

had notice of such contract, be deemed fraudulent on the part of the promoters, directors and officers of the company who knowingly issue such prospectus or notice."

The fact that a prospectus may be, and very often is, upon the issue of new capital, sent out long after the formation of a company, as well as before, renders this section difficult of application. A clause should be inserted in the prospectus to the effect that applicants for shares waive all claims against directors for infringement of the section, but Lord Justice Lindley considers that the validity of such a clause is doubtful.<sup>1</sup> Mr. Palmer, however, considers such a clause valid and effective, if properly framed and free from fraud.<sup>2</sup> Much difference of judicial opinion has been expressed in England in the attempt to give a satisfactory interpretation to this ill-expressed enactment, the phraseology of the corresponding section of the English Act of 1867 being identical with our own.

**3. What Contracts must be disclosed.**—It is now pretty well settled, however, that what the section in effect requires is, that the date and parties to every *material* contract made by the company, or by the directors or promoters, shall be stated in the prospectus; that is, every contract which would be likely to influence the judgment of an intending applicant as to whether he should or should not take up shares.<sup>3</sup>

It is generally concluded that the section is not confined to contracts to be performed by the company, but extends to all contracts, whether in writing or not,<sup>4</sup> entered into by the persons mentioned, and directly or indirectly affecting the formation, management, capital or other property of the company, or the position of the directors or officers of the company with respect to the company, its promoters or vendors, and which might reasonably influence a person in determining whether to apply for shares or not.<sup>5</sup>

<sup>1</sup> Lindley Comp., p. 92.

<sup>2</sup> Palmer Comp., p. 241, citing *Bensusan v. Clarke*, W. N. (1897), 175; *Palmer Company Precedents*, Part 1, p. 88. See also *Buckley Comp.*, pp. 574 & 575; *Greenwood v. Leather, etc., Co.* (1899), W. N., 26.

<sup>3</sup> *Sullivan v. Metcalfe*, 5 C. P. D., 465; *Gover's Case* 1, ch. D. 200; *Craig v. Phillips*, 3 Ch. D., 722; *Palmer Comp.*, p. 240.

<sup>4</sup> *Arkwright v. Newbold*, 17 Ch. L. 301; *Capel v. Sims Composition Co.*, 58 L. T., 807 (W. N., 1888, p. 97).

<sup>5</sup> *Sullivan v. Metcalfe*, 5 C. P. D., 465; *Twycross v. Grant*, 2 C. P. D., 469; *Jury v. Stoker*, 9 L. R. Ir., 385; *Cornell v. Hay*, L. R., 8 C. P., 328.