

your hands if you are, within three months, dissatisfied with your bargain, and we will sell them and pay your money back." After the application was signed, Nesbitt told plaintiff to meet him at a bank, and when plaintiff paid the money, Nesbitt would give him the agreement signed by himself and Acheson. Plaintiff paid the money, but never received the agreement. This action was brought against the company and Nesbitt to recover back the money so paid, the plaintiff alleging false and fraudulent representations by Nesbitt.

The action was tried at Stratford without a jury.

J. P. Mabee, K.C., for plaintiff.

E. Coatsworth, for defendant company.

R. S. Robertson, Stratford, for defendant Nesbitt.

MACMAHON, J.:—I find that Stokes was induced to part with his money on the promise that the agreement would be given to him at the bank when the money was paid; and he went there for the purpose of concluding the transaction on the basis of the agreement being executed by both Stokes and Acheson. . . . Nesbitt did not impress me favourably, and I could not, in the face of Acheson's denial of his having consented to sign any agreement, find that a promise was ever made by Acheson to Nesbitt to sign such an agreement. Nesbitt having got the plaintiff's money under the circumstances stated, I think he deliberately planned a fraud upon Stokes, whose money he obtained.

Before any allotment of stock was made to Stokes, he wrote to the company that the agreement had been promised him, and that Acheson repudiated having made any promise to Nesbitt to sign the agreement. So that, in fact, before there was any allotment of stock made or any stock certificate issued, the defendant company was aware of the alleged fraud of their agent.

Mr. Coatsworth contended that the agreement which Nesbitt promised to give Stokes was an independent collateral agreement of the agent acting on his own behalf, and not within the scope of his authority as agent for the company. The giving of the agreement referred to led up to and formed part of the very contract into which plaintiff consented to enter. On the strength of the agent's representation that Acheson had promised to execute the agreement, Stokes parted with his money, which was immediately forwarded by the agent to the defendant company. Nesbitt had no authority to make the fraudulent representation to Stokes which induced him to part with his money, but, as I have already said, that fraudulent representation formed part of the contract of which the company got the benefit.