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ANGLIN, J.

NOVEMBER 10TH, 1906.

TRIAL.

FISCHER v. BORLAND CARRIAGE CO.

Company—Subscription for Stock—Promissory Note given for Price—Misrepresentation — Condition—Absence of Allotment—Acceptance of Plaintiff as Shareholder — Estoppel—Recovery on Note.

Action for delivery up and cancellation of a promissory note given by plaintiff in payment for stock in the defendant company. Counterclaim to recover the amount of the note.

R. S. Robertson, Stratford, for plaintiff.

J. C. Makins, Stratford, for defendant.

ANGLIN, J.:—The making of the note is admitted. Plaintiff pleads that it was obtained by misrepresentation, and also that it was taken upon condition that, if plaintiff should not before maturity of the note receive certain moneys owed him by his brother, the note should be void and should be returned to him, and his obligation to take and pay for stock should be cancelled. The evidence failed to establish either of these obligations. No misrepresentation was proved; and the note was not taken upon any such condition.

But in the course of the trial it appeared that the directors of defendant company had by resolution, not stating any terms, authorized the secretary-treasurer, one Mil-