

account whatever, to any contributory from the company, may be allowed to him by way of set-off against any subsequent call or calls."

In dealing with the question of set-off under that section, in *Grissell's Case*, L.R. 1 Ch. 528, Lord Chelmsford said:

"The Act creates a scheme for the payment of the debts of a company in lieu of the old course of issuing execution against individual members. It removes the rights and liabilities of parties out of the sphere of the ordinary relation of debtor and creditor, to which the law of set-off applies. Taking the Act as a whole, the call payable by a contributory is to come into the assets of the company, to be applied, with the other assets, in payment of debts; to allow a set-off against the call would be contrary to the whole scope of the Act."

And Sir G. Jessel, M.R., in the later case of *Re Whitehouse & Co.*, 9 Ch.D., at p. 599, observed:

"If, therefore, you want a set-off at all, you must show some provision in the Act itself giving the right of set-off, because, in principle, there is no such right. The debt due to the liquidator is distributable among the creditors, and the debt due to the individual from the company would only rank with the view of obtaining a dividend for the creditor for the amount due. The two debts are not applicable to the same purposes, and could not properly be made the subject of set-off."

These decisions show that the ordinary liability of a contributory, when enforced under the English Winding-up Act, is that of a debtor, not to the company, but to the creditors of the company, and that his debt becomes part of a trust fund for such creditors, and that any debt owing by the company to the contributory (other than those mentioned in the section) is not a liability for which the creditors can be held liable but only the company. And, if the provisions of the Canadian Winding-up Act respecting set-off were identical with the English Act, the rule laid down by the Judicial Committee of the Privy Council in *Trimble v. Hill*, 5 App. Cases 342, would make the decisions of the English Court of Appeal binding upon the courts in Canada.

But our Act has two clauses as to set-off which are not in its English original. One of these is the 57th section, which is a re-enactment of the 107th section of the Insolvent Act, 1875, and is similar to the clauses as to set-off found in the Insolvent Acts, 1865 (s. 24) and 1869 (s. 124), and reads as follows: