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BRYN HALL COLLIERIES

SHAREHOLDERS' OBJECTION TO THE WINDING UP SCHEME

CHANCERY COURT PROCEEDINGS

On Monday, at the Chancery Court, Liverpool before Vice-Chancellor K.H.Lawrence, K.C., a motion was submitted for an interim injunction in the case Grundy and others versus The Bryn Hall Colliery Co. and others. Mr Abbott and Mr Roberts were for the plaintiffs, and Mr Harold Mather and Mr G D Johnson appeared for the defendant.

The plaintiffs were James Arthur Grundy, Frederick William Grundy, Samuel Percy Grundy, Francis Grundy, Edith Mary Grundy (spinster), Magdalene Naylor (widow), Rowland Edward Leyland Naylor, and William Tod.

The defendants were the Bryn Hall Colliery Co. Ltd., and Alfred Ernest Grundy, Abraham Taylor (the directors of the defendant company), Cecile Mary Grundy (married woman), James Barton and Hugh Ford, being the shareholders of the defendants company other than the plaintiffs.

Counsel for the plaintiffs applied for an injunction until the trial of the action or until further order to restrain the defendants Alfred Ernest Grundy and Abraham Taylor (the directors of the company) from submitting for confirmation, as a special resolution, a resolution for the winding up voluntarily of the defendant company, and for the appointment of William Frost, of 3, St James's Square, Manchester, chartered accountant, as liquidator, for the purposes of such winding up, purporting to have been passed at an extraordinary general meeting of the defendant company held on the 15th day of April, 1920, and intended to be submitted for confirmation as a special resolution at another extraordinary general meeting of the defendant company summoned for that purpose for 7th May, 1920, and to restrain such defendant and the defendant company from acting upon the said alleged resolution or confirming the same as a special resolution.

Mr Abbott, in submitting the motion, referred to the position of the parties in the matter. The plaintiffs James Arthur Grundy and Frederick William Grundy, and the defendant Alfred Ernest Grundy, were brothers, and the plaintiff Edith Mary Grundy was a sister. The plaintiffs Samuel Percy Grundy and Francis Grundy were cousins to the others. Cecile was the wife of the first-named defendant. James Barton, another defendant, was formerly the solicitor to the company, until, in 1912, he was struck off the rolls. "He is now, I understand," said Mr Abbott, "advising or helping to advise in his capacity as clerk to the defendants' solicitors. James Arthur Grundy, Frederick William Grundy, Edith Mary Grundy and Alfred Ernest Grundy were the children of James Grundy, who was the largest shareholder in the Bryn Hall Colliery Company, and died in 1901.

In reply to his Honour, Mr Abbott stated that the defendants controlled 796 shares in the company, 500 of which were only partly paid up to the extent of £20 per share.

The nomination of each share was £100. The plaintiffs owned between them 204 shares, all fully paid.

