upon your Lordships that interest may not be so excessive as to amount to *prima facie* evidence that advantage was taken, or a market was made of the borrower's necessity or weakness, or that an unconscionable use has been made of the power over him which the lender was in a position to exercise, so as to entitle the borrower to relief under the statute, or that the transaction was not reasonably consistent with any course of fair dealing, and therefore the borrower is entitled to relief. It will, of course, be always competent for the lender to show that, despite the excessive rate of interest, the transaction was in fact fair and reasonable, but to permit a lender to succeed in retaining the benefit of a bargain securing to him gains apparently so inordinate as those which the lender attempted to secure in this case, without giving satisfactory proof of the character which I have mentioned, would, in my opinion, altogether defeat the object of this remedial legislation. In the present case the transaction seems to me on the evidence altogether inexplicable on any system of fair dealing. The borrower was solvent, and known to be solvent. The risk was trifling, the rate of interest extravagant, the clause of forfeiture quite unnecessary for the protection of the lender's interest, and exorbitant in its character. The associate of and co-operator with the lenders, who negotiated the business, practically made the contract, received commission from both sides, and shared the spoils, was, though present in Court, not examined. Nor was any evidence given to show how the borrower, assuming that he was sane, ever came to submit to terms so onerous as those imposed upon him. In my view, therefore, the transaction *prima facie* came within the terms of the statute and the mischief that it was designed to remedy, and I agree that the appeal should be dismissed with costs.

Appeal dismissed.

Counsel for Appellants—Upjohn, K.C.—Hohler. Agent—B. Barnett, Solicitor.

Counsel for Respondents—P. Ogden Lawrance, K.C.—M. Macnaghten. Agents—Fowler & Company, Solicitors.

HOUSE OF LORDS.

Thursday, July 19.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Davey, James of Hereford, Robertson, and Atkinson.)

RUBEN AND LADENBERG *v.* GREAT FINGALL CONSOLIDATED COMPANY.

Company — Share Certificate Fraudently Issued by Secretary — Responsibility of Company—Principal and Agent.

The appellants in good faith advanced a sum of money to the secretary of a company for his private purposes on the security of a share certificate of the company. The certificate was in point of form correct, bearing the seal of the company, and appearing to be signed by two of the directors and countersigned by the secretary. The seal of the company was however affixed to it fraudulently by the secretary and without authority, and the signatures of the two directors were forged by him.

Held that the company were not estopped from pleading the invalidity of the certificate, and were not responsible to the appellants for the loss they had sustained through the fraud of the secretary.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., STIRLING, and MATHEW, L.JJ.), who had reversed a judgment of KENNEDY, J.

The facts of the case appear sufficiently from the considered judgment of their Lordships *infra.*

LORD CHANCELLOR (LOREBURN)—In this case Kennedy, J., gave judgment in favour of the plaintiffs, but stated that his decision was governed entirely by the authority of a previous case, and that his own opinion was in favour of the defendants. The Court of Appeal gave judgment in favour of the defendants, and in my opinion they arrived at a right conclusion. The question is raised by the fraud and forgery of a man named Rowe. Rowe was secretary of the defendant company. He applied to the plaintiffs, who are stockbrokers, to procure for him a loan of £20,000 in order to enable him to purchase 5000 shares in the defendant company. Accordingly, the plaintiffs arranged with a firm of bankers to advance the money upon a transfer of the shares to their names. Rowe forged a transfer in the name of one Storey as transferor. The transfer was duly executed by the bankers as transferees. And then the plaintiffs delivered it to Rowe in exchange for a certificate. The certificate purported to state that the bankers were the registered proprietors of 5000 shares; it purported to be signed by two directors, the seal was affixed to it, and it was countersigned by Rowe himself as secretary. In fact, the names of the two directors were forged by Rowe, and the company's seal was affixed by Rowe fraudulently, and not for or on behalf of or for the benefit of the defendant company, but solely for himself and for his own private purposes and advantage. Upon this the bankers advanced £20,000. When the fraud was discovered the plaintiffs were obliged to repay to the bank the sum of £20,000, and brought this action against the defendant company upon the ground that they were liable for the fraud of Rowe. The only other circumstance needing notice is that Rowe was admittedly a proper person to deliver certificates on behalf of the company. I cannot see upon what principle your Lordships can hold that the defendants are liable in this action. The forged certificate is a pure nullity. It is quite true that persons dealing with limited liability companies are not bound to inquire into their

