

to recover \$500, the amount of 5 shares of plaintiffs' capital stock for which defendant subscribed on 20th April, 1892, with interest from the dates on which the calls became payable.

Defendant set up that he was induced to become a subscriber for shares by the representations of plaintiffs' agent by whom he was solicited, to the effect that Mr. G. A. Cox and Mr. H. A. Massey had each subscribed or promised to subscribe for \$10,000 of stock, upon the condition that subscriptions for \$50,000 were obtained on or before 1st January, 1893; that defendant's subscription was required in order to assist in making up what was still required of the \$50,000; and that his subscription would not be binding unless the \$50,000, including the subscriptions of Messrs. Cox and Massey, were fully subscribed on or before 1st January, 1893.

It was proved that neither Mr. Cox nor Mr. Massey had subscribed or promised to subscribe for \$10,000 each, either conditionally or unconditionally, nor did they do so at any time after defendant's subscription, nor was \$50,000 subscribed on or before 1st January, 1893.

BOYD, C., held that the representations were proved to have been made; that, by reason of them, defendant was induced to subscribe for the stock "as a sort of escrow; it was not to be effective or operative unless the \$50,000 was obtained within the limited period of time."

G. H. Watson, K.C., and J. B. Dow, Whitby, for plaintiffs.

E. G. Porter, Belleville, and S. T. Medd, Peterborough, for defendant.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.), was delivered by

MOSS, C.J.O.:—For plaintiffs it was contended that defendant failed to prove the representations. They were distinctly sworn to by defendant, and were not contradicted. It appears that the agent by whom they were made died some years before the commencement of the action, but, as the Chancellor pointed out, if plaintiffs were prejudiced for want of his evidence, it was due to their delay in bringing the action. The Chancellor gave credit to defendant's testimony, and there is no law applicable to this case which disables a