

MACLAREN and MAGEE, JJ.A., concurred.

MEREDITH, J.A., for reasons stated in writing, was of opinion that upon the plaintiffs' case the negligence of the deceased was established; that the appeal should be allowed; and (in this dissenting) that the action should be dismissed.

JUNE 15TH, 1910.

*STRATFORD FUEL ICE CARTAGE AND CONSTRUCTION CO. v. MOONEY.

Company—Promoters—Sale of Businesses—Profits—Liability to Account for—Intention to Sell Shares to Others—Directors not Independent of Vendors—Want of Knowledge—President and Manager of Company Interested as Vendors.

Appeal by the plaintiffs from the judgment of MACMAHON, J., 14 O. W. R. 489, dismissing the action without costs.

The plaintiff company, now in liquidation, and John Brown, the liquidator, brought this action, under the authority of an order made in the liquidation proceedings, to recover from the defendants \$27,691.76, being moneys for which they were accountable to the plaintiffs. This sum represented part of the price (\$79,600) agreed to be paid and actually paid by the plaintiff company in cash and debts assumed and paid, for the acquisition of the business and property of the Deacon Company Limited, an incorporated company, and the business and property of another business concern carried on under the name of the Stratford Cement Block Company. The defendants did not deny the receipt by each of them of sums which in the aggregate made almost the sum of \$27,691.76, but they denied all liability to account therefor to the plaintiffs.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, and MACLAREN, JJ.A.

G. C. Gibbons, K.C., and R. T. Harding, for the plaintiffs.

Wallace Nesbitt, K.C., and R. S. Robertson, for the defendant Mooney.

G. G. McPherson, K.C., for the defendant G. R. Deacon.

F. H. Thompson, K.C., for the defendant F. B. Deacon.

* This case will be reported in the Ontario Law Reports.