

that Act, a shareholder is liable beyond the amount unpaid on his shares.

I am unable, therefore, to come to the conclusion that the appellant is liable qua shareholder to contribute to the assets of the company under the Winding-up Act.

It is, in the view I take, unnecessary to consider whether, had the appellant not been a director of the company at the time the bonus shares were allotted to him, the liquidator would have been without remedy against him because of the transfers of the shares which he has made. The appellant was a director when each of the transactions which resulted in the allotment to him of the bonus shares was entered into, and, I have no doubt, committed a breach of trust in being a party to the allotment of the shares as fully paid up, as well as in putting them off on his transferees, to the prejudice of the company, as fully paid up shares.

It is also, I think, not open to doubt that the case is one in which it would be proper that an order should be made under sec. 83 that the appellant should contribute to the assets of the company by way of compensation in respect of this breach of trust, and the amount unpaid on the shares in question would seem to be a not unreasonable sum to require him to contribute. That there is no right of set-off against a sum ordered to be paid under the authority of this section is settled by the English cases, and that irrespective of the effect of sec. 101 of the Companies Act of 1862: *Pelly's Case*, 21 Ch. D. 492; *Fletcroft's Case*, *ib.* 519.

It may be that technically it was not open to the official referee to make an order under sec. 83 on the application with which he was dealing. That question was not argued, and I express no opinion upon it.

If the parties are content that I shall deal with the case irrespective of the point I have just mentioned, and to waive it, the order will go dismissing the appeal as to the bonus shares, without costs as between the parties, but the liquidator will be entitled to his costs out of the assets.

If they are not content, the case must be spoken to again.

With regard to cases 891 and 896 mentioned in paragraphs 3 and 5 of the certificate, my present view is that the official referee was wrong in settling the appellant on the list of contributories as to these shares. 891 appears to be a case in which a transfer has been made of shares properly allotted, and I do not see why, having been transferred, the appellant remains liable for what is yet due on them.