its progress. About this the documentary proof allows of not a shadow of doubt.
Under this state of case, the question is:— whether Sherman was competent to become a purchaser of the property of the plaintiff?
In considering the capacities of a trustee to purchase the property of his cestui que trust, the authorities regard them under two classifications, first, where a trustee buys or contracts with himself or several trustees of which he is one or a board of trustees: Second where the dealing of the trustee is with a cestui que trust who is sui juris and competent to deal independently of the trustee in respect to the trust estate.
Whether the transactions of Sherman be considered under the one or the other head, is immaterial, so far as this appeal is concerned, for, in our judgment, in either case, they cannot be upheld if resisted. The distinction between the two classes of cases consists in this:— that in the first, the contract is voidable absolutely at the instance of the cestui que trust without regard to its fairness; whilst in the second, although the presumptions of the law are against the contract, yet, permission is given to the trustee to show the perfect bona fides of the transaction, and circumstances relieving it from the censure of the law. This is a distinction recognized in most of the books, but it is not universally so. So far from it, some of the cases insist, with great earnestness, that the governing principle ought to be and is the same in both cases. It is not necessary we should investigate the solidity of this last mentioned doctrine, for, whether the dealings of Sherman belong to the one or to the other class, they equally fall under the correction of a Court of Equity. The necessity of good faith — and that free from suspicion, as far as practicable — between the principal and agent, is the main pillar of support to the doctrine; the necessity of it underlies all the decisions. Remembering the weakness of humanity, its liability to be seduced by self interest, from the straight line of duty, the sages of the law inculcate and enjoin a strict observance of the Divine precept "Lead us not into temptation"
In this state, as elsewhere, it is well settled, that trustees cannot purchase at their own sales, either directly or indirectly, and if they do, such purchases will be set aside, on the proper and reasonable application of the parties interested. Richardson vs. Jones, 3 Gill & Johnson 184. This doctrine which is applicable to trustees applies also to purchases by persons acting in any fiduciary capacity, which imposes upon them the obligation of obtaining the best terms for the vendor or which has enabled them to acquire a knowledge of the property. The authorities supporting it are numerous and uncontradictory; they will be found brought together to a considerable number in the notes to the case of Fox vs. Mackreth, 1 White and Tudors Leading Equity cases. 105. A director in a company holds such a relation to its stockholders. The House of Lords in the case of the Aberdeen Railway Company vs. Blaikie, 1 Macqueen Rept. 461. held that a contract entered into by a manufacturer for the supply of iron furnishings to a railway Company of which he was a director, or the chairman at the date of the contract, was void, and not enforceable against the Company. And Lord Cranworth in delivering the opinion said; "A corporate body can only act by Agents and it is of course the duty of those agents so to act as best to promote the interests of the corporation, whose affairs they are conducting. Such an agent has duties to discharge of a fiduciary character towards his principal, and it is a rule of universal application that no one having such duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest conflicting, or which possibly may conflict with the interests of those

whom he is bound to protect. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into. It obviously is or may be impossible to demonstrate how far, in any particular case, the terms of such a contract have been the best for the cestui que trust, which it was possible to procure. It may sometimes happen that the terms on which a trustee has dealt or attempted to deal with the estate or interests of those for whom he is a trustee, have been as good as could have been obtained from any other person. They may even, at the time have been better. But still, so inflexible is the rule, that no inquiry on that subject is permitted. The English authorities on this subject are numerous and uniform." The same views are expressed in the case of Michoud vs. Girod & Howard, a case elaborately discussed by counsel & Court. "The rule", say the Court, "embraces every relation in which there may arise a conflict between the duty which the vendor or purchaser owes to the persons with whom he is dealing or on whose account he is acting and his own individual interest"
The citations are sufficient to show that the dealings of the defendant Sherman with the property of the complainant, fall directly within the prohibition of the rule, and, as a consequence, obnoxious to disavowal.
But, it is said, however this may be, the whole transaction was fully ratified and confirmed by the Complainant, which ratification and confirmation, relieved it from all legal infirmity. An attentive consideration of its whole history as detailed in the record has not brought us to this opinion. The law governing questions of ratification, in cases like the present is well settled. To render the act of ratification effective and conclusive certain considerations are necessary. At the time of the supposed ratification, the principal must have been fully aware of every material circumstance of the transaction, the real value of the subject of the contract and his act of ratification must have been an independent and substantive act, founded on complete information and perfect freedom of volition.
And in addition to all this, the cestui que trust must not only have been acquainted with the facts, but apprised of the law, how those facts would be dealt with if brought before a Court of Equity. Lewin on Trusts Edt. of 1858 p. 615
This last requisite it is no where shown on the proof has been complied with. But, on the contrary, it is purely to be inferred that the stockholders believed they were concluded by what had been done; and this inference is particularly strengthened by the circumstances that the modification in the contract for transportation was solicited and granted, not as a matter of right, but as a concession on the part of the beneficiaries under it. In this view it is not necessary we should dwell more fully on the other facts attending the negotiation and sale. Such commentary properly belongs to the point bearing
As to Dean it is only necessary to observe that it is impossible to believe he was ignorant when he became associated in the transaction, of the fact that Sherman was a Director in the Cumberland Coal and Iron Company. We cannot suppose him to have become a party to a contract involving enormous sums of money, and great liabilities, without some knowledge of the existence and organization of the corporation, with which he was dealing to a great extent. Imputing to him the possession of ordinary intel