

and taken property with the view of continuing solè stockholders, after a considerable interval of time issue new stock to the public. *In re British, etc., Box Co.* (1881) L.R. 17 Ch. Div. 467. Fraud cannot be predicated of such a dealing. Midway, lie two groups of cases. First, the promoters or their dummies become incorporators or directors of the newly formed corporation, make the sale before complete organization, and then call for subscriptions from outsiders. Here they have generally been held liable. *Hayward v. Leeson* (1900) 176 Mass. 310; *Erlanger v. New Sombrero, etc., Co.* (1878) L.R. 3 App. Cas. 1218. Second, the promoters, having designedly issued a few shares of stock to themselves, adopt the sale, and immediately offer the remainder to the public. In a case of the latter sort the United States Supreme Court has recently held, contrary to the view in England, *Society of Practical Knowledge v. Abbott* (1840) 2 Beav. 559; (*semble*), *In re British, etc., Co.* (1881) L.R. 17 Ch. Div. 467, and in Massachusetts on the same facts, *Old Dominion, etc., Co. v. Bigelow* (1905) 188 Mass. 315, that the corporation has no remedy. *Old Dominion Copper Mining and Smelting Co. v. Lewisohn* (1908) 28 Sup. Ct. Rep. 634. The decision stands on the ground that, since all the stockholders for the time being knew the facts, their unanimous act cannot be a fraud upon the corporation. The court properly distinguishes on its facts *Erlanger v. New Sombrero, etc., Co.*, *supra* (belonging to the first group), though its reasoning would undoubtedly cover the principal case.

Two other courses were open to the court. In the first, the court would be called upon to exaggerate the accepted distinction between the corporate entity and its stockholders. It was suggested in *Society of Practical Knowledge v. Abbott*, *supra*, and argued in *Salomon v. Salomon & Co.*, *supra*, that the corporation is an entity so distinct, that it may be defrauded by the unanimous act of its stockholders. Hence, for a fraud upon the corporate interests, a new stockholder, like a minority stockholder, could sue in the name of the corporation. The argument is specious in assuming the interests of the corporation distinct