indoor management, and will not be affected by irregularities of which they had no notice. But this doctrine, which is well established, applies only to irregularities that otherwise might affect a genuine transaction. It cannot apply to a forgery. Another ground was pressed upon us—namely, that this certificate was delivered by Rowe in the course of his employment, and that delivery imported a representation or warranty that the certificate was genuine. He had not nor was held out as having authority to make any such representation or give any such warranty. And certainly no such authority is given by the simple fact that he held the office of secretary and was a proper person to deliver certificates. Nor am I able to see how the defendant company is estopped from disputing the genuineness of this certificate. That, indeed, is only another way of stating the same contention. From beginning to end the company itself and its officers with the exception of the secretary had nothing to do either with the preparation or issue of the document. No precedent has been quoted in support of the plaintiffs' contention except the case of *Shaw* v. *Port Philip and Colonial Gold Mining Company* (50 L. T. Rep. 685, 13 Q.B. Div. 103). I agree with Stirling, L.J. in regarding that decision as one that may possibly be upheld upon the supposition that the secretary there was in fact held out as having authority to warrant the genuineness of a certificate. If that be not so, then in my opinion the decision cannot be sustained. For these reasons the judgment of the Court of Appeal ought to be affirmed.

LORD MACNAGHTEN — This case was argued at some length and with much ingenuity by the learned counsel for the appellants. In my opinion there is nothing in it. Ruben and Ladenburg are the victims of a wicked fraud. No fault has been found with their conduct. But their claim against the respondent company is, I think, simply absurd. The thing put forward as the foundation of their claim is a piece of paper which purports to be a certificate of shares in the company. This paper is false and fraudulent from beginning to end. The representation of the company's seal which appears upon it, though made by the impression of the real seal of the company, is counterfeit and no better than a forgery. The signatures of the two directors which purport to authenticate the sealing are forgeries pure and simple, and every statement in the document is a lie. The only thing real about it is the signature of the secretary of the company, who was the sole author and perpetrator of the fraud. No one would suggest that this fraudulent certificate could of itself give rise to any right or bind or affect the company in any way. It is not the company's deed, and there is nothing to prevent the company from saying so. Then, how can the company be bound or affected by it? The directors have never said or done anything to represent or lead to the belief that this thing was the company's deed. Without such a representation there can be no estoppel. The fact that this fraudulent certificate was concocted in the company's office, and was utterred and sent forth by its author from the place of its origin, cannot give it an efficacy which it does not intrinsically possess. The secretary of the company, who is a mere servant, may be the proper hand to deliver out certificates which the company issues in due course, but he can have no authority to guarantee the genuineness or validity of a document which is not the deed of the company. I could have understood a claim on the part of the appellants if it were incumbent on the company to lock up their seal and guard it as if it were a dangerous beast, and as if it were culpable carelessness on the part of the directors to commit the care of the seal to their secretary or any other official. That is a view which once commended itself to a jury, but it has been disposed of for good and all by the case of *Bank of Ireland* v. *Trustees of Evans' Charities* (5 H. L. Cas. 389) in this House. Of all the numerous cases that were cited in the opening, none, I think, is to the point but *Shaw* v. *Port Philip and Colonial Gold Mining Company*, and that, as it seems to me, cannot be supported unless a forced and unreasonable construction is to be placed on the admissions which were made by the parties in that action. I think that the appeal must be dismissed with costs.

LORD DAVEY—To use the language of a distinguished Judge of the last generation, the appellants' case seems to me as full of holes as a colander. There is not a step in their title which is not tainted with fraud going to the root of it. Storey, whose name was used as transferor, had not 5000 shares to transfer, and his name was forged to the transfer. There were, therefore, no shares, and there was no transfer. The seal on the certificate was, indeed, a genuine impression of the company's seal, but it was placed there without any authority, and (as concisely stated by Lord Lindley in his work on companies) "A document of that kind, if there is any intent to defraud, is a forged instrument." The signatures of the two directors who purported to countersign were also forgeries. The appellants have no doubt been grossly defrauded, but the question is whether they can shift the loss on to the shoulders of the innocent. The company has done literally nothing in the transaction, and could do nothing, because in no stage of the transaction did it come before the board of directors, which alone was entitled to speak and act for it. It is admitted that Rowe was the proper person to deliver certificates to those entitled to them. From this harmless proposition the appellants slide into another and a very different one, that it was the secretary's duty to warrant on behalf of the company the genuineness of the documents which he delivered. There is no evidence that any such duty or power was in fact intrusted to Rowe, and it is too

