

ascertain, at the very latest, when shares are allotted to him, whether there is any discrepancy between the prospectus and the act of incorporation.¹

The parties to the issue of a fraudulent prospectus are also amenable to the criminal law. The Criminal Code² provides that "every one is guilty of an indictable offense and liable to five years' imprisonment who, being a promotor, director, public officer, or manager of any body corporate or public company, either existing or intended to be formed, makes, circulates or publishes or concurs in making, circulating or publishing any prospectus, statement or account which he knows to be false in any material particular, with intent to induce persons (whether ascertained or not) to become shareholders or partners, or with intent to deceive or defraud the members, shareholders or creditors or any of them (whether ascertained or not) of such body corporate or public company, or with intent to induce any person to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof."³

9. **Promotor.**—The word "promotor" has no technical legal meaning and applies to any person who takes an active part in inducing the formation of a company, whether he afterwards becomes connected with the company or not.⁴

In order to constitute a person a promotor, it must be shewn that he was a promotor in fact, and not merely that he intended or had agreed to promote.⁵ But it is submitted as impossible to lay down any general rule to determine who are and who are not pro-

¹ See the judgments in *Peel's Case*, Law Rep. 2 Ch., 674; *Lawrence's Case* and *Kinkaid's Case*, *ib.* 412; *Wilkinson's Case*, *ib.* 536; also in *Downes v. Ship*, L. R. 3 H. L., 343, and *Oakes v. Turquand*, 2 *ibid.* 325.

² Sec. 365.

³ The expression "property" includes every kind of real and personal property, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods; not only such property as was originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise. See 3 (v), Criminal Code.

⁴ See an article by Adelbert Hamilton in 16 Am. L. Rev., 671; and see *Emma Mining Co. v. Lewis*, 48 L. J. (C. P.), 257. See also article in 2 L. N., p. 265, for article from London Law Journal as to what is a promotor.

Ladywell Co. v. Brookes, 34 Ch. Div., 398; 35 Ch. Div., 400, 410; *Gover's Case*, 1 Ch. Div., 182.