

stock register for these 75 shares, and on 26th March, 1906, a certificate, No. 35, was issued for 10 paid-up shares to the firm for the first note of \$1,000. And the certificate No. 36 was subsequently issued for 10 more shares, and handed to Mr. Carpenter, the president of the company.

The secretary of the company, in answer to my question as to the notice to the firm of the allotment of the stock for \$7,500, said: "To the best of my recollection, and in accordance with my practice, I notified them by registered post;" and, as there was no evidence of non-receipt of such notice of allotment, I must hold that it was given as stated.

The contributory Thurston was examined as a witness on his own behalf, but his answers to questions, especially those relating to the actions against him on the two notes of \$1,000 and \$1,750, and those respecting his investigation of the books and dealings of his firm with the Distributors Co., were so unsatisfactory, and also indicated business carelessness and indifference, that where his evidence conflicts with that of Mr. Shaver and Mr. Carpenter, I give credence to theirs and discredit him where he differs from them.

And so, without going into a detailed criticism of his evidence, I make the following findings:—

1. That Thurston knew there was an agreement between his firm and this company (p. 65).

2. That Thurston had the agreement of 9th September, 1905, in his hand to look it over and read the terms of the agreement, and that the terms were also discussed there with him by Mr. Carpenter.

3. That, although Thurston "positively doesn't remember seeing Mr. Shaver in his office," the evidence of Messrs. Carpenter and Shaver, and the signature of Mr. Shaver as the witness to the agreement and subscription for stock, which were signed and executed in New York, on 9th September, 1905, satisfy me that Mr. Shaver was there present as he states, and his evidence of the interview with Mr. Thurston in his office, I am satisfied, is a correct statement of what occurred between the parties.

4. That the consideration for the \$2,500 of stock was that stated in the memorandum of agreement, and, whether the commission on the business with this firm was large or small, it is clear that a consideration was given for these shares, and for which certificate No. 35 was issued.