

dismissed with costs but that no costs had been paid, and that to an execution issued therefor return had been made that plaintiff had no property within the jurisdiction or elsewhere, to respond the execution. It also appeared that plaintiff had made an assignment for the general benefit of creditors, and that on an examination before commissioners it was shewn that he had no real or personal property, book debts or assets, that none of his creditors had been paid, and that anything recovered in the action would belong to his creditors.

*Held*, (following the practice laid down in Chitty's Archbold p. 399) affirming the order made at Chambers, that the case was one in which the plaintiff should be ordered to give security.

*A. Whitman*, for plaintiff. *R. L. Borden*, Q.C., and *A. E. Silver*, for defendants.

Full Court.]

HAMILTON ET AL. v. GRANT ET AL.

[March 13.

*Railway company — Action against shareholder — Defence of previous transfer of shares to directors — Transfer held valid notwithstanding failure of transferees to register — Decisions under English Companies Act distinguished — Transfer prepared by director assumed to have been in proper form — Remedy against shareholders lost through delay — N.S. Railway Act, R.S., 5th series, c. 53, s. 23, sub-s. 1 — N.S. Companies' Act, 5th series, c. 78 — Acts 1886, c. 155 — Acts 1890, c. 63.*

In 1887 H., and others associated with him for that purpose, undertook to buy up a majority of the stock of the S. V. and L. Ry. Co., and entered into an agreement with M. and G. under which the latter were to procure and transfer to them a sufficient amount of stock in the company for that purpose. The stock so acquired and transferred was to become the property of H. and his associates in the proportion of one-fourth each. On September 3rd, 1887, G. received a transfer of 500 shares of stock in the company owned by D., and on the same day these, with other shares held by M., were transferred to the Board of Directors (H. and his associates), and the transfer was approved and accepted by them. Sometime subsequently H. sent to G. a transfer to H. and his associates of all the interest of G. in the stock of the company which G. signed and returned. H. acted as president and a director of the company for some years after, and took a chief part in all the meetings and subsequent transactions, and was a party to proceedings taken by the directors and shareholders to borrow money on the security for the franchise of the company. By the act of incorporation of the company (1886, c. 155, s. 4) it was enacted that "the transfer of shares in this company shall be valid and effectual for all purposes from the time such transfer is made and entered in the books of the company." In an action brought by plaintiffs as trustees representing bondholders against the executrix and executor of