

fused to pay; and this action was brought. He defended on the ground that he had been induced to subscribe by the fraud of the promoter; and the case came down for trial before the Chief Justice of the Exchequer, at Hamilton, without a jury.

The learned Chief Justice found the facts in favour of the defendant, and dismissed the action. The plaintiff company now appeals.

There is no doubt that if shares be subscribed for on the faith of a prospectus, shares issued on such a subscription, if it is fraudulent and the fraud induced the subscription, are not to be forced upon the subscriber, "for the prospectus is the basis of the contract for shares," and the company by issuing stock thereon ratifies and adopts the prospectus: *Pulsford v. Richards* (1853), 17 Beav. 87; *Jennings v. Boughton* (1853), 17 Beav. 234; and it makes no difference if the prospectus be issued before incorporation: *Karberg's Case*, [1892] 3 Ch. 1. See also *Henderson v. Lacon* (1867), L.R. 5 Eq. 249; *Ross v. Estates Investment Co.* (1868), L.R. 3 Ch. 682; *Lynde v. Anglo-Italian Hemp Spinning Co.*, [1896] 1 Ch. 178; *Roussell v. Burnham*, [1909] 1 Ch. 127; *In re Pacaya Rubber Co.*, [1914] 1 Ch. 542.

But where a person petitions for a charter and becomes an original shareholder named as such in the charter, the same rule does not apply. Any misrepresentation made is the act of a promoter, not the company; the company, not being in existence, cannot make any misrepresentation, and there is no ratification (if there could under the circumstances be ratification) by the company: *In re Northumberland Avenue Hotel Co.* (1886), 33 Ch. D. 16; *In re Rotherham Alum and Chemical Co.* (1883), 25 Ch. D. 103; *Clinton's Claim*, [1908] 2 Ch. 515.

The matter came up squarely in *In re Metal Constituents Limited*, [1902] 1 Ch. 707, where the decision is rested both on the ground I have stated and on the ground that by signing the memorandum the applicant became bound not only as between himself and the company but as between himself and the other persons who should become members.

The distinction between the case of a shareholder who is allotted stock by the company and one who is a petitioner and a charter member was not present to the mind of the learned Chief Justice, but it is thoroughly established and is unassailable on principle or authority.

In this view it is unnecessary to consider whether the alleged misrepresentations were in fact made or if made whether they were such as would give the defendant the right to repudiate.