

mischief is likely to result from blurring the distinction between carelessness and fraud, and equally holding a man fraudulent, whether his acts can or cannot be justly so designated." Lord Lindley's deductions from these observations are, that, if the matter to be enquired into is fraud, it is actionable, if it is not fraud, but merely carelessness, it is not.¹

A director can be rendered liable only for his own personal fraud or for the fraud of his co-directors or of other agents of the company which he has either expressly authorized or has connived at.² A provisional director may have the authority of his co-directors to take the prospectus around, and, upon the strength of its statements, to canvass for subscriptions for stock, but he is not the agent of the other directors to make, and has no implied authority to make, any representations outside of the prospectus by which, if false and fraudulent, they could be made responsible for such false and fraudulent representations.³

As already stated, a person who has been induced to enter into a contract by the fraudulent conduct of those with whom he has contracted is entitled to rescind such contract, but he must do so within a reasonable time after his discovery of the fraud. In such case the contract is voidable, not void.⁴ But the contract must be avoided, or that must be done which is equivalent to avoidance, before the commencement of the winding-up.⁵ The fact that the company is going on and trading, and the rights of shareholders and others varying from day to day, is a most material circumstance to be taken into consideration when deciding whether the repudiation has taken place within a reasonable time, for after any considerable length of time the rights of third parties will be injuriously affected by repudiation.⁶ In this case a person must repudiate his shares within the shortest limit of time which was fairly possible in such a case.⁷ He must also

¹ (1891) 2 Ch., at p. 466.

² See *Petrie v. Guelph Lumber Co.*, 11 Can. S. C. R., at p. 455; *Weir v. Barnett*, 3 Exch. Div., 32; *Cargill v. Bower*, 10 Ch. Div., 502.

³ *Petrie v. Guelph Lumber Co.*, 11 Can. S. C. R., at p. 455, 456.

⁴ Per *Baggallay, J.*, in *In re Scottish Petroleum Co.*, 23 Ch. Div., 413.

⁵ *Ibid*; *Oakes v. Turquand*, L. R. 2 H. L., 235; *Reese River Co. v. Smith*, L. R. 4 H. L., 64, 77, 78; *Whiteley's Case* [1899], W. N., 34; [1899], 1 Ch., 770.

⁶ In *re Snyder Dynamite Projectile Co.*, 3 The Reports, 289, 292, 293, as to rescission of contract and laches.

⁷ *Scholey v. Central Ry. of Venezuela*, L. R. 9 Eq., 266 n.