

it should not be interfered with unless there is no other alternative.

The plaintiff, prior to the liquidation of the company, had held some 459 shares of the capital stock; but before that date he had, with the assent of the company, transferred this stock.

On the same day that the company assigned—the 28th February, 1912—Shantz himself executed an assignment for the benefit of his creditors.

In these two ways he had at this time divested himself of all title as stock-holder. He is not shewn to be a creditor of the company.

Apparently for the purpose of giving trouble, the plaintiff obtained an assignment from his wife of one share of stock, which she held. This assignment is put in at the trial, and bears date the 2nd April, 1912. I have suspicion as to that being the actual date of the assignment. This assignment is not shewn to have been in any way approved; and, being made more than a month after the date of the winding-up order, is inoperative as a transfer of stock; but it may operate as an assignment of any dividend which might be payable to the shareholders as the result of the liquidation.

It is by virtue of the supposed ownership of this share that the plaintiff claims a *locus standi* to maintain this action. He issued his writ on the 18th May, 1912, after the contract with Gross, but before a conveyance had been made in pursuance of that contract—the conveyance being dated the 20th May, and registered on the 27th May, after the registration of the *lis pendens* in this action. In the meantime a new company had been incorporated; and Gross, on the 21st May, conveyed to it. This company has been in possession and operating the plant for the year during which this action has been pending; and the \$70,000 paid by Gross has been held by the assignee.

I think the plaintiff fails, for various reasons.

First, he has not been shewn to be either a creditor or shareholder. On the evidence, there is no suggestion that he was a creditor; and I think the transfer to him of the one share of stock after the date of the winding-up order did not make him a shareholder.

Secondly, I do not think that the right of action, if any, is vested in the shareholder. Under the trust deed, the creditors are first to be paid, and the money is then to be held for the company. Even if a shareholder or creditor, the plaintiff does not represent the company. The rights of the company are vested in the liquidator.

In the next place, although Jacob Shantz had not formally