

received thereunder, and that every member was to be deemed to have had notice of the terms of the agreement; and A and B were placed on the register as holders of fully paid shares. Upon the winding up of the company, it was held that the insertion of the names of A and B as lessees in the lease of S. quarry was a mere piece of machinery for enabling them to get payment for their services in the promotion of the company; and that B was liable for misfeasance in accepting, while director of the company, the shares for his services in promoting the company, and for allowing the shares to be issued to A, and that he must pay to the liquidator the nominal amount of the shares allotted to him and to A. In another case,¹ which was an action for damages, a promotor who procured himself to be appointed metal broker to the company on certain terms which were disclosed, also managed to obtain a large sum in addition out of the promotion money, which was added to and hidden in the price paid by the company for the property it bought. He was compelled to refund what he had surreptitiously obtained.

The concealment of the promotor's profits is sometimes sought under the form of exaggerated commission. If the promotor claims that he is entitled to a commission, he may fairly retain a trifling percentage, but where, under that guise, he retains a large part of the purchase money, it would make that an untrue representation which might be substantially true if the amount were trifling.²

11. Actions against Promoters by the Company and individual shareholders.—The company, being the body with whom, by its agents, the contracts with promoters are entered into, must usually be the body to set them aside,³ and although individual shareholders who were parties to the fraud may be benefited, yet, so far as courts of equity are concerned, the mere fact that the punishment cannot be apportioned, will not avoid justice being done.⁴

But the holding in our Supreme Court case of *Beatty v. Neelon*,⁵

¹ *Emma Silver Mine Co. v. Lewis*, 4 C. P. D., 396.

² *Emma Silver Mining Co. v. Grant*, 17 Ch. Div., 122; *Bagnall v. Carlton*, 6 Ch. Div., 371.

³ *Beatty v. Neelon*, 13 Can. S. C. R., 1; *New Sombrero Phosphate Co. v. Erlanger*, 5 Ch. Div., 73, per Jersel, M.R. Confirmed in H. L. 3 App. Cas., 1218.

⁴ See *New Sombrero Phosphate Co. v. Erlanger*, 5 Ch. Div., 73, per Jersel, M.R., and *Northrup Mining Co. v. Dinock*, 27 N. Scotia, at p. 158, per Townshend, J.; *Kerr Fraud and Mistake*, p. 390.

⁵ *Supra*.