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## SHOULD TIPPECANOE COUNTY COMMISSIONERS V. REYNOLDS BE OVERRULED?

GEORGE P. RYAN\*

Is the relationship existing between a director<sup>1</sup> and a shareholder of the same corporation such that if the director purchases stock in the corporation from the shareholder, he is not bound to disclose to the shareholder all the material facts known to him officially which affect the value of the stock? Does the director owe a different obligation to the shareholder than a trustee does in dealing with his *cestui que trust*? May the director deal with the shareholder as with a stranger—free from the burden or duty of disclosure? Is the rule the same where there is a prospective substantial increase in the value of the stock, known to the director but unknown to the shareholder, and shareholder has little if any opportunity to ascertain the facts? If a director cannot be considered as a trustee for the shareholder, is the director under no duty of disclosure?

The Supreme Court of Indiana in *Tippecanoe County Commissioners v. Reynolds*,<sup>2</sup> decided in 1873, held that the above questions must be answered in the affirmative. This decision has never been overruled and presumably is the law in Indiana to-day. In that case the defendant was a director, officer and stockholder of a corporation in which the plaintiff owned stock. The defendant, through a secret agent, purchased the plaintiff's stock at a price which the plaintiff considered fair in the light of the facts known to it. The plaintiff believed that the corporation was heavily burdened with debt, whereas, the corporation had sufficient funds to pay off its debt. The defendant, by reason of his official position, knew the true financial condition of the corporation and the true value of the stock. The defendant had reason to believe if the assets of the corporation were sold, the value of each share of stock would greatly exceed the share price paid the plaintiff. Subsequent to the purchase of the plaintiff's stock, the defendant then being the only shareholder, sold the corporation to a third party. The

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<sup>1</sup> In this article the word "director" is used to include also any executive officer of a corporation.

<sup>2</sup> 44 Ind. 509, 15 Am. Rep. 245 (1873).

sale resulted in a handsome profit on the stock purchased from the plaintiff. The plaintiff brought the action to recover the difference between the price it received for its stock and the price it would have received if it had been paid the value of the stock measured by the price paid for all the stock at the time the corporation was sold. On these facts the court held that there was nothing in the case to indicate that the purchase was infected with fraud or that there was a violation of any special trust or confidence reposed in the defendant by the plaintiff. The court reviewed a number of decisions which held that a director is not a trustee for a shareholder and concluded that, since this was true, the director was at liberty to deal with the shareholder in the same manner as with a stranger. Chief Justice Downey dissented on the ground that the defendant occupied a relation of trust and confidence toward the plaintiff.

Although there is a sharp conflict in the authorities, the weight of authority is unquestionably in accord with *Tippecanoe County Commissioners v. Reynolds*. This view is based upon the proposition that a director of a corporation is not a trustee for the individual shareholder and therefore has the same right to buy stock from a shareholder as any one else has. The rule laid down is that "while directors occupy a trust relation to the corporation which they direct, their duty does not apply to the stockholder in the sale and purchase of stock. Dealing in its own stock is not a corporate function. In buying or selling stock, directors may trade like an outsider, provided they do not affirmatively act or speak wrongfully, or intentionally conceal facts with reference to it. There is also the qualification that no other relation of trust exists between the parties."<sup>3</sup> This is the rule in Arizona,<sup>4</sup> California,<sup>5</sup> Delaware,<sup>6</sup> Illinois,<sup>7</sup> Indiana,<sup>8</sup>

<sup>3</sup> *Shaw v. Cole Mfg. Co.*, 132 Tenn. 210, 177 S. W. 879 (1915), L. R. A. 1916B 706.

<sup>4</sup> *Steinfeld v. Nielson*, 15 Ariz. 424, 139 Pac. 879 (1914) (purchaser of the stock, though not actually an officer or a director of the corporation, was regarded as sustaining such a relation to the corporation and its stockholders since, as the majority stockholder, he dominated its affairs through the board of directors).

<sup>5</sup> *Bacon v. Soule*, 19 Cal. App. 428, 126 Pac. 384 (1912).

<sup>6</sup> *Cahall v. Lofland*, 12 Del. Ch. 299, 114 Atl. 224 (Ch. 1921), *aff'd*, 13 Del. Ch. 384, 118 Atl. 1 (Ch. 1922).

<sup>7</sup> *Bawden v. Taylor*, 254 Ill. 464, 98 N. E. 941 (1912); *Hooker v. Midland Steel Co.*, 215 Ill. 444, 74 N. E. 445 (1905) (director offered to return shares at price paid, with interest).

