

fact, however, that the directors who purchase for the company do not constitute an independent board, is not *ipso facto* a sufficient ground for setting aside the contract.<sup>1</sup> He must make a full and fair disclosure of his interest and position with respect to the property which he desires to sell to the company.

If a promotor purchases property for the company from a vendor who is to be paid by the company when formed, and by a secret agreement with the vendor, a part of the price, when the agreement is carried out, comes into the hands of the promotor, that is, a secret profit which he cannot retain,<sup>2</sup> and if any part of such secret profit consists of paid-up shares of the company, issued as part of the purchase price of the property, such shares might, in winding-up proceedings, be treated, if held by the promotor, as unpaid shares upon which he may be made a contributory.<sup>3</sup>

In a recent English case, a syndicate was formed to purchase the property of a company, which was being wound up, and which property was subject to debentures and a mortgage, and to resell it to a company to be formed by them, or some other purchaser. Four members of the syndicate were appointed trustees to purchase and resell the property and promote the company; they were also empowered to purchase, as an interim investment, any debentures of the old company. The syndicate bought the mortgage and some of the debentures at a figure much below what they realized, and later on purchased the property itself. An agreement was then made between the syndicate trustees and one Close, as trustee for the intended company, by which the vendors agreed to sell the property to the proposed company for £40,000 more than they paid for it. It was also provided in the agreement that its validity should not be impeached on the ground that the vendors as promoters or otherwise stood in a fiduciary relation to the company, nor should the vendors be required to account for any profits made or to be made by them by the purchase of any debentures or other charges on the property. The articles of the company, when formed, ratified this agreement. The four trustees of the syndicate became the first directors of the company. The prospectus made reference to the above agreement

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<sup>1</sup> Per Lindley, M. R., and Collins, J., in *Lagunas Nitrate Co. v. Lagunas Syndicate*, C. A. [1899] 2 Ch., 392.

<sup>2</sup> *Hess Manufacturing Co., supra.*

<sup>3</sup> *Ibid.*