

the said defendant company were then offering for sale shares of the company, the purchase price of which was to be used in the immediate erection of such second factory, whereas the said defendant company and the said Weaver well knew that no orders whatever had been received for any of the said baggage trucks nor was the said company then offering shares for sale the proceeds of which were to be used by the defendant company in the erection of a second factory."

He says he was induced to buy said 100 shares and pay for them in consequence of said representations and found them subsequently to be worthless or worth much less than the price paid.

The plaintiff was a railway conductor with some knowledge of machinery and had had some previous experience in the purchase of shares of stock in companies. He admits that he made a personal examination of the model and its working and relied on his own judgment as to the mechanical utility of the contrivance. He says on the other hand that as to the business part of the matter, as he calls it, he inquired of Weaver and relied on what he was told by him. He says he did not receive a prospectus of the company when buying the stock. The defendant Weaver cannot say positively that he did.

There is evidence that copies of the prospectus and other portions of the company's literature were in Weaver's office and that the plaintiff received some of these. On cross-examination at the trial he admitted that a considerable part of what appears in the prospectus he had seen in the literature he had obtained. In each case the application for the purchase of shares signed by the plaintiff states on its face that he had obtained a copy of the prospectus. I think, therefore, upon the whole evidence, I should find that he did receive a copy of the prospectus at or before the time when he signed the applications for stock. I find also on the evidence and documents that the defendant Weaver was an agent of the company. The evidence is conflicting as to what representations were really made by him. The plaintiff at the trial, when asked what he meant by the "business part of the matter" testified as follows:

"He (Weaver) told me that the company was capitalized at one million dollars and that we had the patents for the Dominion of Canada, for which we paid in stock \$250,000 worth of stock. It was at that time that I subscribed for the fifty shares and paid in full for them."