

still delaying the winding-up of the company, and delaying it to the great prejudice of all who have real and substantial claims against it. But if that be so do not these things call rather for a final disposition of the claim upon its merits, than obstructing it; even though the obstruction be upon valid and proper legal grounds?

As far as I can see, there has never been any adjudication, in any tribunal, upon the merits of the plaintiff's claim. The proceedings in the winding-up matter never went so far as that; there was never anything like a judgment against which either party might appeal.

Then, after many vicissitudes, the case came for trial in May, 1911, and when the defendants first objected to a trial, of the merits, on two more or less technical grounds, namely: (1) because of the winding-up proceedings which stayed all actions against the company without leave, and it was asserted that no leave had been obtained, and (2) because of a Chambers' order staying all proceedings in this action until the costs of another action had been paid; and it was asserted that such costs had not then been paid. The appellant then, conducting her own case, as she had throughout, very unwisely because of her incompetence as a lawyer—answered that the leave had been given and the costs paid, as she could prove, but not then; and asked for a postponement of the trial until she could do so; and that was about to be done when the defendants, firmly objecting, interposed another point and insisted upon the dismissal of the action. This point was that the appellant had assigned absolutely all her claims in this action to a foreign corporation; and they produced that which purported to be a copy of such an assignment. The appellant did not deny that she had made an assignment, but asserted that it was not absolute, but only as security for money which she had borrowed to enable her to prosecute this action. She also seems to have admitted making another assignment, but asserted that as to it the assignees were bare trustees for her.

The learned trial Judge thereupon dismissed the action with costs, on the ground that the appellant had absolutely assigned all her rights in the subject matter of this action.

In that I think he erred; it is now firmly settled that a party cannot, against his will, be non-suited upon his opening of the case merely; that may be insufficient to shew a good cause of action; but the evidence may supply all that