Mr Abbott said he would satisfy his Honour that the whole management of the company as directed by the defendant Alfred Ernest Grundy had been to benefit himself and his nominees at the expense of the plaintiffs and the minority of the shareholders, and no less than four actions in the Chancery Court had been necessary in order to protect the interests of the plaintiffs, and in each action the plaintiffs had succeeded in obtaining the redress which they claimed. The trouble first began in 1907 when Alfred Ernest Grundy was charged with withholding certain dividends from the trustees of James Grundy's estate. The first action was commenced by the trustees of the estate against Alfred Ernest Grundy in the High Court for an order to transfer shares to them, and for an account, and judgement was given for the plaintiffs. At that time Barton was acting as solicitor to Alfred Ernest Grundy, and had charge of the case. In 1909 further proceedings became necessary by reason of the election of James Arthur Grundy as a director of the company. The directors held that he failed to qualify, but the High Court held that he fully qualified as a director, and the defendants were ordered to pay costs. In 1910 further proceedings were necessary by way of foreclosure in that court, and the effect of that was that the defendant Alfred Ernest Grundy was foreclosed in all further interest in the estate of his father, and he had since then had no interest in the estate. In 1912 Barton was struck off the rolls. How the difference arose he (Mr Abbott) did not know, but a certain difference arose between him and his late chief, Mr Alfred Ernest Grundy, with the result that he wrote letters to the plaintiff, Mr James Arthur Grundy, offering to make disclosures as to the financial position of the company. Mr Grundy very properly said that he was not going to interview him until he knew exactly whether the suggestions were true or false. In 1915 it was discovered that the balance sheet for the year ending December 1914 was inaccurate and misleading, and did not represent the true financial position, and at that meeting the auditor of the company, Mr Frost, who was the gentleman it was proposed to appoint as liquidator in the proposed voluntary winding up, was charged with assisting the directors to deceive the shareholders. Frost admitted to plaintiffs that the accounts were misleading, and that it was not contradicted in the evidence that day. His re-election as auditor was opposed by plaintiffs, but he was elected by the majority of the shareholders. The remaining litigation occurred in 1911, when a resolution was proposed for the altering of the articles. What was objected to was that the proposed alterations were to effect this – that the defendant Alfred Ernest Grundy should be appointed managing director for life, and that his remuneration should be fixed by the directors, also that the dividends payable should be paid upon the nominal amount of the shares, and not according to the amounts paid up. As there were 500 shares £20 paid up it was obviously to the advantage of defendants that dividends should be paid in this way. Those resolutions were carried by the votes of the defendants Alfred Ernest Grundy and his nominees, and forthwith an action was commenced in the Chancery Division of the High Court. The shareholders who were represented by plaintiffs alleged that the proposed alterations were for the benefit of defendant Alfred Ernest Grundy, in fraud of the rights of the fully paid up shareholders. The plaintiffs received an interim judgement. The result was that the alterations were cancelled. In 1919 the plaintiffs were very anxious to obtain information as to the amount of the salary of Alfred Ernest Grundy, and the amount of his commission, for in the Register at Somerset House he was described as managing director and salesman for the company. They were unable to obtain any information.

In 1919 he offered to purchase the plaintiffs' shares for £100 each per share, and subsequently in March 1920 he increased his offer to £120. It was obvious that the plaintiffs at this time were unable to obtain any information, and did not know the value of the shares, and quite rightly said they could not accept any such offer. On 31st March 1920 the annual general meeting was held. No balance sheet was produced on the ground that it was not ready – the auditor had not been able to prepare it. The defendant again refused to give any information whatever as to the financial position of the company. He further said he had resolved to terminate his connection with the company. Consequently, the plaintiffs being entirely dissatisfied with the manner in which the meeting had been conducted, on the 7th April they wrote this letter to the solicitors of the company:-

“7th April, 1920. We are instructed by our clients to record their strong protest against the way in which the business at the shareholders' meeting held on the 31st March was conducted. Your clients refused to give information to which the shareholders are entitled. In particular we may instance the late secretary's discharge in very suspicious circumstances and the appointment of Mr Taylor as secretary at a salary of £200 per annum. Information on both these points, as well as others, was refused, and your client even declined to tell the shareholders what Mr Taylor's present salary was. It was pointed out that Mr Taylor was already in the company's employment as a whole time clerk, and the few additional duties of a formal character which he will be called upon to perform as secretary do not justify the payment of a salary of £200 per annum. Your client's conduct and statement at the meeting also made it very obvious that during the recent negotiations your client at no time, notwithstanding the statements in your letter, intended to sell his shares. His sole intention appears to be to force the minority shareholders to sell their shares, and he made some vague threats as to what would happen to them in a month's time. We had been puzzled at your repeated reference in previous correspondence to the 'intense friction' and the 'fierce friction' which you alleged existed between our respective clients. As our clients only see your client once a year they did not understand the phrase, but at the meeting it was made clear that you intended it to afford a ground to justify the extreme step of passing a resolution for voluntary liquidation, not in the interests of the company, but solely directed against our clients. Your client expressed very strongly his dissatisfaction with the company, and stated that he had determined to end it. If his statement is genuine he can accomplish his object by the obvious method of selling his shares.”

AFFIDAVIT of Mr James Arthur Grundy

Counsel read the following from the affidavit of James Arthur Grundy: -

An extraordinary general meeting of the company was held on the 16th April., 1920, pursuant to a notice dated the seventh day of April, 1920, convening such a meeting for the purpose of passing an extraordinary resolution, for the voluntary winding up of the company, and for the appointment of the said William Frost as liquidator, and convening another meeting for the 7th May, 1920, to confirm (6 words unreadable) The defendant, Alfred Ernest Grundy, was the chairman of the said meeting. The said meeting was attended by all the defendants, except the defendant, Cecile Mary Grundy, who is the wife of the defendant Alfred Ernest Grundy, and had given her proxy to the defendant Alfred Ernest Grundy, and by me and all the other plaintiffs,

