estate was likely to lose anything by the sale to the defendants, the appeal should be dismissed; 21 A. 242. When the case reached the Supreme Court (24 Sp. Ct., 699), that court allowed the appeal from the Court of Appeal, and held that the defendant Lee, as inspector, stood in a position of trust towards the creditors, and could not obtain an advantage for himself from his position, and that the creditors were entitled to a reference to ascertain what profit, if any, he had derived from the transaction.

In Gastonguay v. Savoie, et al. (1899) 29 Sp. Ct., 613, it was held that an inspector of an insolvent estate is a person having duties of a fiduciary nature to perform in respect thereto, and he cannot be allowed to become a purchaser on his own account of any part of the estate of the insolvent. Mr. Justice Taschereau, in his judgment, page 614, says: "Upon the ground that the inspector of an insolvent estate cannot be allowed to purchase any property of the insolvent, as the respondent has done, I would allow the appeal to annul this sale. It is a principle of law which courts of justice are bound to strictly apply, and no one having duties of a fiduciary character to discharge, should be allowed to put his duties in conflict with his interests." . . . "I cannot divest my mind of the opinion that it would be opening the door to frauds if the courts failed to forbid such dealings."

In ex-parte James, 8 Ves., it is said by Lord Chancellor Eldon, at page 345: "This doctrine as to purchases by trustees, assignees, and persons having a confidential character, stands much more upon general principle than upon the circumstances of an individual case. It rests upon this that the purchase is not permitted in any case, however honest the circumstances; the general interests of justice requiring it to be destroyed in every instance, as no court is equal to the examination and ascertainment of the truth in much the greater number of cases. And at p. 348: The principle is, that as the trustee is bound by his duty to acquire all the knowledge possible, to enable him to sell to the utmost advantage for cestui que trust, the question, what knowledge he has obtained, and whether he has fairly given the benefit of that knowledge to the cestui que trust, which he acquires at the expense or the cestui que trust, no court can discuss with competent sufficiency or safety to the parties."

Now, I find from the correspondence put in that Mr Long, having purchased on the 22nd of September, he, two days after —on the 24th—telegraphed to George Moore, at Waterloo, offering the Waterloo Mills for fifty thousand dollars, including all supplies in mill, and saying: "I will take five thousand with you, Seagram, Randall and friends. Payments made easy. Wire me reply. Sold both Carleton mills." He sold the Carleton mills at $50,000. He also on the 24th wrote the Penman Manufacturing Co., of Paris, in which he is a large shareholder and a director, regarding the mills at Hespeler, giving a list of mill supplies on hand, amounting to $16,297, and then stating:

"As a director of the Penman Co., I would recommend that you offer $130,000 for the mills, houses, lands and everything connected with the place, on one year's time, without interest. I could hold the deeds and endorse your paper. If accepted, I would suggest putting a man in charge, who is a carder and spinner, and let him do all the work you can give him, and try and work for Newlands, Galt Knitting Co., Berlin Felt Boot Co., and others, who give out work or buy yarn; look after the houses, collect rents, etc., and keep the place in order, and insurance right. Next spring, if it is decided that that you do not want them connected with your present mills, we could sell them or may be get up a separate company to run them. I feel sure these mills will be worth double the day after the Penman Co. buy them, and I do not like to let these mills go into other hands until the Penman Co. has plenty of time to consider. The risk is so small in buying, as I suggest, I think you should seriously consider the proposition."

There was at the time that Mr. Long made his offer $37,000 cash belonging to the estate in the bank, which was included in the assets sold; there were manufactured goods, which Mr. Long immediately sold for $17,000; there were supplies which were necessary for the running of the mills amounting to $26,000, but which were carried into the account at $13,000, and bills receivable amounting to about $80,000, which were carried in at $75,000, as it was considered that they were good for that sum; then there was $4,500 rebate on insurance. These several items amounted to $146,000.

The Penman Co. has these mills under option at $125,000.

It is manifest that Mr. Long was in a position to know of people who were likely to be purchasers for the mills which he acquired, and the facility with which he was able to dispose of some of the properties shows that, that when the mills were being sold separately there was no great difficulty in disposing of them; and he seems to have been possessed of a knowledge as to intending purchasers, which if, as inspector, he had communicated to the liquidator, would have been of very great value to the estate.

As to the point arising under Section 31 of the Act, upon the appointment of a liquidator, the estate of the insolvent company became vested in him, and the duty devolved on him of receiving offers or tenders for the sale of the estate; and "he may, with the approval of the court, and upon such previous notice to the creditors, shareholders or members as the court orders, sell the real, personal, heritable and movable property, effects and choses-in-action by public auction or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels."

It is, I think, reasonably clear that it is upon him, as one of the officers of the court, that the duty is cast of recommending—perhaps with the sanction of the inspectors —to the court, that the offer of a particular tender for the assets of the estate be accepted or rejected. The liquidator is to dispose of the estate with the sanction of the court; but the court cannot dispose of the estate without the sanction of the liquidator.

This, I think, is apparent from the interpretation put upon Section 33, which provides that the liquidator may, with the approval of the court, compromise all calls and liabilities to calls, debts and habilities . . . and all claims that are present or future, certain or contingent, etc.

Under Section 190 of the English Winding-up Act (which is not essentially different from Section 33 of our Act), the Court of Appeal held in Re East of England Banking Co (1872), L.R. 7 Ch. Ap., 309, that the court had no jurisdiction to order the liquidator in a winding-up to consent to a compromise with a contributory, L.J. James saying at page 311:"I am of the opinion that the only power is in the liquidator with the sanction of the court, and there is no power in the court to order a compromise, whether the liquidator recommends it or not." That case was followed in Re Sun Lithographic Co. (1893), 24 O.R., 200, where it was held that there was no power under Section 33 to enforce a compromise upon dissentient minorities of creditors.

I, therefore, reach the conclusion that the referee could not dispose of the assets of the estate without the assent of the liquidator.

The offer made by Mr. Long to the learned referee, of