

resigned his position as inspector, he was given to understand that he could not take any part in the deliberations of the inspectors, by reason of his contemplated interest in the plaintiff's proposed purchase; and from that time on he took no part whatever in the negotiations leading up to the sale. It cannot be said that he in any way abused a fiduciary relationship.

It is true that Jacob Shantz signed a memorandum in the margin of the conveyance to Gross. This, it was said, was done at the request of the purchaser, who deemed it essential to perfect the conveyance. But his act in joining in the conveyance was purely formal.

The case is entirely different from any of the cases cited, because there was no knowledge on the part of Clarkson that Shantz had any interest in the purchase made by Gross. There was no collusion in any sense of that term. Clarkson, voicing the views of the creditors, desires to affirm the sale. In no other way can these creditors expect to receive payment in full of their claims. They have no interest in setting aside the transaction.

If the sale was at an undervalue—which is not alleged—the creditors are not concerned; the company alone is interested. Gross was not disqualified from being the purchaser. It was open to him to bid. If Shantz, the inspector, by reason of his sub-contract, is disqualified from keeping for himself any profits he may make out of the transaction, that is a matter that cannot now be dealt with; for the company, who alone could claim it, and Shantz, who alone could be liable, are not before the Court.

I would be the first to deprecate any attempt to narrow the beneficial equitable doctrine which precludes a person occupying a fiduciary position from himself purchasing without the concurrence of all concerned; but this case illustrates what has often been pointed out, that equitable doctrines must not be pushed to such an extent as to produce a palpable absurdity. When it is realised that in this case an insolvent man, who has assigned for the benefit of his creditors, takes a transfer of one share in a company in liquidation and seeks to set aside a sale of property made by the assignee of the company, which has secured to the creditors payment in full—a result which the plaintiff hoped for, but proved unable to bring about—and that this action is brought just at the critical moment of the closing of the transaction, and has resulted in withholding \$70,000 from the body of creditors for a year, and when it is not suggested that any other shareholder of the company has any sympathy with the contention put forward by the plaintiff, it is seen how utterly devoid of any semblance of equity this action is.

The action is dismissed with costs.