except Francis Grundy, Edith Mary Grundy, Magdalene Naylor, Rowland Edward Leyland Naylor and Wm. Tod. At the said meeting the defendant Alfred Ernest Grundy gave very full details of the assets of the company, and stated that the company owned 353 twelve ton wagons, 3 fifteen ton wagons, 268 ten ton wagons, 153 eight ton wagons, 50 dirt wagons, 3 locomotives, 12 Lancashire boilers, and other machinery and plant. He was asked by me for the reason for proposing the resolution to wind up the company, but he declined to state the reason, and at the instigation of the defendant James Barton he said it was not necessary to give a reason. The defendants other than the company are the holders of 796 of the 1,000 shares issued by the company. Five hundred of the said 1,000 issued shares are partly paid up in the extent of £20 per share, and all these said 500 shares are held by the defendant Alfred Ernest Grundy and his nominees, the defendants Cecile Mary Grundy and Abraham Taylor. Under the articles of the association of the company the said partly paid shares carry the same voting rights as the full paid shares. Of the remaining 500 shares issued by the company which are full paid, 204 are held by myself and my co-plaintiffs, and of the balance of 296 shares the defendant Alfred Ernest Grundy and his nominees hold 294 shares. The defendant James Barton holds one share in the company jointly to the defendant Alfred Ernest Grundy. The defendant Hugh Ford is the holder, with the defendant Alfred Ernest Grundy, of the remaining one share. At the said extraordinary general meeting held on the 16th April, 1920, after taking a poll at the demand of the defendants, Alfred Ernest Grundy, Abraham Taylor and James Barton, the defendant Alfred Ernest Grundy as the chairman, declared the said resolution carried. The plaintiffs present at the meeting voted against the said resolution, and they did not hold the proxy of those plaintiffs who were not present at the meeting. The company assets as detailed by the defendant Alfred Ernest Grundy at the said meeting on 16th April 1920 are worth a very considerable sum, the wagons alone being estimated to be worth over £100,000, and the other assets, after deducting or making allowance for the liabilities other than the capital liabilities set out in the balance sheet, for the year ending 31st December 1918, being estimated to be worth £50,000. I have had more than twenty-one years experience of and in connection with the management of collieries and colliery affairs, and am well able to assess the value of the said wagons and other assets, and in my opinion the above figures represent an under rather than an over-estimate. I am a director of the West Leigh Colliery Company Ltd., and in that capacity in the month of March last I negotiated the sale of 50 ten ton wagons, which were defective and in want of repair, at the price of £135 each. The paid up capital of the company is £60,000, and the shares on this estimate are worth £250 per share. If the estimate of the defendant Alfred Ernest Grundy that in a liquidation the holders of the said full paid up shares will not get £100 per share be correct, then £90,000 of the estimated value requires to be accounted for. The defendant Alfred Ernest Grundy is a large shareholder and has the controlling voting power of Cross, Tetley and Co., Ltd which is a company carrying on the business of colliery proprietors at Bamfurlong near Wigan, adjacent to the defendant company, and he is the managing director of that company. The said William Frost is the nominee of and acts according to the instructions given by the defendant Alfred Ernest Grundy, and will act as he is requested to do by him. As previously stated, the company's assets are very valuable, and the plaintiffs fear that if the said William Frost is appointed liquidator and obtains possession of the company's assets, he will sell such assets at an under-value to the said Cross, Tetley and Co., Ltd for the benefit of the defendant Alfred Ernest Grundy as a shareholder in that company, and with the result that the shareholders in the company will receive in the liquidation only the par

value of their shares, or less as predicted by the defendant Alfred Ernest Grundy and I verily believe that such a sale of the assets at an under-value is the reason why such defendant is now endeavouring to put the company into voluntary liquidation after having failed to induce the other plaintiffs and myself to sell their shares at a totally inadequate price.