<sup>8</sup> *Tippecanoe County Commissioners v. Reynolds*, 44 Ind. 509, 15 Am. Rep. 245 (1873).

Kentucky,<sup>9</sup> Louisiana,<sup>10</sup> Massachusetts,<sup>11</sup> Michigan,<sup>12</sup> Minnesota,<sup>13</sup> Missouri,<sup>14</sup> New Jersey,<sup>15</sup> New York,<sup>16</sup> Pennsylvania,<sup>17</sup> Tennessee,<sup>18</sup> Utah,<sup>19</sup> Washington,<sup>20</sup> West Virginia,<sup>21</sup> the federal courts,<sup>22</sup> England,<sup>23</sup> and Canada.<sup>24</sup>

This majority rule, for the most part, is based upon a statement in *Smith v. Hurd*,<sup>25</sup> decided by the Supreme Court in Massachusetts in 1847. There a special action on the case was brought by a stockholder in a bank against the directors for nonfeasance and misfeasance of official duty. The court held that the stockholder could not maintain the action, and said: "There is no legal privity, relation, or immediate connection, between the holders of shares in a bank, in their individual capacity, on the one side, and the directors of the bank on the other. The directors are not bailees, the factors, agents, or trustees of such individual stockholders." As applied to that case the above statement produced the right conclusion and is, strictly speaking, correct. The difficulty has arisen in applying this statement to a dif-

<sup>9</sup> *Waller v. Hodge*, 214 Ky. 705, 283 S. W. 1047 (1926); *Barth v. Fidelity & Columbia Trust Co.*, 188 Ky. 788, 224 S. W. 351 (1920).

<sup>10</sup> *In re Shreveport National Bank*, 118 La. 664, 43 So. 270 (1907).

<sup>11</sup> *Blabon v. Hay*, 269 Mass. 401, 169 N. E. 268 (1929).

<sup>12</sup> *Buckley v. Buckley*, 230 Mich. 504, 202 N. W. 955 (1924); *Walsh v. Goulden*, 130 Mich. 531, 90 N. W. 406 (1902).

<sup>13</sup> *Rogers v. Prewry*, 196 Minn. 16, 264 N. W. 225 (1935); *Seitz v. Frey*, 152 Minn. 170, 188 N. W. 266 (1922); *accord*, *Dutton v. Barnes*, 162 Minn. 430, 203 N. W. 414 (1925) (director and shareholder held joint adventurers).

<sup>14</sup> *Wann v. Scullin*, 210 Mo. 429, 109 S. W. 688 (1908).

<sup>15</sup> *Crowell v. Jackson*, 53 N. J. L. 656, 23 Atl. 426 (1891); *Connolly v. Shannon*, 105 N. J. Eq. 155, 147 Atl. 234 (Ch. 1929), 39 Yale L. J. 582, 14 Minn. L. Rev. 530.

<sup>16</sup> *Carpenter v. Danforth*, 19 Abb. Pr. 225, 52 Barb. 581 (N. Y. 1868).

<sup>17</sup> *Krumbhaar v. Griffiths*, 151 Pa. 223, 25 Atl. 64 (1892).

<sup>18</sup> *Shaw v. Cole Mfg. Co.*, 132 Tenn. 210, 177 S. W. 879 (1915), L. R. A. 1916B 706; *Deaderick v. Wilson*, 67 Tenn. 108 (1874).

<sup>19</sup> *White v. Texas Co.*, 59 Utah 180, 202 Pac. 826 (1921); *Haarstick v. Fox*, 9 Utah 110, 33 Pac. 251 (1893).

<sup>20</sup> *Voellmeck v. Harding*, 166 Wash. 93, 6 P. (2d) 373 (1931); *Haverland v. Lane*, 89 Wash. 557, 154 Pac. 1118 (1916); *O'Neile v. Ternes*, 32 Wash. 528, 73 Pac. 692 (1902).

<sup>21</sup> *Poole v. Camden*, 79 W. Va. 310, 92 S. E. 454 (1916).

<sup>22</sup> *Du Pont v. Du Pont*, 242 Fed. 98 (D. D. Del. 1917); *Du Pont v. Du Pont*, 256 Fed. 129 (C. C. A. 3rd, 1919) (directors formed syndicate to purchase stock from shareholders). *But cf.* *Strong v. Repide*, 213 U. S. 419 (1909).

