

WHAT IS A PROMOTER?

blighted by Courts of Appeal; and the history of his birth and growth may be clearly traced. In the beginning, the promoter, like the world, was legally without form and void, and he did his best to cover himself with darkness. It was to the interest of those persons who represented him in the flesh to assert his insignificance. He loudly protested that he was nobody; he was not a director, trustee, or agent of the company; he had never put himself forward in any shape or form; and, if he ever had any existence entailing tangible duties, they all disappeared when the company was formed, as the chrysalis disappears when the butterfly spreads its wings. If he was anything at all, it was an honest capitalist who advanced money when no one else was able to do so, and who did a great deal of work for a very reasonable percentage. All this was very plausible; but still the hard fact remained that, while every one else had lost money over the company, the promoter alone had made money. This gave shareholders some confidence in the strength of the law to make promoters disgorge. Still, there were many legal difficulties in the way. Equity was thought more likely to assist the shareholder than Common Law: but in Lincoln's Inn there was a respectable body of opinion that the promoter would never be held to fill a fiduciary relation to the company. Men who have since risen to the bench thought that the doctrines of trusteeship had so far become stereotyped, as not to admit of this new development. The Courts, however, early began to decide against the promoter. Not only did they clothe him with the duty of the highest degree of good faith, but they pronounced him a trustee. The word was fatal. Calling a man a trustee is giving a dog a bad name; and it is a mercy to hang him at once. The promoter, when attacked, was not only deprived of his magnificent profits, but was even stripped of his commission; and in one case it became a question, when the company offered its promoter, out of charity, a reasonable remuneration in its own statement of claim, whether the Court would sanction such a compounding with the evil one.

The case of the *Emma Silver Mining*

Company v. Lewis & Son, decided last week, is the latest of the series of cases in which the war has been carried into the promoter's camp. It may be said to be the apex of the pyramid, of which the *New Sombrero Company v. Erlanger*, 48 Law J. Rep. Chanc. 73, is the base, *Bagnall v. Carlton*, 47 Law J. Rep. Chanc. 30, is the middle. The Sombrero case decides that a promoter is in a fiduciary relation to the Company, thus finally putting an end to the doubts which have been expressed on the point. This relation being established, the Court of Appeal decided in Bagnall's case that it involves the restoration to the company of the promotion money which has been intercepted out of the subscribed capital. Thirdly, the Common Pleas, in the *Emma Mine* case, held that there is no legal definition of a promoter; but that if a man has contingent interest in the subscribed capital of a company when formed, and does anything to help along its formation, or the subscription to its shares, a jury may well find him to be a promoter. The consequences of that relation had already been applied by Mr. Justice Denman to the case of the Messrs. Lewis. His decision, on further consideration, is reported in the April number of the *Law Journal Reports*, and may be looked upon as a further application of Bagnall's case. We have thus the three questions dealt with—Is a promoter a trustee? is he liable for profits? and who is a promoter?

Practically, perhaps, the third of these questions is as important as any. Most who have had anything to do with companies would rather be sure that they have not made themselves promoters at all, than run the risk of having it proved that they have done something which promoters ought not to do. In order thoroughly to understand the *Emma Mine* case, it is necessary to know the history of the action. It was an action claiming damages against the Messrs. Lewis for conspiring with the vendor of the mine to palm it off on the company at an excessive price. It also claimed 5,000*l.*, being the value of 250 shares given by the vendor to the Messrs. Lewis. Upon the question of conspiracy the jury were divided in opinion; but they found