Counsel read the following other extracts from the affidavit of James William Grundy: "In the year 1909 I was elected as director of the company, but at the expiration of two months after my election the defendant James Barton advised the company to decline to register a transfer of certain shares in the company by the said trustees to myself, which were transferred in order to qualify me as a director in case the shares belonging to the estate of the said James Grundy which were registered in my name jointly with my said co-trustees, could not be regarded as giving me the necessary qualifications, and on the advice of the defendant James Barton, the directors of the company decided that having failed to qualify my election as a director became void, and the defendant James Barton was elected a director to fill the vacancy on the Board thus created. I thereupon brought an action against the company, the defendant Alfred Ernest Grundy and the other then directors of the company in the Chancery Division of the High Court of Justice, and at the trial thereof the Court held that I was duly qualified as a director, and ordered the defendants in that action to pay the costs. I ceased to be a director at the beginning of the year 1912 when my period of office expired under the provisions of the articles of the company."

In or about the year 1912 the defendant James Barton, who was at the time and had been for some years previously thereto acted continuously as solicitor for the company, was struck off the rolls. On the 26th November, 1912, he wrote me a letter in which he stated he was about to go to the West Coast of Africa, and wished for an appointment for the purpose of giving me information which affected the interests of the shareholders of the company. On the 28th November 1912, the defendant James Barton again wrote asking for certain balance sheets of the company, after receipt of which he said he would point out certain facts, and stated "it is no use seeing Frost, because it might lead to a general covering up (the Frost referred to is William Frost, a chartered accountant who carries on business at "J.E. Lees and Co.," at St James's Square, Manchester, and he was then and is now the auditor of the company, and is the liquidator referred to in the resolution for voluntary liquidation hereinafter mentioned.) In an undated letter timed "Friday evening", the defendant James Barton asked me to send the balance sheet for 1907, and stated the details of each balance sheet might be necessary, but if I had not the details handy he desired me not to approach the said Frost. "as he had a fear any inquiry into past balance sheets might lead to a conference of the heads." On the 22nd December, 1912, which was a Sunday, he wrote a letter in which he made very detailed comments on the balance sheets and added "The future for the shareholders of the company is black. You will never receive another dividend under the present regime. The Board is rotten, and poor Mr Shaw, good and pious gentleman that he is, is mentally unable to cope with the figure-head. My advice to you is to keep low until the next balance sheet appears. In the meantime, you can marshal your forces. Briggs, Shaw (referring to two of the then directors), and the present Board could not and cannot see the trickery brought into play. I leave the matter entirely to you. I have in my possession documents and a storehouse of facts showing the terrible corruption that prevails in the management of

the company. If you and your friends are interested, then I will give them my documents and other information on terms which must be handsome ones. I can further show you where over £15,000 has disappeared from sight. A Chancery Court would order restitution, if possible, to be got hold of. It is no use crowding you with more facts for the present. Sufficient to say that the settled policy of the company is to pay no more dividends. I can lay my fingers on the business and explode the whole affair but I must be paid or terms arranged for my information. I think, however, I have been of some service to you, and as a labourer is worthy of his time, and you will send me a Bank of England note, I will then prepare a history of everything, and afterwards hand the same to you, when you decide an appointment requisite." On the 6th January, 1913, I acknowledged this letter and stated that before replying further I thought it desirable to see Mr Radcliffe and Mr Jones who were then shareholders in the company. On the 7th January 1913 the defendant James Barton wrote me and said, "I think you are making a very bad move in opening yourself to either Jones or Radcliffe until the next balance sheet comes out. I shall know in a few days what the past year has done for the company. I ask you to remain quiet until the balance sheet is issued. Jones will queer the pitch. Far better to see me first. I may add your brother (meaning the defendant Alfred Ernest Grundy) has been writing and wiring to see me, and wants again to come to an understanding. If you have not communicated with Jones or Radcliffe please do not do so until you see me." I did not reply to the last mentioned letter, nor did I grant an interview to the defendant James Barton.

At the annual meeting of the company held in the year 1915, I discovered that the balance showed for the year ending 31st December 1914 was grossly misleading and inaccurate, and did not represent the true financial position of the company, and I charged the said William Frost, the company's auditor, with attempting to assist the directors in their efforts to deceive the shareholders as to the state of the company's affairs. The said William Frost then admitted to me that the accounts were misleading. I voted at such meeting against the said William Frost being re-appointed auditor, but his re-appointment was carried by the defendant Alfred Ernest Grundy, and the other then directors of the company, who were the defendants Abraham Taylor, and Peter Gorton and Gordon H Slorah [?]. The defendant Alfred Ernest Grundy at that time held a control over 750 of the 1,000 shares then issued by the company. The then directors, Taylor, Gorton and Slorah, were in the employ of the company, and each of them had been nominated and qualified to act as a director by the said

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Alfred Ernest Grundy. At each subsequent annual meeting of the shareholders the election of the said William Frost as auditor of the company has been opposed by myself and such other of the plaintiffs as have been present at such annual meetings. The said William Frost has been auditor of the company continuously for many years and since 1915 has held such office against the wishes of all the plaintiffs.

