

motors.¹ The question in each case must be, what has the co-called promotor done to make himself liable to the demand made against him? What fraud or breach of trust has he committed or been party or privy to?² If none, he is under no liability.

A promotor cannot be considered an agent or trustee for the company, which is not in existence, but the principles of the law of agency and trusteeship have been extended to meet his case. He stands in a so-called fiduciary relation to the company which he promotes, and is accountable to it just as if the relationship of principal and agent or of trustee and *cestui que trust* had existed.³

10. Contracts of Promotor with and at expense of the Company.

—A clear distinction must be made between a trust for a company of property acquired by promotors and afterwards sold to the company and the fiduciary relationship engendered by the promotors, between themselves and the company, which exists as soon as the latter is formed.⁴ There is no rule of law which prohibits a person from bringing about the formation of a company, for the purpose of selling property acquired by him to the company, for a profit.⁵ The promotor does not necessarily hold such property in trust for the prospective company, but he stands in what, for want of a better term, has been called a fiduciary relation to the latter, and, if he sells to them, must not violate any of the duties devolving upon him in respect to such relationship. If he sells, for instance, through the medium of a board of directors who are not independent of him, the contract may be rescinded provided the property remains in such a position that the parties may be restored to their original state.⁶ The mere

¹For particular cases see *Great Wheal Polgooth*, 53 L. J. (Ch.), 42 (Sollicitor); *Lydney & Wigpool Co. v. Bird*, 31 Ch. Div., 328 (Vendor's Agent); *Cornell v. Hay*, L. R. 8 C. P., 328.

²See *Lydney, etc., Co. v. Bird*, 33 Ch. Div., p. 93; *Whaley Bridge Co. v. Green*, 5 Q. B. D., 109.

³*New Sombbrero Co. v. Erlanger*, 5 Ch. Div., 73, 112, 118, 123; 3 App. Cas., 1218; *Emma Mining Co. v. Grant*, 11 Ch. Div., 918, 936; and see *In re Hess Manufacturing Co.*, 23 Can. S. C. R., 644.

⁴*In re Hess Manufacturing Co.*, 23 Can. S. C. R., 644; *New Sombbrero Phosphate Co. v. Erlanger*, 3 App. Cas., 1218.

⁵*Ibid* and *Gover's Case*, L. R. 1 Ch. Div., 182; *Albion Steel Co. v. Martin*, L. R. 1 Ch. Div., 580.

⁶*In re Hess Manufacturing Co.*, *supra*; and see *Northrup Mining Co. v. Dimock*, 27 Nova Scotia, 112.

Defendants entered into a verbal agreement with D to dispose of a gold