

While it is manifest from the evidence that it was the intention of Cook from the beginning to form a company to take over the leases, and while the receipts given by him to his victims indicated this, it may not necessarily follow that he must account for secret profits. . . .

The receipts read: "Received from . . . the sum of one thousand dollars in payment for a one-twentieth interest in certain oil leases consisting of 2,647 acres, more or less, located in the county of Essex, Ontario, for which I agree on or before the first day of September, 1905, to form an oil development company, absorbing the above mentioned oil leases, and to give to the said . . . a certificate duly authorized by the said prospective company, entitling him to a one-twentieth interest in said company. John W. Cook."

I take it that, all that was done in forming the company being done in pursuance of the agreement set out in the receipts, Cook not objecting, but himself a member of the committee, the company must be considered as having been formed by Cook. Had he objected to the company being formed as it was, the case might be different, but, in the circumstances, he must be held to have formed the company in performance of his contract set out in the receipts—and I consider it a matter of perfect indifference that there were nominal shareholders and nominal directors who affected to act for the company. Cook then was, in my judgment, so far a "promoter" of the company; and I am unable to distinguish this case in principle from *Gluckstein v. Barnes*, [1900] A. C. 240. . . .

[In re Lady Forrest Gold Mine, [1901] 1 Ch. 582, distinguished.]

In the case now under consideration we must hold, upon all the evidence, that there was the grossest fraud practised upon those who were expected to form the company: and upon the formation of the company the fraudulent representations were continued to the directors of the company in that they were mere figure heads, and the real actors were Cook, the tort-feasor, and Edgar, his innocent victim.

But this resulted in the sale to the company of property not of Cook and Boerth, but of a syndicate of 20 persons, including these—and consequently (as regards the company) the gain to Cook and Boerth was not the difference between the pretended and actual price of the leases, but a fractional portion thereof.