AFFIDAVIT OF MR FRANCIS GRUNDY

Counsel read next the following affidavit: I, Francis Grundy, of "Oak Lodge," Prestwich, in the county of Lancashire, merchant and manufacturer, say, "On the 31st of March 1920, I had an interview with the defendant, Alfred Ernest Grundy, and the Patton Arms Hotel, Warrington, immediately after the annual meeting of the

shareholders of the defendant company, which was held on that day. At the said interview, the defendant, Alfred Ernest Grundy, informed me that the defendant company was going into liquidation, and that Cross, Tetley and Co., Ltd., in which company he stated he had a controlling interest would take over the defendant company's business, and he stated that if the defendant company went into liquidation the shareholders would not get par for their shares. He made this statement to me in order to bring pressure on me to sell my shares at what I consider to be an under-value. The defendant, Alfred Ernest Grundy, has recently been in negotiation with myself and my co-plaintiffs for the purchase of the shares held by me and them, and in such negotiations he offered £120 per share, but this offer had been declined. At the said interview I informed the defendant, Alfred Ernest Grundy, that if the defendant company went into liquidation the shares would be worth at least £150 each. On the 8th April inst. I received an offer from the defendant, Alfred Ernest Grundy, of £130 per share for all my shares, which offer I declined to accept."

MR ALFRED ERNEST GRUNDY'S EVIDENCE

Mr Mather read the following affidavit: I, Alfred Ernest Grundy, of 2, Oxford Road, Birkdale, say in my opinion the defendant company's assets are not worth than £100,000 after deducting the liabilities of the company. The present value of such assets has been increased through the war and the consequent shortage of labour and materials. Since the death of my father, James Grundy, there has been nothing but friction between myself and James Arthur Grundy. At general meetings of the defendant company for considerable years past the said James Arthur Grundy has been the prime factor in opposing every resolution that has been proposed in connection with the company's business. With a view to ending the friction that has hitherto existed between myself and the said Arthur James Grundy, I in April 1919, through my present solicitor, Mr Thomas E A Baker, offered to purchase the whole of the interests of the plaintiffs at the value of £100 per share, and I have made subsequent offers giving on 10th April, 1919, particulars of the wagons, and on 24th April, 1919, offering to have them valued, and on 1st May, 1919, to increase my offer on the basis of such valuation, and on 28th May 1919, I offered to pay for the plaintiffs' shares on the basis upon the basis of a valuation of the whole of the collieries or to sell my shares to the plaintiff James Arthur Grundy upon a similar valuation. On the 3rd November, 1919, I offered 3110 a share and on 18th February, 1920, I offered £120 a share or to sell by a valuation as formerly offered. The correspondence is very voluminous, but the plaintiff James Arthur Grundy, though professing willingness to sell his shares, and those of co-plaintiffs, has never accepted any of the offers made by me nor has ever named any value or figure at which he and his clients are prepared to sell their shares. I have not seen or had made any valuations the defendant company's assets, and my offers have been based upon general outlines only as to what would be approximately the value of the concern. I am of the opinion that the proper value to be placed on the £100 shares is very little (if anything) over the par value thereof. It is quite impossible for any company successfully to be carried on with the existence of the present bitter feud, and it is absolutely necessary in the interests of all concerned that the company should be wound up and a new company take over the assets in which either the plaintiffs or the defendants are not shareholders. It is utterly false that I or anyone else ever intended or suggested to sell any of the assets to Cross, Tetley and Co., Ltd., either at an under-value, or at all. It has always been my intention (so far as I have been able) to dispose of the assets in

the open market for the best price, and if possible in cash. The allegation that I intended or have ever intended to be privy or party to or to seduce or encourage any liquidator of the defendant company to commit any wrongful act is wholly false and utterly unfounded.

The Vice-Chancellor said he did not think it was relevant what had happened in the past. It did not prevent the majority from having a winding up. He understood it was alleged there was a possibility of a sale at under-value. Supposing the evidence was directed to show that the liquidator was a person who was likely to sell at an under-value the remedy was to apply to substitute a liquidator. The two things were separable.

