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Trusts

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Sale by Trustee to Self

The rule that a sale by a trustee of trust property to himself is voidable by the beneficiary as his absolute option, regardless of the fairness of the purchase price and the good faith of the trustee, was tempered somewhat by the Supreme Court, in the case of *Honeywell v. Dominick.*[1] The wife and brother of the testator were named executors and trustees of residuary property with general power of sale and reinvestment. Income was payable to the wife for life, and upon her death the property was to go to testator's son if he was then thirty years of age (which he was at time of suit); if he should predecease the widow, to his issue, and if none surviving, to the brother and sisters of testator, and to the issue of such as may have died. The will also provided that the widow and son should be allowed to occupy the real estate without charge, the upkeep being imposed upon the residuary estate. The item of property in this suit was a plantation which had become burdensome to maintain. Without seeking prior court approval the wife individually purchased from herself as executrix and trustee and her co-executor-trustee the plantation at a price representing the actual value of the property. As additional consideration she surrendered her life interest in the property. The adult beneficiaries consented to the transaction. The widow thereafter spent considerable money in repairing and improving the property and later sold it to the plaintiffs. A confirmatory deed was also made to the plaintiffs by the widow as executrix and trustee and by her co-executor-trustee. Subsequently the plaintiffs contracted to sell the property to another, and the vendee refused to comply with the contract because of the possible voidable character of the plaintiffs' title—voidable allegedly because of the sale by the executrix-trustee to herself. This action followed, for adjudication of rights under the Uniform Declaratory Judgment Act, and for specific performance. Contingent

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1. 223 S.C. 365, 76 S.E. 2d 59 (1953).

remaindermen—alive and unborn—were made parties along with the executors and trustees and the vendor.

The lower court decree confirmed the original transaction, and the Supreme Court affirmed. While acceding to the rule of voidability of a purchase made by a trustee individually of the trust property, the Court was of the opinion that the nature and circumstances of the purchase were so unusual and extraordinary that avoidance could not take place. The position of the Court is placed on two grounds: (1) that a trustee may, in suitable circumstances, be permitted by the court to become a purchaser, and that the court may confirm "what it would have authorized upon proper application at the time;" (2) that "The rule against the purchase of trust property will not apply, according to the holding of many cases, where, under the particular circumstances of the case, the reason for the rule does not exist, as, for example, where there is no possibility of advantage to the trustee or prejudice to the trust estate from the transaction in question. 54 Am. Jur. 362, Trusts, Sec. 456." There are inherent dangers in these propositions which, carried to their logical conclusions, could result in destroying the beneficiary's power to avoid and with it the policy of the rule, but such considerations would require treatment beyond the limits of this survey. The Court is careful to point out, however, that the rule is not "whittled away," and that only circumstances of an extraordinary character may, as here, permit its application. An examination of the facts in the case discloses a combination of unique circumstances that, if they were not allowed to operate outside the rule, would result in shocking injustice. With the rule judicially preserved and justice done, only satisfaction can be expressed with the result of the case.

Beneficiary as Trustee

The familiar rule that one cannot be trustee for himself is used by the Supreme Court, in *Industrial Equipment Co. v. Montague*,[2] to dispose of a case involving the alleged misuse of corporate funds by an officer who had distributed the funds to all the stockholders of the corporation, including himself. The corporate problems of this case are discussed under Corporations. From the trust point of view, the significant feature of the case lies in this language:

2. 224 S.C. 510, 80 S.E. 2d 114 (1954).

> Undoubtedly, corporate directors are at least quasi-trustees in their dealings with the property of the corporation and the relation is fiduciary in its nature. . . . But here the directors were also all the stockholders in this private, business corporation, whence they may be said, for the purpose of this decision, to have been the corporation itself. In that light, the trust relation disappears because one cannot be a trustee of property for himself.