

he testified, but only in the half-hearted manner in which all of his testimony was given, that he never signed an application; never made an application for shares in the company; and that he never was a shareholder of the company; never became one.

Boles, the secretary-treasurer of the company, testified that he had spoken to the appellant about taking stock; and that, though he did not subscribe for him, there was an application on the usual form for 200 shares with the appellant's name signed to it; that it was pasted in the application-book of the company; that a certificate of ownership of the stock was issued by him to the appellant in accordance with the application; and that the appellant's name thereafter appeared, as holder of 200 shares, in the lists of the stockholders made under the requirements of the law.

It is objected that secondary evidence of the application was inadmissible. Though, as I have intimated, I should have preferred better evidence of the loss of the books and papers of the company, I am not prepared to say that the learned Referee erred in admitting the evidence; but, in truth, little turns upon the question, because the fact that the appellant was a holder of the 200 shares of stock is abundantly proved otherwise.

During the inquiry before the Referee, the certificate in the appellant's favour testified to by Boles was found among his papers in the hands of his banker: that might, of course, have happened without his knowledge, though when it was issued it was enclosed by Boles with a letter, addressed to the appellant, in these words: "I enclose herewith stock certificate No. 180, shewing \$6,000 paid thereon." But, however that may be, the appellant, nearly two years after the date of his certificate, and over six weeks after the date of the letter with which the certificate was enclosed, signed a paper purporting to assign to Leitch the 200 shares of the company standing in his name in the books of the company; a fact which is quite conclusive against his contention, and his defective memory, that he never was a shareholder of the company.

Nor is that all: the assignment was not acted upon; and, a month after its date, the appellant gave to Leitch a power of attorney and proxy to vote for him upon his shares in the company; and the same thing was done again, about nine months later.

So that I can have no manner of doubt that the appellant was a shareholder of the company for the number of shares in