

from those of its stockholders. No court, it is believed, is prepared to go to this extent. It would lead to inextricable difficulties in the determination of the corporate interests, and to the result, rejected in *Salomon v. Salomon & Co.*, supra, that the receiver of a corporation, whose stock was exclusively owned by the promoters during the entire life of the corporation, could recover profits made by them in a sale of their property to the corporation.

The court might more properly have looked beneath the technical distinction between the first and second groups of cases, and, viewing the transactions as in essence the same, have administered equitable relief. Cf. *Erlanger v. New Sombrero, etc., Co.*, supra. This apparently is the underlying basis of the Massachusetts decision. But that court professed to adopt the business view that the real corporation was one composed of the contemplated stockholders and that the knowledge of the promoter before the completion of such a corporation was not the knowledge of the entity. This theory, however, is logically open to criticism, and is unnecessary to support the true ratio decidendi. It might also, perhaps, be argued that, under the circumstances of the principal case, the corporate interests should be determined by the interests of the contemplated stockholders as well as by those of the present stockholders. This would be a modification of the extreme entity theory, and perhaps represents the view of the English Court of Appeals in *In re British, etc., Box Co.*, supra, holding that an issue of stock to the public directly after the adoption of the transaction would be conclusive evidence of fraud on the corporation. It could hardly be regretted had the Supreme Court, exercising its equitable powers, brushed aside its technical argument and allowed the corporation relief.

It is probable, however, that, on the facts of the case, the subscribers had an individual remedy against the promoters. Though in most cases in which personal relief has been given the subscriber, the facts shew misrepresentation, the broad ground of decision is that the promoter does not treat with the subscriber at arm's length, but in a fiduciary relation by virtue of which