<sup>23</sup> *Percival v. Wright*, L. R. 2 Ch. 421 (1902).

<sup>24</sup> *Allen v. Hyatt*, 17 D. L. R. 7 (1914) (facts held to create fiduciary relation).

ferent set of facts, that is, to the situation where the director purchased stock from the shareholder without disclosing material facts affecting its value, and in reasoning from the premise that the director is not a trustee for the individual shareholder to the conclusion that the former does not owe any duty under any circumstances to the latter.

In *Blabon v. Hay*, a case involving the purchase of stock by two of the directors who, a year later, sold it for more than twice the amount of the purchase price, *Smith v. Hurd* was cited with approval and followed. The court said: "The fact that the defendants were directors created no fiduciary relation between them and the plaintiff in the matter of the sale of his stock."<sup>26</sup>

The question was presented to the Massachusetts court again in 1933 in *Goodwin v. Agassiz*.<sup>27</sup> The directors had purchased, through agents on the Boston Stock Exchange, shares of stock in the company at a time when the directors knew of, but had communicated to no one, a geologist's theory as to the possible existence of copper deposits in the region where the property of the company was located. The exploratory operations were started in 1925 and completed unsuccessfully in May, 1926. The geologist's theory was formulated in March, 1926, and was known to defendants shortly thereafter. The purchase of the stock in question was made in May, 1926, immediately after plaintiff learned that the exploratory operations had been terminated. The court held, as it had in the case of *Blabon v. Hay*, that there was no liability on the part of the directors for the reason that the directors of a corporation do not occupy the position of trustee toward the individual stockholders and that, in this case, the plaintiff failed to prove actual fraud. The court did, however, indicate that, in a proper case, it would adopt the doctrine that special facts may create a fiduciary relationship between the director and the individual stockholders. The court said: "While the general principle is as stated, circumstances may exist requiring that transactions between a director and a stockholder as to stock in the corporation be set aside. The knowledge naturally in the pos-

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<sup>25</sup> 12 Metc. 371, 46 Am. Dec. 690 (Mass. 1847).

<sup>26</sup> 269 Mass. 401, 169 N. E. 268 (1929).

<sup>27</sup> 283 Mass 358, 186 N. E. 659 (1933), 19 Corn. L. Q. 103, 47 Harv. L. Rev. 353, (1934) 32 Mich. L. Rev. 678.

session of a director as to the condition of a corporation places upon him a peculiar obligation to observe every requirement of fair dealing when directly buying or selling its stock. Mere silence does not usually amount to a breach of duty, but parties may stand in such relation to each other that an equitable responsibility arises to communicate facts. . . . Therefore, where a director personally seeks a stockholder for the purpose of buying his shares without making disclosures of material facts within his peculiar knowledge and not within the reach of the stockholder, the transaction will be closely scrutinized and relief may be granted in appropriate instances."

The court applied what it called "the general principle" in *Goodwin v. Agassiz* because the stock was purchased on the stock exchange and not directly from the individual stockholder, and because the directors' knowledge was of such a nebulous character that it did not raise the same obligation as knowledge of an established fact. The court declared that, in some cases, "an equitable responsibility arises to communicate facts." Any knowledge which the directors have obtained by virtue of their position, nebulous or otherwise, which would affect the value of the stock if known to both parties, should create such an equitable responsibility. And, if so, it is difficult to understand how the fact that the directors dealt through agents could alter in any way the duty owed by the directors to the shareholder. It must be noted, however, that the Massachusetts court is inclined to abandon the old rule "in appropriate instances."

The Indiana court in *Tippecanoe County Commissioners v. Reynolds* cited with approval the New York case of *Carpenter v. Danforth*.<sup>28</sup> In that case the court held that directors are not trustees of shareholders for the sale of the stock of the corporation; that a certain trust relationship exists but such relationship imposes upon the director only the obligation with respect to the purchase of stock from a shareholder, to refrain from actual, positive fraud. Concerning the character of the relationship existing between the parties, the court said: "There is, therefore, a certain trust relation between the shareholders and the directors of a corporation; but the trust put in the directors usually extends, and I must assume that in this case it extended; only

<sup>28</sup> 19 Abb. Pr. 225, 52 Barb. 581 (N. Y. 1868).

to the management of the general affairs of the corporation, with a view to dividends of profits; and, therefore, that the trust relation between the defendant Danforth extended no farther. . . . The plaintiff's *stock* was not the subject of trust between them, nor had the trust relation between them any connection with the plaintiff's stock, except so far as the good or bad management of the general affairs of a corporation by its directors indirectly affects the value of the stock."<sup>29</sup> Applying the rule of this case to the facts in *Tippecanoe County Commissioners v. Reynolds*, the Indiana court arrived at the only possible conclusion.

