

REVIEW OF THE CHARGES.

IV. In all of these charges the onus of proof must be on the petitioner. Some have not been proved, and others are matters that should be dealt with by the law-courts, for where the law provides an ample remedy that remedy should be taken, as it is not for this Committee to take up the functions of the law-courts. Your Committee will therefore dispose of these latter charges first, namely :—

(1.) “Promoters receiving secret profits”: This charge must refer to (a) salary for office and secretary, and (b) directors’ fees. In regard to (a), Mr. Holsted was simply Cook and Gray’s servant, and managed the companies, and had nothing whatever to do with the flotations. Mr. Holsted managed fourteen companies for Cook and Gray, and received on an average £75 a year for each, or a total of £1,050 a year, and in the books of the companies he debited the companies with owing these amounts to Cook and Gray, and credited the companies with having paid the various payments thereon to Cook and Gray. Therefore any profits made out of this by Cook and Gray were not secret profits, but were known to the shareholders, all of whom could have known that Mr. Holsted was only the servant. Neither were the directors’ fees secret profits. Therefore this charge has not been proved at all, unless it refers to brokerage, which is dealt with hereafter.

(2.) “One promoter being also a director and receiving director’s fees, as per table attached, yet not attending meetings”: Mr. Cook drew director’s fees, and attended in some cases only one meeting, and in others no meetings; but if there is any wrong in this the remedy is with the shareholders, who may elect some one else. A director may do work for his company other than attending meetings, and the company should not be restricted in their choice of a director.

(3.) “That the Ngahere Company’s claim is not situated where stated in prospectus”: The evidence upon this charge is very much more in favour of Mr. Cook than petitioner; but even if the charge was proved, the law on the subject has been clearly laid down in the Promoters’ and Directors’ Liability Act, and therefore Parliament has provided an ample remedy, which should have been taken if any wrong had been committed.

(4.) “That, on the grounds of misrepresentation, Mr. Gray, one of the promoters of the Golden Grey Company, and others, repudiated payment of calls on shares upon which the firm of Cook and Gray had received brokerage”: In reference to this charge, we have the evidence of Mr. Gray, who swears that his partner, Mr. Cook, induced him to take up shares on the understanding that only the application-money would require to be paid. Mr. Gray and others were summoned by the company in the Magistrate’s Court at Dunedin, and defended the actions on the above grounds. Mr. Cook, in answer to this charge in his sworn evidence, question 35, page 8, says, “The Magistrate decided there was no misrepresentation without hearing my side at all.” Mr. Cook took this evidence away with him, and corrected it and returned it, yet this statement of his was not correct, for the Court held that no agreement entered into between Mr. Cook and the defendants could bind the company, and therefore the issue of this charge was not decided by the Court at all. Mr. Abbott also gave evidence on this charge, and admitted that certain of the companies were formed for speculative purposes; that Mr. Cook had induced him to take shares on the understanding that the application-money (1s. per share) only should be called up, and that he (Mr. Cook) would have the control of the companies, and they would not be gone on with unless the state of the share-market warranted it. The evidence of Mr. Gray and Mr. Abbott was denied by Mr. Cook, who, it appears, also by writing took over Mr. Abbott’s shares, but still retained them in Mr. Abbott’s name on the share register. There is also the evidence among the other documents of the company of letters written by other shareholders which corroborate the statements of Mr. Abbott and Mr. Gray, and the weight of evidence concerning this charge is against Mr. Cook; but whether or not these shareholders are to be relieved of their liability on these shares is purely a matter for the Courts to decide in proceedings between them and Mr. Cook. The part, however, of this charge which concerns your Committee is the formation of a company merely for speculative purposes on the share-market. This is against public policy, and is purely a species of gambling, and should be stopped by legislation. All parties knowingly entering into such a transaction are *participes criminis*.

(5.) “The formation of secret rings for speculative purposes only by promoters and directors at a time when the public were being asked to subscribe money to be used for mining purposes”: The only evidence we have of this is what is mentioned in the previous paragraph. It has not been proved that what had been done was kept secret from the other shareholders. If, however, it was kept secret, then it would be unfair to the other shareholders, who would be induced to take up shares on the representation of the names of those subscribing. Legislation is necessary to prevent the occurrence of such a case as that alleged to have taken place in this matter.

(6.) “Vendors making a profit on liquidation on shares which have cost them nothing”: This has not been proved.

(7.) “Shares being ‘dummied,’ and commission received on them”: If this had been done, then a remedy is already provided by law, and therefore the Committee have no further remarks to make.

V. As to the other charges, we wish to say,—

(8.) “One person or firm being (a) the promoter, (b) broker, (c) secretary, and (d) director, and (e) the registered offices of companies being in his or their offices”: It has been proved that Mr. Cook—or, rather, the firm of Cook and Gray, of which he was the managing partner in Dunedin, and had the sole control there—was the vendor to the company, also the promoter, secretary, broker, and director, and the office of the company was Cook and Gray’s office. It will be necessary to briefly review these different positions held by Mr. Cook in order to ascertain if his duties in one position would conflict with those in another position. As “vendor” to the company Mr. Cook is the seller, and as “secretary” and “director” he is in a position of trust for the other shareholders to purchase from himself, so he becomes both a buyer and a seller. Again, being the “promoter” of the company, he stands in a fiduciary position to the company he promotes: he virtually creates a body to purchase from himself. The promotion gives him an unlimited