at the same moment, with inconsistent, contradictory and conflicting character; that the title by property purchased under such circumstances can only be acquired by ratification of the sale, acquiesced in by those who are interested in its disposition, and, then after full disposition of all the facts known to the purchaser; that the law does not impose upon the cestui que trust, the necessity of showing the existence of actual fraud — the inquiry being not whether such was or was not the case; that the purchase is voidable at the instance of the cestui que trust on the ground of policy, to remove all temptation to abuse and danger of imposition, and which could not be easily disposed.

Whether Sherman is to be regarded as trustee, in a technical sense, it is not important to determine. It is enough to know that he was acting for others; that he was clothed with powers which imposed upon him the duty to act for the benefit of the Stock holders of the Company. He was not only a director, but on the Executive Committee, to inquire into the policy & propriety of the sale; was possessed of all information, value of the land, all circumstances which suggested the expediency of the sale, and after such was determined upon was retained to make the sale, they standing in the relation of the greatest confidence; an agent of the Complainant, and to act for the benefit of its Stockholders.

Independent of the special appointment of the Board of Directors, his position as such, in some sense, made him a trustee for them, the Stockholders. For them they were to administer the affairs of the Company. They, the Stockholders, were the persons to be benefited or injured. A sale of the land for less than its real worth, impaired the value of the stock in the same proportion.

The directors could not, for the reasons assigned, sell to themselves, it is equally certain that one of their number, selected to sell, for the purpose of liquidating the indebtedness of the Company, could not make such contract to buy &c.

Barnett in Ch. Ch. Judgments, 455. 456.
White & Crac V. Turner, 3 Veny Jr. 414.
Man V. Royal, 13 Veny Jr. 374.

It has been urged with much ability that no adjudicated case, can be produced to vitiate the contract of sale, absolutely void; that it is valid to communicate a legal title to Sherman and Dean, and for that reason the complaint has to show affirmatively such circumstances as will justify the equitable interposition of this Court in their favor; that the rules of equity as applicable to Sherman, in consequence of his relations to the Complainant, cannot operate against Dean, as he does not occupy that position.

For the reasons already given, it could not be necessary for me to know more from the testimony than that the defendant was director of the Cumberland Coal and Iron Company, than to authorize this Court to set aside the deed at the instance of that Company. But as Dean is not in that predicament, his rights cannot be impaired from that circumstance.

Before determining the case as to him, the probable interest or motives leading him to contract &c, I will look to some facts which have had

influence upon my mind.

There is nothing in the case to show that the transportation contract was in any manner known to any person to buy — indeed, that any one was cognizant of its existence, except the parties connected with it. That the contract to elect does not, in fact, liquidate or release the liability of the Cumberland Coal and Iron Company to pay either the principal or interest of the 112 bonds, part of the 578 bonds for $1000 each, at the rate of 5½ per cent. per annum, payable semi-annually on the first day of July and January, 1844.

That it appears by the deed to Sherman & Dean, that they assumed and undertook to pay the principal and interest on these bonds: while, in truth, the responsibility of the Company still continues. That afterwards the Hoffman Steam Coal Company made a similar contract, by which that Company was bound to pay the principal and interest of the bonds referred to &c.

It will be seen also, that the Complainant, in the 1842, was had no other security than the undertaking of Sherman & Dean and "The Hoffman Company" as mentioned in these deeds. That of the parties paid the interest until the year 1844, the Complainant could not complain of a violation of the contract. But in the meantime by the transportation contract the Complainant was bound to furnish cars and transport coal, for Sherman & Dean, without restriction as to quantity; and in the event of a failure or refusal of the Complainant to comply with the agreement as originally made, heavy sums as liquidated damages were to be paid.

By the testimony, Dean appears to be a young man, about twenty three or twenty four years of age, without property or other sources of support, engaged in both keeping for a Mercantile house, with a salary merely sufficient to pay his ordinary expenses, and no evidence of his ever having seen the property purchased. Can it be estimated as a contract made in good faith by him, with the expectation of paying his part of the purchase money? He had nothing. He did not know its value. Did he expect large sums, and assume heavy engagements, with a knowledge that he could and would comply? Could for a moment supposed that his money was used for that purpose? I have no doubt it would take much more to comply with his part of the agreement than he seemed to be possessed of. His total want of means: total absence of ability to pay, and in the language of Judge Davies of New York, "the readiness with which he entered into liabilities to such an amount, gives confidence to the allegation that he was a man of little, or no pecuniary responsibility."

I cannot see the wisdom of the contract on the part of the Company: but they could have been induced to make a deed to this irresponsible grantee: this can only be reconciled with the presumption that it was not for or with him, but that he was sent as the instrument to secure the title to others. He at least could not regard himself as not the amount he was to pay. If he saw the omen of his part of the first payment, is it reasonable to suppose he would not have inquired it in a careless manner as is contended was done by him in this case; would he have remained a clerk, at a salary not more than sufficient for his support, instead of using it in trade, or some other business, with hopes of a profit, & more certain than the uncertainty of trade in Coal.

Judging him by those rules which govern business conduct, he would have, if his purchase was real, and upon his part, thoroughly examined