In *Von Au v. Magenheimer*<sup>30</sup> the question was presented again to the New York court. In that case certain directors "froze out" a shareholder by failure to declare dividends and by raising their own salaries as officers, so that it would appear that there would be no profits. The court said: "While the wrong now being considered was not technically a deceit its effect was to defraud plaintiff, and, in respect of the remedy at least should be treated as a fraud. It was a species of fraud; by the wrongful acts of the defendants the plaintiff was led to think that her stock was worth less than in fact it was, and we should not indulge in hair-splitting discriminations between that kind of deceit and a fraudulent misrepresentation or concealment respecting an existing fact, in view of the relations of the parties. If their relation was not strictly of the fiduciary character of trustee and *cestui que trust*, it was in a sense fiduciary; at least the parties did not deal on equal terms; . . . The defendants were not under the disabilities of trustees in respect of dealing with a *cestui que trust*, but their superior position imposed upon them some duty to the plaintiff as well as to the corporation, at least the duty not to take advantage of the opportunity afforded by their position to wrong her by any affirmative act designed to injure. Having power to so manage the affairs of the corporation as to affect the value of her shares, they owed her the duty to refrain from intentionally abusing that power actually or apparently to depress the value of those shares for the purpose of acquiring them at an undervaluation. When they succeeded in securing her

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<sup>29</sup> *Carpenter v. Danforth*, 58 Barb. 581, 584 (N. Y. 1868).

<sup>30</sup> 126 App. Div. 257, 110 N. Y. Supp. 629 (1908), *aff'd*, 196 N. Y. 510, 89 N. E. 1114 (1909).

stock by that misuse of power they committed a breach of duty to her resulting in injury, and it is immaterial that their act may also have wronged the corporation. In view of the conditions under which business is now conducted it will be very unfortunate if it shall be held that the duty of corporate managers in respect of their conduct of the corporate affairs is solely to the corporate entity, and that however great a designed injury to an individual stockholder may be, he can only get redress through the corporation. The purpose of the wrong being to injure the plaintiff that should be held to have been its effect." The court thus recognizes the fact that the director is not, strictly speaking, a trustee for either the corporation or the shareholder. The relationship is characterized as "in a sense fiduciary." The court points out, however, that the superior position of the director prevents the parties from dealing on equal terms and imposes on the director some duty to the shareholder as well as to the corporation.<sup>31</sup>

Although *Von Au v. Magenheimer* appears not in accord with *Carpenter v. Danforth*, the most recent New York decision holds otherwise.<sup>32</sup> The court referring to *Von Au v. Magenheimer* said, "That decision makes plain that the law will not permit a director to commit a deliberate active fraud for the purpose of acquiring a stockholder's stock. It does not, however, stand for one of the propositions now contended for, namely, that the director, before he makes the purchase must disclose to the stockholder all the information he possesses. . . . The New York decisions, so far as they touch the point, seem to be in accord. *Carpenter v. Danforth*. . . ." But the court held for the defendant directors on the ground that the plaintiff had not relied on the directors in making the sale. The New York rule apparently is that only under certain specific circumstances does a director occupy more than a confidential relationship to a particular stockholder, in no case is the director accountable to the shareholder for the proceeds of his purchase where the stockholder did not rely on the director in making the sale.

<sup>31</sup> 19 Abb. Pr. 225, 52 Barb. 581 (N. Y. 1868); *Developments of the Law—Corporations—1931*; (1932) 45 Harv. L. Rev. 1374, 1389.

<sup>32</sup> 259 App. Div. 176, 18 N. Y. S. (2d) 328 (2d Dep't 1940).

