

The offer which was considered by the creditors was one which would give them 40 cents on the \$1 upon their claim. The effect of the abatement allowed by the Master from this price is to reduce this to less than ten cents. The time for rescission has long since gone, and the Master by his judgment has made a new and entirely different bargain for those beneficially concerned.

The claim put forward as to the book debts seems to me equally unjustified. I cannot believe that on the sale of the assets of the company in liquidation the vendor, in the absence of any stipulation, undertakes that there is no defence to the claims appearing in the books, based upon defects of workmanship or breach of contract, by the defunct company. The purchaser takes his chances. He buys the business as a going concern, for better or for worse. If the vendor was to guarantee the debts and the value of the merchandise, why should he sell at 40 cents on the \$1? If the debts were all good, and the merchandise account worth its face value, there was no insolvency.

The compromise of the claims was not only actually approved by Hall, but, by the agreements executed by him when extensions were granted, he expressly empowered the liquidators to compromise. I fail to appreciate the argument that this meant to compromise undisputed claims against insolvent debtors, and not to compromise disputed claims against solvent debtors. Nor can I understand the contention that the debtors' right to an abatement of the price by reason of defective work or of the company's default is an "incumbrance" within the meaning of the contract.

The claim on the "Bertram Rolls" falls under the same head. The purchase was of the assets of the company as a going concern; the purchaser took the property subject to all contracts. The only stipulation is that the property shall be "free from incumbrances." This does not mean that this going concern is not to have contracts affecting its goods and property, but that there is to be no charge upon or hypothecation of the assets.

Upon this principle I think the Master ought not to have allowed the amounts due for freight and duty. These may have been liens upon the property, but they do not seem to me incumbrances within this contract.

This also applies to the cross-appeal as to the patterns. The company had the right to use these upon certain terms. The asset vested in the purchaser was this right.