

The debenture scheme called for 30-year bonds, guaranteed by the Imperial Trust Company as to principal. All that this in fact meant, as shewn by an agreement of the 6th April, 1916, was that of each \$100 debenture the trust company set apart enough to produce \$100 by the accumulation of interest on the sum so set apart at the end of the 30 years—the surplus of the sum so set apart being all that was given to the company as working capital.

By the agreement the company undertook to give the trust company \$50,000 paid-up stock for distribution among those who might take bonds—the intention being that this should be contributed by the promoters. Only \$20,000 of these debentures were sold, and a commission of 25 per cent. was paid for procuring the subscriptions.

On the 22nd May, 1917, the company changed its name to “Oak Tire and Rubber Company Limited.”

Stock had been sold or subscribed for; and, according to the returns, the total stock issued, including the \$184,000 issued for the purchase-price, was a little over \$300,000 of the \$400,000.

This was the situation when C., an expert salesman of stock and bonds, entitled to a commission of 25 per cent. on all sales made, sought to induce the plaintiff to subscribe.

The instrument used by C. was called a “statement.” It was a “prospectus” within the meaning of sec. 99 of the Companies Act, R.S.O. 1914 ch. 178, as it was “issued for the purpose of being used to promote or aid in the subscription or purchase of” the shares of the company. It was silent as to the actual affairs of the company, and stated only the result of the manufacture of an hypothetical number of tires at an assumed cost, which would leave \$275,000 per annum “available for reserve and dividends on \$250,000 common stock This estimate is on the basis of 100 tires only per day, whereas, as shewn, the plant has a capacity of 400 tires per day.” This indicated a general lack of fairness and honesty.

Notwithstanding that only a little more than \$300,000 shares had been issued in the way indicated, this “prospectus” bore on its face the statement, “Capital authorised \$400,000, all common shares, full paid, and non-assessable.” The statement made to the plaintiff of the amount of stock issued was substantially accurate; but what the plaintiff complained of was, that it was made in such a way as to indicate that this amount of money had been put into the business—the payment of the bulk of the amount by the transfer of assets being concealed. The issue of debentures was also concealed, and the plaintiff was told that there was no incumbrance. The “statement” indicated that all the earnings would be available for the common stock.