

seems to have been the only one in existence at the date of the said agreement?

It was proved at the trial that no extension of the time for manufacture within two years from the date of the patent, as required by sec. 38 of the Patent Act, R. S. C. ch. 69, had been obtained, nor had advantage been taken of the conditions which may be substituted under sec. 44 of that Act. The patent was therefore void at the end of two years from its date. It had no legal existence when the prospectus was put forth by the defendant company on the 1st of April, 1910, and the references in the prospectus and the agreement therein referring to the patent as an existing one were false and misleading.

Under the Ontario Companies Act (1907), 7 Edw. VII., ch. 34, sec. 97, sub-sec. 2; "all purchases, subscriptions or other acquisitions of shares . . . shall be deemed as against the company . . . to be induced by such prospectus, and any terms, proviso, or condition of such prospectus to the contrary shall be void."

An amendment was made to the original statement of claim permitting the plaintiff to set up misrepresentations in the prospectus.

I am of opinion that the misrepresentation as to the existence of the patent was a material one and that under the section of the Companies Act referred to, the contract of sale for the first block of shares is void.

I am also of opinion that the defendant Weaver did falsely and fraudulently represent to the plaintiff in connection with the sale of the second block of 50 shares of the capital stock that the business of the company was so great as to render it necessary to erect a second factory. I find that this was a material misrepresentation made by the agent of the company to the plaintiff on which he relied and by which he was misled and induced to purchase the stock: *Lloyd v. Grace Smith & Co.*, [1913] A. C. 716. The sale of the second block of stock must also be set aside.

I have come to this conclusion on the evidence of the plaintiff and Weaver alone, giving credence to the testimony of the plaintiff as against that of Weaver. I have not taken into consideration the evidence of other witnesses called by the plaintiff to shew that Weaver had made similar representations to those persons when inducing them