Must they, then, account for the whole difference in price? I think so. It was their clear duty as trustees to have disclosed the whole transaction. Instead of that, they neglect this duty and induce the company to purchase property as having been bought for $20,000, which really cost much less. The measure of damages in that case would be the loss to the company, and that is the difference in value of the leases in fact and as represented. The value in fact, in the absence of other evidence, is the price paid, and therefore the defendant Cook should pay the difference between the $20,000 represented value and the actual amount paid for the leases originally. In the circumstances of this case, no evidence should now be allowed as to the value of the leases in fact.

Hirsche v. Sims, [1894] A. C. 654, may be looked at as containing some remarks not inapplicable here.

I have read the many cases cited by counsel and some others, but I find nothing authoritatively laid down opposed to my conclusions.

In addition to the claim of the company, it may well be that each of the persons defrauded has a cause of action. This is not the same cause of action as that of the company, and the trial Judge was right in not giving relief of that character in this action. But the damage to these will not necessarily be made good by the payment to the company. Some may have sold, or there may be other circumstances. Therefore the judgment should have expressly provided that it was without prejudice to any action to be brought by any one claiming to have been defrauded. The position of Boerth canot be successfully distinguished from that of Cook; they were partners in this fraudulent scheme.

With the modification mentioned, the judgment below should be affirmed, and the appeal dismissed with costs.

BRITTON, J., gave reasons in writing for the same conclusion.

FALCONBRIDGE, C.J., also concurred.