the purchase, the cestui que trust is entitled, of course, in his election, to acquiesce in the sale or not. It is thus seen that he cannot act as agent, and become himself the buyer and seller at the same time. The policy of the rule is to shut the door against temptation; and which, in cases in which such relation exists, is deemed to be of itself sufficient to create the disqualification. (4 Kent's Com., 438, 475; 2 Sugden's Com., 359, 447, 448; 1 Story's Equity Juris., 322; Story on Agency 211; Michaud agt. Girard, 4 Howard 503, 554, 558.)

Such doctrine is undoubtedly maintained in Maryland, in the late case of Keighler et al agt. Savage Manufacturing Company, 12 Maryland, 446. The Chief Justice says: "Its paramount and its vital principle is good faith; without it the relation of principal and agent cannot exist; and so sedulously is this principle guarded, that all departures from it are esteemed frauds upon the confidence bestowed. And that if an agent buy without the consent and knowledge of a principal, or if with the consent, the principal not being fully and thoroughly advised of every fact and circumstance in the possession of the agent, such sales are invalid. From these authorities it will be seen to be the law that one who is connected with another by being employed as agent to make sale, is incapable of purchasing at such sale by himself or by his contract, as it would invest him, at the same moment, with inconsistent, contradictory and conflicting character. That a title to property purchased under such circumstances can only be acquired by the ratification of the sale, acquiesced in by those who are interested in its disposition, and, then, after a full exposition 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 of danger of imposition, and which could not be easily exposed. 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 sell for the benefit of the stockholders of the Company. He was not only a Director, but on the executive committee, to inquire into the policy or 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; was 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 consence, 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. Burrell on Assignments 455, 456. Whitcoll vs. Turner, 3 Vesey jr., 740. Morse vs. Royal, 12 Vesey jr. 374.

It has been urged with much ability that no adjudicated case can be produced to decide the contract of sale absolutely void; that it is valid to communicate a legal title to Sherman and Dean; and for that reason the complainant 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 would not be necessary for one to know more from the testimony than that the defendant was Director of the Cumberland Coal and Iron Com-

pany, 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 ever made known to any person to buy — indeed, that anyone was cognizant of its existence, except the parties connected with it. That the contract and deed 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 875 bonds for $1000 each, at the rate of six per cent. per annum, payable semi-annually on the first day of July and January, 1864.

That it appears in 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, for the $112,000, had no other security than the undertaking of Sherman & Dean and "The Hoffman Company" as mentioned in those Deeds. That if the parties paid the interest until the year 1864, the complainant could not complain of a violation of the contract. That in the meantime by the transportation contract, the complainant was bound to furnish cars, and transport all 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 four years of age, without property or other sources of support, engaged in book-keeping in 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 esteemed 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 invest large sums, and assume heavy engagements, with a knowledge that he could and would comply? Can it be 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 Daves, of New York, "the readiness with which he entered into liabilities to such an amount, gives countenance 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; how 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 used as the instrument to secure the title to others. He at least could not have been willing to vest the amount he was to pay. If he were the owner of his part of the first payment, is it reasonable to suppose he could have invested it in so careless a 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, &c., more certain than the uncertain trade in coal?

Judging him by those rules which govern human conduct, he would have, if his