

that before its date Barber had obtained an option from the owners of mining claims for about \$12,500 and about 25,000 shares of stock in the company to be incorporated to acquire the claims, and that, in order to induce the plaintiff to subscribe, the defendants "and their agents Barber and Greig" fraudulently concealed from the plaintiff the fact that Barber or Barber and his associates were to receive the difference in cash between the \$12,500 and the \$95,000 to be paid him under the agreement; that they also represented that no stock was to be issued other than for cash as set out in the agreement, while in fact about 25,000 shares were to be transferred to the original owners of the claims, and that they represented to the plaintiff, contrary to the fact, that all the information which could be obtained was contained in the agreement. It was further alleged that at the date of the plaintiff's subscription no prospectus of the company had been filed in accordance with the Mines Act; that the plaintiff's subscription was obtained by oral representations; and that he had repudiated his subscription and made no payments. And the plaintiff claimed a declaration that his subscription was not binding upon him, and that he was not a shareholder, and an order for the removal of his name from the stock register.

The defendants, in their statement of defence, set up and insisted upon the plaintiff's agreement to subscribe, denied all fraud and fraudulent misrepresentation, asserted the regularity and validity of all the proceedings, and counterclaimed for the calls.

BOYD, C., found against the plaintiff on the alleged fraud and held him bound as a subscriber for the 5,000 shares, but did not give effect to the counterclaim, as the American Securities Limited were not before the Court. He dismissed both the action and the counterclaim.

Upon the plaintiff's application for leave to appeal directly to the Court of Appeal, his counsel consented to an amendment being made by adding the American Securities Limited as defendants in the action and plaintiffs by counterclaim. This was done, and the pleadings were amended accordingly.

The plaintiff having appealed, the defendants gave notice of a cross-appeal as to the counterclaim, but it was agreed between counsel that it should not be proceeded with, it being understood that such disposition of it was without prejudice to the defendants' right to proceed by action for the recovery of the calls, if entitled to be paid them.