

Mention of this debt brings up a curious transaction which took place in the year 1922–23, relative to the account of those gentlemen against the company. The incident is roughly as follows: A cheque for some £500 was received by the company from a Wellington firm called the Oppenheimer Casing Company (Limited), and, although Mr. Lysnar's company owed the National Bank some £300,000-odd pounds, this cheque was not put through the bank account by Mr. Lysnar's company, but was handed over direct to Messrs. James and McCarthy. Mr. Lysnar's explanation of this transaction was that it was done to save double exchange. It is needless for us to make any further remark about this transaction than to state that in our opinion it is a very unusual way of doing business, and that we think that Mr. Lysnar, if not the rest of the directors, must have been aware of the usual course of business in matters of this sort. One inference that can be drawn is that the cheque, if remitted to the bank, might have been used in permanent reduction of the company's overdraft.

The principal assets, as we have mentioned above, were the ship and the works. We think it is needless to point out that the question of cost or replacement value cannot be applied to the ship, and we have already pointed out that in our opinion cost or replacement value cannot be applied in the case of the works.

FINANCIAL POSITION.

In our opinion the position of this company was, in September, 1923, a hopeless one. The company then, and at the time of the sale, not only owed considerably more than the fair value of the whole of its assets, but it was destitute of liquid assets, and was entirely at the mercy of its chief creditor. Apart from the fact that it owed the National Bank a very large sum of money, the mortgage on its ship was overdue. Mr. Mountfort, on whose report and evidence Mr. Lysnar seemed to rely considerably, was asked to assume for the sake of argument that the figures of £70,000 for the ship and £221,228 19s. 11d. for the works—that is, land, buildings, and plant—were fair and reasonable, and the following appears at page 913 of the notes:—

If you take those values as fair and reasonable, then the company was insolvent?—

That is so, yes.

So that it would have lost the whole of its capital and over £100,000 more?—Yes.

Notwithstanding the strenuous efforts of counsel for the Poverty Bay Farmers' Meat Company, Limited, to convince us to the contrary, the company then was, in our opinion, to use the words of one witness, "in a hopelessly insolvent condition."

The evidence showed that the National Bank was anxious about this account in February, 1922, and mention is made at page 583 that the Gisborne manager was called to Wellington. At page 559 Mr. Jolly is reported to have said—

We were so dissatisfied with the position of the account that in April, 1922, we began to put aside an amount out of our half-yearly profits to provide for a possible and an expected loss on the company's account. We began that in April, 1922.

So the Commission may take it that at least from April, 1922, you were in a state of anxiety with regard to this company's account?—Yes, and even earlier than that, but for the fact that they assured us they were going to sell the steamer.

CAUSES OF COMPANY'S FINANCIAL POSITION.

At page 565 of the notes an explanation is given as to how the overdraft amounted up against the bank's desire. Mr. Jolly, at page 566, said that if in 1922 he had stopped the account and put the company into liquidation Vestey's or anybody else could have come in and bought the works for less than half the sum that Vestey's gave for them. He went on to say that in 1923 and the year or two prior to 1923 a number of freezing-works in New Zealand had to close up or were in extreme difficulties, and that it was impossible to dispose of the works of these companies except at a great sacrifice.

Early in 1923 three directors of Mr. Lysnar's company approached the National Bank in Gisborne and told the bank there that they were going to approach Vestey's representative. The records show that as soon as Mr. Jolly heard of this he wrote