Mr Abbott said that was always on the assumption that they were willing to assent to a winding up, or that a winding up was proper. But if he could satisfy His Honour that they were making use of the statutory powers dishonestly, and in fraud of the plaintiff

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The Vice-Chancellor: They cannot unless the liquidator is a party to it.

Mr Abbott said he could satisfy His Honour as to the power of the court to interfere with the passing of a special resolution to wind up the company if the court was satisfied that fraud was intended. Might he call His Honour's attention to the figures.

The Vice-Chancellor: Perhaps you had better call my attention to where you say fraud is alleged. The fraud you allege I take it is an intention to sell at an under-value.

Satisfy me that there is any fraudulent intent?

Mr Abbot: here is the defendant who has a controlling interest in the company.

The Vice-Chancellor: Some one has to have the control.

Mr Abbott said it was a most important matter for his clients. Defendant had a controlling interest in that company, and he had also a controlling influence in Cross, Tetley and Co., and a managing director of that company. That was in evidence. That was not denied. There was the evidence of Mr Francis Grundy whom he told in an unguarded moment that he intended that Cross, Tetley and Company should take over this undertaking.

The Vice-Chancellor: What does defendant say about this?

Mr Abbott said that defendant did not specifically refer to it at all, but put in a general denial.

The Vice-Chancellor: There is a denial by the defendant.

Mr Abbott: A general denial that he intended to do so. Continuing, Mr Abbott agreed they did not say defendant said he would sell the assets to Cross, Tetley and Co., at an undervalue, but it was quite obvious there was no point in going into liquidation unless he was going to do that.

The Vice-Chancellor: It is not a motion to prevent a sale by the liquidator, but a motion to prevent a winding up.

Mr Abbott said they did not want a winding up at all.

The Vice-Chancellor asked whether they could stop it?

Mr Abbott said that the defendant had said repeatedly that in the liquidation the shares would par.

The Vice-Chancellor ?? that it is an undervalue?

Mr Abbott: A gross undervalue. Your Honour might say if they were going to fetch par defendant is the one to suffer because he holds the majority of the shares, but the answer to that is quite plain – he is not going to suffer, he is going to receive his compensation in the advantage that Cross Tetley's will obtain by taking over these various assets.

The Vice-Chancellor: Suppose I came to the conclusion – I do not say I have – that you were entitled to some relief, but not relief against the winding up; supposing you had made a case that there was some possibility of a sale at an undervalue, and I take the view that it did not prevent the company going into voluntary liquidation, ought you not to amend?

Mr Abbott said that if they stopped the winding up they would gain all they wanted. If he could prove to his Honour that there was no ground for the winding up. It was certainly not an insolvent company.

The Vice-Chancellor: It is the absolute right of three-fourths, the majority.

Mr Abbott: If the right is exercised without fraud and honestly.

After other arguments the Vice-Chancellor said that if Mr Abbott thought he had a case for restraint of sale at an undervalue he ought to ask for an injunction to that effect. He if would like an opportunity of considering that point he gave him leave to amend. He did not think there was sufficient ground to stop a winding up. He would have thought for the benefit of both parties the sooner the company was wound up and the better.

Mr Abbott said that he was speaking perhaps at a disadvantage. One could not always satisfy the court as to what one knows to be the position of the parties.

The Vice-Chancellor: Take your case at its highest. A number of actions were brought against Mr Alfred Ernest Grundy in which he has been shown to be wrong. Is that a reason why he should not exercise the majority powers he has?

Mr Abbott argued that it would be dangerous in the interests of the plaintiffs, who were the holders of the minority of the shares to let the liquidation go on.

The Vice-Chancellor suggested that Mr Abbott should amend his motion to restrain the sale at an under-value, and at the same time bring a summons to ask for the appointment of the plaintiff's nominee as liquidator.

Mr Abbott consulted with his clients and said that having regard to the views of his Honour, they would amend their claim to an injunction to restrain the sale as an under-value.

Mr Mather said his Honour had not yet heard his client's case.

The Vice-Chancellor said, of course, the course proposed was without prejudice to his final decision.

Plaintiffs were given the right to amend the motion by claiming an injunction to restrain the company and the liquidator from selling at an under-value. Also with an opportunity of applying for an order to appoint another Liquidator.

The proceedings were then adjourned?