In *Binns v. Copper Range Co.*<sup>35</sup> the Supreme Court of Pennsylvania refused, with qualifications, to recognize the existence of a fiduciary relationship between a shareholder and a director. In that case the court said, "The general rule supported by the decided weight of authority and followed in Pennsylvania holds that the mere fact that a purchaser of shares from an individual shareholder is an officer or director of the company whose shares he purchases, does not of itself in the absence of special circumstances create a fiduciary relationship between them as to this sale of stock. The duty of an officer or director is owed to the corporate entity and not to the shareholder as an individual."<sup>34</sup>

The minority view is followed in Georgia,<sup>35</sup> Iowa,<sup>36</sup> Kansas,<sup>37</sup> Nebraska,<sup>38</sup> and Wisconsin.<sup>39</sup> The decisions of the courts in these states have, to a great extent, been based upon the proposition that a director, with respect to the individual shareholder, occupies the position of trustee. Since the director does not hold the legal title to any property to which the shareholder holds the equitable title, this position cannot, in accordance with strict legal principles, be justified. It seems apparent, however, that the real reason behind this line of decisions is that the courts felt that a rule which permitted a director to take advantage of his knowledge of facts not known to the shareholder but with which the director was familiar by reason of his official position, was unreasonable, unfair, unconscionable, and offensive to the moral sense.<sup>40</sup>

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<sup>35</sup> 335 Pa. 257, 6 A. (2d) 895 (1939).

<sup>34</sup> See also, *Schuur v. Berry*, 285 Mich. 654, 281 N. W. 393 (1938).

<sup>35</sup> *Oliver v. Oliver*, 118 Ga. 362, 45 S. E. 232 (1903) (a leading case on the minority view).

<sup>36</sup> *Dawson v. National Life Ins. Co.*, 176 Iowa 362, 157 N. W. 929 (1916) (contains an extensive review of the authorities).

<sup>37</sup> *Hotchkiss v. Fischer*, 136 Kan. 530, 16 P. (2d) 531 (1932), (1933) 46 Harv. L. Rev. 847; *Stewart v. Harris*, 69 Kan. 498, 77 Pac. 277 (1904).

<sup>38</sup> *Jacquith v. Mason*, 99 Neb. 509, 156 N. W. 1041 (1916).

<sup>39</sup> *McMynn v. Richardson-Phenix Co.*, 186 Wis. 442, 201 N. W. 272 (1925), 10 Corn. L. Q. 509.

<sup>40</sup> "The debate as to whether technically a fiduciary relation exists may and doubtless will go on, but a knowledge of the law is not required to enable one to appreciate the moral wrong perpetrated by a corporate officer with knowledge acquired by virtue of his position in profiting on the ignorance of a stockholder." Ladd J., in *Dawson v. National Life Ins. Co.*, 176 Iowa 362, 375, 157 N. W. 929, 933 (1916).

In *Oliver v. Oliver*<sup>41</sup> the Supreme Court of Georgia held that the director is a quasi trustee for the shareholder and based its conclusion, that the director was under a duty to disclose material facts affecting the value of the stock, upon that foundation. In discussing the relationship existing between the shareholder and the director the court said: "No process of reasoning and no amount of argument can destroy the fact that the director is, in a most important and legitimate sense, trustee for the stockholder. . . . Not a strict trustee, since he does not hold title to the shares; not even a strict trustee who is practically prohibited from dealing with his *cestui que trust*; but a quasi trustee as to the shareholder's interest in the shares. If the market or contract price of the stock should be different from the book value, he would be under no legal obligation to call special attention to that fact, for the stockholder is entitled to examine the books, and this source of information, at least theoretically, is equally accessible to both. It might be that the director was in possession of information which his duty to the company required him to keep secret; and, if so, he must not disclose the fact even to the shareholder, for his obligation to the company overrides that to an individual holder of the stock. But if the fact so known to the director cannot be published, it does not follow that he may use it to his own advantage, and to the disadvantage of one whom he also represents."

This question reached the Supreme Court of the United States in the case of *Strong v. Repide*.<sup>42</sup> In overruling a decision of the Supreme Court of the Philippine Islands<sup>43</sup> the court said: "If it were conceded that the ordinary relation between directors and shareholders is not of such a fiduciary nature as to make it the duty of the director to disclose to the shareholder general knowledge which he possesses, yet there are cases where by reason of the special facts such duty does exist." In the instant case the court found the following special facts to exist: (1) defendant was a director; (2) owned three-fourths of the stock; (3) was administrator general with large powers; (4) was engaged in negotiations which finally led to the sale of the

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<sup>41</sup> 118 Ga. 362, 45 S. E. 232 (1903).

<sup>42</sup> 213 U. S. 419, (1909).

