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Principal and Agent--Accounting for Personal Profits Made by Agent Withholding Information From Principal

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disclosed on the face of the record. This is the colorable point in the case.

Another question is suggested by this case. Suppose the justice of the peace suit is started first for an amount less than $15. The probable result would be that a $3,000 tort action would be settled irrevocably in the justice court. It would be impossible to appeal because of the amount involved. Thus might persons who are quite certain of their liability find their escape. A race for jurisdiction might ensue with the party at fault heading for a justice of the peace court. Such a result is not desirable. Yet unless we refuse to recognize the justice's judgment as binding and conclusive it must inevitably follow.

—JEROME KATZ.

PRINCIPAL AND AGENT—ACCOUNTING FOR PERSONAL PROFITS MADE BY AGENT WITHHOLDING INFORMATION FROM PRINCIPAL.—In a recent case,[1] it was found by the lower court that Crichton was the agent of Laing when he had a conference with officials of the Chesapeake & Ohio Railway Company relative to the purchase of Laing's stock in the Greenbrier and Eastern Railroad Company and that the agent's negotiations for and decision to purchase Laing's 2655 shares for his brothers and other business associates at $75.00 a share resulted from information received at this conference which he did not disclose to his principal. Crichton, who then owned some shares of this stock and later secured a number of shares for corporations in which he was the majority stockholder, gained control of more than 8000 shares, including the Laing stock, and sold the entire amount to the C. & O. Ry. Co. for $140.91 a share. The lower court awarded judgment for the profit made on the Laing stock, which with interest amounted to $243,733.10. The appeal to the Supreme Court was limited to the consideration of the measure and amount of recovery.

On the ground that a fiduciary is strictly prohibited from making a personal profit out of his fiduciary relation aside from the compensation allowed by law or contract with his principal, and where he does so, courts of equity will invariably compel him to account therefor as trustee,[2] the upper court ordered Crichton to account to Laing for all the profits made by him on stock

[1] Laing *et al.* v. Crichton, 156 S. E. 746 (W. Va. 1931).

[2] The court cites: 15 AM. & ENG. ENCY. LAW, 1199, 1200. POM. EQ. JURIS. (4th Ed. 1919) Par. 959; MECHEM ON AGENCY, (2d Ed. 1914) Pars. 1224, 1225; Robertson v. Chapman, 152 U. S. 673, 681, 14 S. Ct. 741 (1894).

personally owned and on stock owned by corporations in which he was the majority stockholder, which profits with interest amounted to $180,374.23, since these profits were the result of information obtained and withheld by Crichton as Laing's fiduciary.

The case is unique in that the agent made no profits from the stock of his principal. The decision shows clearly the manner in which our court regards the sacredness of the relation of principal and agent.[3] Although Crichton had advanced money of his own, had secured control of a great amount of stock, had gotten financial backing for his venture, and had carried on negotiations with other railroads to such an extent that the C. & O. had a fear of losing the chance to purchase, and even though the court found that the evidence did not show that minority holdings could have sold for more than $75.00 a share on the date of purchase, and that Laing could have secured a higher price had Crichton been unreserved, still the fact that Crichton did not disclose the information which he secured as Laing's agent resulted in his losing his profit from all the transactions involved in the deal.[4] Although Laing was pleased and glad to received $75.00 a share, seemingly it was Crichton's duty to inform him of the prospects of a sale at a higher price and to have given him the privilege of joining in the pool or to act otherwise with full knowledge of all the facts.[5] It may be noted that without Laing's stock the sale possibly could never have taken place, for the C. & O. desired at least 8000 shares and the total number was only 10,000 shares.

Assuming the desirability of the result reached here by the application of the well known principle enunciated by the court in this particular case, its application should not be extended to its logical limits. Thus, if Laing had owned only one hundred shares of this stock, for which he would have received $7,500.00 and for which the railroad would have paid $14,091.00, to have made Crichton account to Laing for $180,374.23 would have been manifestly unjust. Query: Should the court apply the rule and reach this result in any decision amounting to a heavy fine upon the fiduciary in favor of his principal?

—MELVILLE STEWART.

[3] Equity regards the relation of principal and agent in the same general manner and with nearly the same strictness as that of trustee and beneficiary. POM. EQ. JURIS. (4th Ed. 1919) Par. 959.

[4] "'An agent is not permitted to hold, against his principal, the fruits of the exercise of his representative powers.'" Pardee v. C. Crane & Co., 74 W. Va. 359, 82 S. E. 340 (1914).

