

the set-off in question. According to his view, a shareholder in a company incorporated under the Ontario Act can set off, against a claim by a liquidator for the amount unpaid on his shares, any debt due to him by the company, referring to R. S. O. 1897 ch. 191, sec. 37; sub-sec. 2 of which reads as follows: "Any shareholder may plead by way of defence, in whole or in part, any set-off which he could set up against the company except a claim for unpaid dividends, or a salary or allowance as a president or a director of the company."

This has reference to any action against a shareholder in the nature of a sci. fa. by a creditor of the company. . . .

[Reference to *Shaver v. Cotton*, 23 A. R. 426.]

To allow set-off by a shareholder who is also a creditor, would violate the spirit and intention of the Winding-up Act, the ruling object of which is the distribution of the assets of an insolvent company among its creditors *pari passu*; and I cannot construe the provisions of sec. 33 of the Ontario Companies Act as extending the right of set-off to proceedings against shareholders under the Winding-up Act.

It is quite clear upon the authorities that, unless sec. 37 gives the right of set-off as against the liquidator, there is no authority for allowing set-off. . . .

[Re *Mimico Sewer Pipe Co.*, 26 O. R. 289, distinguished.]

As regards the law allowing a set-off of one debt against another, as administered by the Courts, whether of law or equity, both in this country and in England, the mutuality between cross-debts or demands has always been the underlying essential. I can find no case where it has been allowed in favour of a contributory shareholder as against a liquidator; but the cases are very numerous against such allowance.

[Reference to *Maritime Bank v. Troop*, 16 S. C. R. 456; *Emden*, 7th ed., pp. 236-239; *Masten's Company Law*, p. 653.]

There was a good deal of discussion upon the argument as to the effect of the winding-up of the company upon rights conferred upon shareholders by the Ontario Act, Mr. Watson contending that the Ontario Legislature had the power to and did define his client's rights in the statute under which the company was organized, among those rights being the right of set-off against the company, and any creditor suing in respect of unpaid stock, and that these rights could not be curtailed by Dominion legislation.