<sup>43</sup> *Strong v. Repide*, 5 Off. Gaz. P. I. 72 (1907).

land at a price which very greatly enhanced the value of the stock; (5) was the chief negotiator for the sale of all the lands and no one knew as well as he the exact condition of such negotiations; (6) was acting substantially as the agent of the shareholders by reason of his ownership of shares and by acquiescence of other shareholders; (7) the negotiations were for the sale of the whole property; and (8) the lands were the only valuable asset owned by the company. The court said these special facts make "such a combination as rendered it the plain duty of the defendant to speak." The court did not review or discuss the authorities upon any of the propositions involved but cited two cases<sup>44</sup> as illustrations of "where by reason of special facts," a duty of disclosure exists, and one case, *Tippecanoe County Commissioners v. Reynolds*, supra, illustrating the general rule that there is no such duty. The court relying on the particular facts of the case did not express a definite opinion as to whether the director-shareholder relation was fiduciary. It seems probable that the court would have arrived at the same conclusion in any case where the director had failed to disclose facts which affected the value of the stock and it is quite apparent that if the existence of such special facts as were enumerated by the court in this case were established as the test of the duty to give information and if such test were applied to the facts in the case of *Tippecanoe County Commissioners v. Reynolds* that the decision of the Indiana court would be held erroneous.

It has been urged that to place the burden of disclosure upon the director would deprive him of the same valuable right to purchase shares of stock in the open market that other shareholders have, and would thereby reduce the market for shares or would require constant information to be given to the shareholder whenever the director wished to enter the market.<sup>45</sup> This argument is fallacious. If the director need not disclose information, then the stockholder cannot participate equally in the market for the director will always have an unfair advantage over the shareholder. Likewise, under the majority rule the director can appropriate to himself business opportunities which should belong

<sup>44</sup> *Stewart v. Harris*, 69 Kan. 498, 77 Pac. 277 (1904); *Oliver v. Oliver*, 118 Ga. 362, 45 S. E. 232 (1903).

<sup>45</sup> Walker, *The Duty of Disclosure by a Director*, (1923) 32 Yale L. J. 637, 640.

to all the shareholders equally and to which the director should have no special claim. Indeed, the rule tends to keep investors out of the market and to depress the value of shares more than a rule which gives equal opportunities to directors and shareholders alike.

In support of the majority rule, it is argued that the shareholder has access to the books of the corporation and that if he fails to examine them he has only himself to blame. Theoretically this is sound but, as a matter of practice, leaves the shareholder without information. The books of many of the large modern corporations are, from a practical standpoint, geographically inaccessible to a great number of the shareholders. Furthermore, an inspection to be of any practical value to the shareholder would require the services of highly trained, not to mention highly paid, accountants.

The supposed difficulty of supplying information to the shareholder is non-existent. There are well known channels whereby such information can easily and quickly be sent to all shareholders.<sup>46</sup> It appears, therefore, that, from an economic standpoint, the advantages are all in favor of the minority rule and against the rule laid down in *Tippecanoe County Commissioners v. Reynolds*.

The rule announced by the Supreme Court of Iowa in 1937 in *Humphrey v. Baron*<sup>47</sup> seems to be the most desirable rule. There the court said: "Where an officer or director of a corporation proposes to purchase stock from an individual stockholder, such officer or director occupies a fiduciary capacity towards the stockholder with whom he is dealing, and is in duty bound to disclose evidence bearing upon the value of the stock coming to his knowledge as an officer or director of the company."

It is not necessary for the courts to identify the relationship as trustee-*cestui que trust*, principal-agent, or any other fiduciary relationship recognized by prior decisions. It should be sufficient to recognize the fact that the director does occupy a special position with respect to the individual shareholder whenever the director deals in stock of the corporation. The directors are placed in office by the votes

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<sup>46</sup> Berle, *Publicity of Accounts and Directors' Purchases of Stock* (1927) 25 Mich. L. Rev. 827.

<sup>47</sup> 223 Iowa 735, 273 N. W. 856 (1937).

of the shareholders and the shareholder should have the right to expect that the director for whom he casts his vote will not only manage the affairs of the corporation to the best of his ability but will also deal fairly and openly with the individual whose vote has helped to place him in office. If the relationship is designated as fiduciary, the problem is simplified. It is familiar law that one acting in a fiduciary capacity shall not be permitted to make use of that relationship to benefit his own personal interest.

The realities of modern business practices makes the conclusion inescapable that *Tippecanoe County Commissioners v. Reynolds* should be overruled.