[5] See *supra* n. 3.

TRUSTS — STATUTE OF FRAUDS — ORAL AGREEMENT TO BUY LAND AND RECONVEY TO ANOTHER. — B orally agreed to purchase certain land for C and hold the legal title until C had repaid him in labor, whereupon he promised that he would convey to C. After performance on his part C brought a bill to enforce a trust against B. The Supreme Court of Appeals of Virginia held that the situation created an express trust, which was enforceable at common law and also in Virginia, where the seventh section of the English Statute of Frauds had never been adopted. The seventh section required that "all declarations of trusts in land shall be manifested and proved by writing."[1] *Jackson v. Greenhow.*[2]

The decision is singular in that the court construed as a declaration of trust what appears to be no more than a mere contract for the sale of land, unenforceable for want of a writing. No particular words are necessary to create a trust, but the intent to create a trust is an indispensable requisite, and "if the settlor does not propose to make himself a trustee, the trust is not perfectly created".[3] The court was seemingly undisturbed by the suggestion that they were enforcing what appeared to be a parol contract for the sale of land, due undoubtedly to the fact that there were latent equities in the case making their decision a desirable and justifiable result. But it would have been less discomfitting if the court had seized upon an equity of some sort and justified its decision on the ground of a resulting or constructive trust. Such trusts being excepted by the eighth section of the statute of frauds arise by operation of law, and, of course, require no writing.

A breach of a confidential relation or unconscionable conduct on the part of B might warrant a court in raising a constructive trust in C's favor. It has been held that a conveyance of title obtained by a grantee in pursuance of a verbal agreement between himself and another, though no purchase money was paid, is not within the statute of frauds because equity will raise a constructive trust if the parties stand upon equities independent of contract.[4]

It is a familiar equitable doctrine that where one person pays the purchase price of land and title is taken in the name of another, the latter presumptively holds upon a resulting trust for

[1] See SCOTT, CASES ON TRUSTS (1919) 192 *et seq.*
[2] 156 S. E. 377 (Va. 1931).
[3] PERRY ON TRUSTS (7th ed. Baldes, 1929) § 97.
[4] Floyd v. Duffy, 68 W. Va. 339, 69 S. E. 993 (1910).

the former.[5] This doctrine has been applied where the money was paid by the grantee to the grantor by way of a loan to a third party, and the grantee of legal title was held a resulting trustee for the third party.[6] The parol evidence to show the land was bought for another was admitted to show the money was advanced as a loan, thus overcoming the objection that such evidence is inadmissible to prove a parol trust. Where B promised to convey one-half interest in his land to C if C would pay one-half the expenses in pending litigation to acquire the land, and C paid no money, there was no resulting trust. The court held such a contract to be one for the sale of land within the statute of frauds.[7] To raise a resulting trust it is necessary that C pay or assume a binding obligation at or before the time of conveyance of legal title to B. This requirement was not satisfied in the principal case. A payment subsequent to conveyance will not attach a trust.[8] But a payment after the contract of sale is made, but before conveyance, will raise a resulting trust.[9]

—AUGUST W. PETROPLUS.

WORKMEN'S COMPENSATION — APPLICATION TO NATIONAL GUARDSMAN. — The North Carolina Supreme Court, in the case of *Baker v. State*,[1] decided that a North Carolina National Guardsman was an employee of the state within the meaning of their Workmen's Compensation Act.[2] The Act provides that the word "employment" includes all employees of the state and that the word "employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship. The plaintiff was injured while engaged upon his duties as National Guardsman. He was a regularly enlisted member of that organization, having signed an enlistment contract. He received fifty cents per week from the state for his services as a militiaman. It was insisted that the plaintiff was not an employee of the state within the meaning of the act, since his status

[5] Scott, *Resulting Trusts Arising Upon the Purchase of Land* (1927) 40 HARV. L. REV. 669.
[6] McDonough v. O'Neill, 118 Mass. 92 (1873).
[7] Woods v. Ward, 48 W. Va. 652, 37 S. E. 520 (1900).
[8] Currence v. Ward, 43 W. Va. 367, 27 S. E. 329 (1897).
[9] Bright v. Knight, 35 W. Va. 40, 13 S. E. 63 (1891).

[1] Baker v. State, 156 S. E. 917 (N. C. 1931).
[2] North Carolina Pub. Laws 1929, c. 120, § 2(a).