

respect of which he appears upon the list of contributories; and that the onus of discharging himself from the liability which usually flows from the ownership of such shares rests upon him.

The company was created by ch. 118 of 3 Edw. VII. (D.), and by that enactment, sec. 11, the Companies Clauses Act, with some exceptions, is made applicable to it.

Under sec. 30 of that (latter) enactment, every shareholder of the company is liable, individually, to the creditors of the company, until the whole of his stock has been paid-up. But, under sec. 32, no person holding stock as an executor, administrator, curator, guardian, or trustee, is personally liable; the estate and funds in the lands of such persons are. And no person holding stock as collateral security is personally liable, but the person pledging the stock is: sec. 32.

Whilst it is quite clear that there must have been some secret agreement or understanding between the appellant and Leitch as to the stock in question, there is no sufficient evidence to bring the appellant within any of the exceptions from individual liability to which I have referred; and so he has not satisfied the onus of proof which, I have said, rests upon him.

His own testimony is quite too shadowy and uncertain to be the foundation of any legal rights in his favour; he might have made the situation quite clear by the evidence of Leitch, but he did not see fit to adduce it; and so it may fairly be taken that a disclosure of all the facts connected with the shares in question would not have helped him.

There is no evidence upon which it could rightly be found that Leitch is in any way liable to the company, or its creditors, upon the stock in question: there is no sufficient evidence that he ever had any legal or equitable right or title to it, except that which the assignment from the appellant to him may have given; and that assignment was never carried into effect, as the evidence shews, and the appellant's subsequent proxies make plain: proxies which make strongly against the appellant's contention and testimony that he never was a shareholder, as well as against his contention that he was a pledgee only, because it is the pledgor not the pledgee who has the right to represent the stock, and vote as shareholder: sec. 33.

The learned Referee was, I find, right in his conclusion. The appeal is dismissed with costs.