

the prayer of the petition to the extent of the value at which it seems to have been taken by the appellants. It is contended that this is not evidence of value, and that it is only a private memorandum of the appellants. I think this is hardly a fair appreciation of the matter. The valuation was made in presence, or at all events with the knowledge, of the inspectors, and expressly concurred in by one of them. This would be a complete admission, if Mr. Thomas had not had any other capacity than that of an inspector, and even though he had another interest there, I cannot think his positive concurrence in the value is not evidence of the value. It only exposed his admission to an easier repudiation by the creditors. This they have not attempted. Again, we have the assignee's letter. If it was not by the pencil memorandum, how was the subsequent adjustment promised by him to be arrived at? I have already expressed the opinion that the action of the assignee was adopted by the creditors, and therefore his undertakings for the creditors in taking the step by which they profited bind them. This, however, does not affect the principle, but only the extent of our judgment; for if we had not taken the pencil memorandum as evidence we should have ordered an *expertise*.

One other point remains. At the last argument it was urged that the action was too late, because appellants had only five days to object. There seems to me to be no force in that argument. The term of ten days was departed from and a general undertaking to adjust deficiencies was substituted, which could only be met by an answer at common law. There was no such acquiescence or waiver of the right to claim adjustment.

Sir A. A. DORION, C.J., said the grounds of the judgment were fully set out in the recorded judgment, which is as follows:—

"Considering that on the 25th day of September, 1876, the respondent in his capacity of assignee to the insolvent estate of L. J. Campbell & Co., sold to the appellants for the sum of \$34,000, payable within ten days, the assets of the said estate, including an item described as 'Railway and Newspaper Advertising Company stock, \$5,642.76';

"And considering that on the 30th of September, 1876, the appellants through the

Molson's Bank paid to the respondent the sum of \$33,500, being the balance of the price of the said assets, which payment was made before it became due, on the express condition contained in the letter of the same date by the respondent to the appellants, that he, the respondent, would pay them for any deficiency that might be found to exist in the goods and assets sold, in the proportion of the estimates made in pencil by the appellants on the inventory annexed to the deed of sale;

"And considering that the stock belonging to the insolvent estate of L. J. Campbell & Co. in the R. & N. Advertising Company at the time of the sale consisted of 150 shares of stock of \$100 each, making a total of \$15,000, of which \$9,357.24 were still unpaid, and that no transfer could be effected of said shares or of any portion thereof, except subject to the liability of paying the calls made or to be made on the capital of the said stock, which liability was never known to the appellants and formed no part of the consideration which they agreed to pay for the said Railway & Newspaper Advertising Co. stock;

"And considering that although there was no warranty stipulated at the time of the sale, yet the respondent, being unable to deliver to the appellants the stock sold, is by law bound to return to them a portion of the price of sale which he has received, in the proportion that the value of said R. & N. A. Co. stock bears to the value of the whole assets sold;

"And considering that the respondent has neither alleged nor proved that the estimate made by the appellants at the sum of \$2,000 on the list or inventory mentioned in the letter of the respondent of the 31st December, 1876, and which was concurred in by the said respondent, is not a fair and just estimate of the proportionate value of such an amount of paid up stock as was represented in the said list as consisting of \$5,642.76, and that under such circumstances the appointment of experts to establish the proportionate value of the said stock would lead to unnecessary expenses to the parties;

"And considering that the Superior Court sitting at Montreal in matters of insolvency had, under the provisions of sect. 125 of the Insolvent Act of 1875, jurisdiction to adjudicate on the claim of the appellants arising out of the acts of the respondent when acting in his