great a strain on my powers to ask me to imply it from the mere fact of his being the secretary or the proper person to deliver documents. But even if I could make the implication that the appellants desire I do not think that it would assist them, for I agree with the learned Judges in the Court of Appeal that every part of the legal proposition stated by Willes, J. in his well-known judgment in *Barwick* v. *English Joint Stock Bank* (16 L. T. Rep. 461, L. Rep. 2 Ex. 259) is of the essence of it. Willes, J.'s, words are these—"The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit." Where, therefore (as in the present case), the secretary is acting fraudently for his own illegal purposes, no representation by him relating to the matter will bind his employers. And in my opinion it would be a matter of reproach if the law were otherwise. The reason for the qualification, I suppose, is that a representation made under such circumstances, whether express or implied, is also part of the same fraud, and cannot rightly be considered to be made by the servant as agent or on behalf of his master. Finally, it is in my opinion open to serious doubt whether on the facts of the present case the parties relied on Rowe's representation at all. The evidence indicates that they refused to do so because they declined to part with their money on Rowe's certifying the transfer (as it is called), and if they acted in reliance on the certificate apart from any representation their case of course fails, for nobody can pretend that the certificate itself created any estoppel against the company. I guard myself from expressing any opinion whether, even if the certificate had been genuine but issued under some innocent mistake, it would have been an estoppel in favour of the present appellants. It will be remembered that the appellants themselves propounded the forged transfer to the company for registration of the supposed transferees' names. I share the doubt expressed by my noble and learned friend Lord Macnaghten in *Balkis Consolidated Company* v. *Tomkinson* (69 L. T. Rep. 598, (1893) A.C. 396), "whether under such circumstances a person ought to be permitted to rely upon a representation innocently made to which he has in a sense and to a certain extent contributed." The recent decision of this House in *Mayor of Sheffield* v. *Barclay* (93 L.T. Rep. 83, (1905) A.C. 392) may be found to have some bearing upon this point. It is, however, unnecessary to express any opinion upon it on the present occasion. I am of opinion that the appeal should be dismissed.

LORD JAMES OF HEREFORD—Concurring as I do in the judgments which have been delivered, I do not propose to add to them except by making one observation. This is one of the cases in which it is said that one of two innocent persons must suffer. I cannot help observing that the decision now about to be given may cause those who receive certificates in commercial life to be anxious, and to be shaken in their confidence in the validity of those certificates. But in this case a transferee has a safeguard which a company has not. A company cannot protect itself against the fraud of its secretary, and if the company has to bear the burden of this loss of course the loss placed upon companies will be very great, and they must guard against it. But—certainly theoretically, I do not know if it is quite the case practically—the transferee has a safeguard. He can always apply to the two directors whose names appear upon the certificate and inquire from them whether those signatures are valid and genuine signatures or not. If the answer is that they are genuine the certificate of course is valid; if the answer is "No, I have not signed that certificate," then he is aware that it is invalid. I do not know whether in commercial life transferees will take the trouble to inquire of directors whose signatures appear on certificates whether those signatures are genuine or not, but at any rate there is that power if they choose to exercise it.

LORD ROBERTSON and LORD ATKINSON concurred.

Appeal dismissed.

Counsel for the Appellants—Rufus Isaacs, K.C.—Danckwerts, K.C.—J. D. Crawford. Agents—Gilbert Samuel & Company, Solicitors.

Counsel for the Respondents—Sir R. Finlay, K.C.—Eldon Bankes, K.C.—Bremner. Agents—Ashurst, Morris, Crisp, & Company, Solicitors.

HOUSE OF LORDS.

Thursday, July 26.

(Before the Lord Chancellor (Loreburn), Lords Davey, James of Hereford, and Robertson.)

OGDENS LIMITED *v.* WEINBERG.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Assignation—Terms of Assignation Held to Carry Right to Sue Action for Damages of Breach of Contract.

The trustee of a bankrupt trader assigned to a third party the goodwill of a bankrupt's business, "and also all the book and other debts, securities, credits, effects, contracts, and engagements belonging or appertaining to the said business to which the vendor as such trustee is entitled."

At the time of his bankruptcy the trader was in a position to bring an action of damages for breach of contract against a wholesale firm which had undertaken to divide a certain bonus and profits among its customers