

section of the English Act,¹ that when the section is applicable it gives to shareholders a remedy against the promoters, etc. personally.²

12. Liability for contracts made before incorporation.—It is now well established that persons engaged in forming a company are not partners.³ The object of the promoters being to form a company, which is a sort of partnership with limited liability, it is held that persons who hold themselves out as members of such associations do not thereby hold themselves out as partners, either with each other or with their co-members. And in order that a person engaged with others in forming a company may be liable for their acts, he must have authorized them to do those acts as his agent, or have ratified such acts.⁴ It has been recently held in the Province of Quebec that the signing of the petition for incorporation of a company by the provisional directors renders them jointly and severally liable for the fees of an attorney employed by the promotor to incorporate the company and before the company has, in fact, been incorporated.⁵

It has also been held in the same Province by the Court of Queen's Bench, confirming the Court of Review, which reversed the decision of the Court below, that where defendant caused a prospectus to be published of a company to be formed, and on the strength of certain representations therein, which were not correct, the plaintiff entered into a contract for two years for an expedition to the Yukon, at a salary of \$60 per month, the defendant was responsible for the consequences of the representations contained in the prospectus, no company having been formed at the time it was issued, as therein alleged, nor subsequently incorporated, and defendant was liable to plaintiff for his salary.⁶

¹Sect. 38.

²*Charlton v. Hay*, 31 L. T., 437; 23 W. R., 129; *Tycross v. Grant*, 2 C. P. Div., 469.

³*Raynell v. Lewis*, 15 M. & W., 517; *Wyld v. Hopkins*, 15 M. & W., 517; *Capper, Ex parte*, 1 Sim. N. S., 178; *Hutton v. Thompson*, 3 H. L. C., 161; *Bright v. Hutton*, 3 H. L. C., 368; *Norris v. Cottle*, 2 H. L. C., 647.

⁴*See Lindley Comp.*, 143. In Quebec held: That an agent who makes a contract in behalf of a corporation which has no legal existence, is personally liable to the third party, with whom he contracts. *Pearson v. Lighthall*, 7 R. J. Que., S. C., 1895, 201. See also *Ellis v. Drummond*, S. C., 1893, 4 Que., 473.

⁵*Auger v. Cornellier*, R. J. Q. B., 1892, 293.

⁶*Bonhomme v. Bickerdike*, Court of Review. Montreal, November 28th, 1899. Confirmed by Court of Queen's Bench, April 18th, 1900 (not yet reported).