

the interest of defendant as his agents, had acted for their own advantage, and were themselves the vendors, and concealed that fact from defendant.

H. L. Drayton, for plaintiff.

J. A. Robinson, St. Thomas, and J. M. Ferguson, for defendant.

MEREDITH, C.J.—The defence was not, in my opinion, proved. According to the testimony of A. E. Wallace . . . his company (plaintiffs) purchased from the firm of A. E. Ames & Co., of which he was a member, 600 shares of the common stock of the Rogers Co. at 50 cents in the dollar. He thought the stock at that price a great bargain; that it was worth at least 70 cents in the dollar, and was likely in the near future to go to par; that he himself bought from his company 100 of the shares at 70 cents in the dollar; that he did not personally make the sale to defendant, or a sale which was made to Honsinger, who acted for defendant in the purchase of the 100 shares bought by him, of another 100 shares at the same price; that these sales were made through a man named Smith, who was sometimes employed by plaintiffs in such transactions; that he (Wallace) made no representations of any kind as to the stock either to Smith or to Honsinger. He further testified that the stock was a desirable investment at 70 cents in the dollar; that it had always paid a dividend of 4 per cent. per annum, and earned enough to pay a much larger dividend.

Smith . . . was not called.

I see no reason for disbelieving the testimony of Wallace, and I give credit to it. The testimony of Honsinger, upon which alone defendant rested his case, fell far short, even if it were accepted in its entirety, of proving the fraud set up or any fraud in the transaction. At most it shewed that, owing to the nature of the relations between him and Wallace, and the previous transactions which they had had, he believed that he was not buying from Wallace or plaintiffs, but that Wallace was acting as his friend or agent in procuring the stock for him, and that he and defendant were getting what they bought at the price which was being paid for it. His testimony, assuming it to be entirely accurate, shewed no reasonable ground for any such belief, nor is there anything in it inconsistent with what Wallace deposed to, unless it be the statement that he had had a conversation with Wallace, 4 or 5 days before the purchase was made, when Wallace, he says, told him that he (Wallace) could get 500