assignments and Preferences—Assignment by Company for Benefit of Creditors—Inspector of Insolvent Estate—Interest in Purchase of Assets—Action to Set aside Sale—Locus Standi of Plaintiff—Acquisition of Share of Company's Stock after Winding-up Order—Shareholder not Representing Company—Inspector Abstaining from Action in Regard to Assets—Formal Concurrence in Conveyance of Assets—Absence of Knowledge by Assignee of Interest of Inspector—Sale Beneficial for Creditors—Insolvent Plaintiff—Inspector not Occupying Fiduciary Position.*

Action by Dilman B. Shantz, on behalf of himself and other creditors and shareholders of Jacob Y. Shantz & Son Company Limited, to set aside a sale of the assets of the company by the defendant Clarkson, the assignee of the company for the benefit of creditors, to the defendant Gross; upon the ground that one Jacob B. Shantz, an inspector of the estate, was interested in the purchase.

The action was tried before MIDDLETON, J., without a jury, at Berlin, on the 13th May, 1913.

M. A. Secord, K.C., for the plaintiff.

W. N. Tilley and R. H. Parmenter, for the defendant Clarkson.

W. C. Chisholm, K.C., for the defendant Gross.

MIDDLETON, J.:—On the 28th February, 1912, the company made an assignment to the defendant Clarkson of all its assets, upon trust to sell and convert the same into money, and to apply the proceeds in payment of the debts, and to pay the balance, if any, to the company. . . .

[The learned Judge then referred to a proceeding for the winding-up of the company and the making of a winding-up order, which did not become effective.]

On the 19th March, a meeting of the creditors was held. Mr. Jacob Shantz, Mr. Butler, and Mr. Whitehouse were appointed inspectors. The inspectors met immediately after the shareholders' meeting, and instructed the assignee to draw up an advertisement for the sale of the business as a going concern.

An advertisement was accordingly published, but the sale was not proceeded with pursuant to it, as the plaintiff desired a postponement, hoping that he would be able to make financial arrangements which would enable him to purchase the property, and organise a new company in such a way that the creditors