estate & for an inadequate consideration. Whatever may have been the doctrine heretofore it is well settled now that there is no magic in the names trustee and cetui que trust to prevent the parties who are thus designated from dealing with each other. Indeed to establish such a rule of prohibition might defeat the very object of the Court in taking care of the interest of the beneficiaries, for the trustee might be willing to give more for the property than any body else would do.

The law now is that the trustee may buy the trust property from his cetui que trust who is sui juris; Provided however that they must deal upon equal terms, bona fides, and at arms length. Hill on Trustees 537, Coles vs Trecothic, 9 Ves. Jr. 244 Morse vs Royal 12 Ves Jr. 373.

But the Courts will watch with jealous care to see that such sales are not the result of undue influence & management on the part of the trustee, who has used his position to gain information in regard to the trust property which he has concealed from his beneficiary and turned to his own advantage. When the legal title and right of possession is in the trustee he is presumed to have all the knowledge of the property which his position would enable him to acquire. But the cetui que trust having no right of possession is not presumed to know as much about the property as his trustee. Hill on Trustees 536.

In all transactions of this kind therefore the relation of trustee and cetui que trust is sufficient in itself to raise a presumption that the trustee acted with and undue advantage over his beneficiary and that the sale is fraudulent. Hill on Trustees 536. 7 Story's Eq Jur Vol 1 S. 310 note 2

This presumption may be rebutted by showing that the trustee dealt fairly with the beneficiary and imparted to him all the information that he himself had in relation to the property. Hill on Trustees 537. Coles vs Trecothic 9 Ves 244 Morse vs Royal 12 Ves. Jr. 373. Gibson vs Jeyes 6 Ves Jr 278.

The Complainants contend that the deeds cannot be supported unless the trustee was in fact discharged from his trust at their time of their execution and the relation of trustee entirely destroyed. But that is not necessary, as there would then be no dealing between trustee and cetui que trust: All that is necessary is, that the Court shall see that the trustee made no improper use of his advantage, That the cetuis que trust were not influenced by an undue confidence in the trustee, That they had full knowledge of their rights and interests in the trust property. And that the deeds are the result of a fair and deliberate intention on their part to sell to the trustee.

That is all that was intended by Lord Eldon in ex parte

Lary, as appears from his explanation in Coles vs Trecothic 9 Ves 246 Hatch vs Hatch 9 Ves 297, and also from Gibson vs Jeyes 6 Ves 270 & Morse vs Royal 12 Ves 373.

On the other hand it is contended that this is a dry trust created only for the purpose of supporting an estate in remainder in the children of William W. Hoyo, and therefore the rule established does not apply to this case.

And this conclusion would certainly be correct if the premises would justify it. Hill on trustees 537 & 538

But this is not a dry trust. It is a trust accompanied with a right of "possession management and direction" and these incidents of the trust being the foundation of the presumption of superior knowledge in the trustee, bring the case directly within the principle.

And it makes no difference so far as this principle is concerned, whether the legal estate was in the Trustee or in the cetui's que trust. For there is no inconsistency in supposing that the testator intended his grandchildren to have the legal estate, subject to the possession management and direction" of the executors during the continuance of their trust.

This presumption of unfairness is strengthened by the fact that the trustee expended large sums of money in improvements made upon the property, exceeding the sum of Two thousand dollars as stated by the answer of the executor, which he certainly would not have done unless he had known the value and condition of the trust estate and the necessity of the improvements and that there was a reasonable probability that they would be profitable This is still more remarkable too in connexion with the fact that the payments for improvements were principally made about the time that the trustee was buying the several interests of his beneficiaries. The only outlay for that purpose stated to have been made previous to his purchases was one hundred dollars to White.

He appears to have had some object in view too in making these purchases that was altogether inconsistent with his duty as trustee. He employed George W. Devernon as his agent in obtaining these deeds, to whom he said he was desirous of having the title in himself and that he would arrange it satisfactorily with them, and make provision for them. This is evidence that he felt in his own mind that he was not paying an adequate consideration for the property notwithstanding his declarations to the contrary and that he intended to divert from the purposes of the trust, and give it some direction more suitable to his own wishes, especially in connection with the fact that his own last will was executed less than three months afterwards, by which he