

the defendant became bound to hand over to the plaintiff Strong transfers of all the shares, thereby effecting a delivery of all the property, assets, effects, business and goodwill of the company as a going concern as they subsisted at the date of the letter.

The question, what was the plaintiff to get in substantial property or value in taking over the shares, was of course an important one. Its solution depended largely upon the value of the property, assets and effects, and the extent of the charges or claims against them, in other words, the debts or liabilities. For the ascertainment of these, the defendant in the letter refers the plaintiff to the last stock-taking on the 31st of August, 1906, the date of the termination of the company's fiscal year, and to the liabilities of the company as they stood on the books on that day, and the ordinary running expenses and liabilities of the company incurred since that date. The payment of whatever sums fell within the description of these two items, and the sum of \$230,000 to the defendant was to be the full cost of the entire purchase. This is in effect the representation contained in the defendant's letter, and doubtless was a material inducement to the plaintiff in concluding to purchase.

It is scarcely open to doubt that the final payment to the defendant of \$180,000 was made upon the faith that the liabilities of the company up to the 31st of August, 1906, appearing on the statement of assets and liabilities given or exhibited to the plaintiff Strong on the 17th of November, 1906, shewed all that required to be met on that account. If before making the payment to the defendant, the plaintiff had become aware that there were other liabilities to be met in addition to those shewn on the stock-taking of the 31st August, he could, and no doubt would, have exercised the usual right of a purchaser to pay off anything that was a charge against the property purchased, or retain the amount required for the purpose and pay only the remainder to the vendor.

I agree with the trial Judge and the Divisional Court that the defendant is liable to make good the sums properly paid in excess of what were shewn as liabilities on the stock-taking at the end of the company's fiscal year, provided the payments so made were in respect of what were properly liabilities at that time.

And I also agree in the main with their conclusions upon the items. There are, however, two of these which, with deference, I am of opinion should not have been allowed against the defendant. I refer to the Martin & Andrew account of \$94.56,