

tors named in the letters of incorporation, and they were the persons to whom the defendant F. B. Deacon's offer to sell was submitted. They represented 50 out of the 1,000 shares which comprised the capital stock of the plaintiff company, and the remainder were to be offered to the public. . . .

The affair was really arranged between the defendant F. B. Deacon, the vendor and at the same time the real manager of the plaintiff company, and the defendant Mooney, the president of the plaintiff company, who was at the same time interested in the selling concerns.

There is no evidence upon which it could be fairly concluded that the directors as a board acted with full knowledge of the transaction and of the relations of the vendor towards the plaintiff company, which they were supposed to represent. Nor can it be held that they formed an independent board, dealing not for themselves alone but for and in the interests of the persons to whom they intended to apply to become shareholders and invest their money in the company. In the then existing state of affairs, it could not be said that "the executive management of the company was in the hands of a thoroughly independent board of directors, a board over which (the vendor) could exercise no influence, and which would, as the expression is, keep him at arm's length in making the bargain." See *In re Hess Manufacturing Co.*, 23 S. C. R. 644, at p. 658.

To place the affairs of the plaintiff company in the hands of such a board was a duty which the defendants F. B. Deacon and Mooney, in their relation to the plaintiff company both as promoters and as manager and president, respectively owed to the future shareholders of the plaintiff company. It is not pretended that any of the transactions which have been disclosed, or probably only partly disclosed, in this action, were made known to any shareholders other than the members of the board, as to four of them only to the limited extent shewn by the testimony.

The result seems to have been that the defendant F. B. Deacon was enabled to obtain for the property and assets which he was selling to the company, of which he was one of the promoters and an officer, a price which brought him a very large profit. This he might possibly have been able properly to make, had the bargain for it been made in a different fashion. But, as the matter was initiated, carried on, and concluded, the plaintiff company was not fairly or properly represented in the bargaining, and for this the defendants F. B. Deacon and Mooney were responsible. And, therefore, to the extent to which each shared in the profit made, he should be held liable.