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DICKINSON v. TALBOT.

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representatives of deceased trustees, was never presented to the court. The law of this court is, and is well established and known, that where there is a power of sale and exchange given to trustees, to be exercised at the request or with the consent of the tenant for life, they may sell to the tenant for life just as they may sell to any other person. No doubt Lord St. Leonards, in his book on Powers, says that it was formerly a considerable question whether a tenant for life, whose consent was required for the exercise of a power of sale and exchange, could buy the estate himself, or take it in exchange for an estate of his own. He is referring there to something which had occurred before the case of *Howard v. Ducane*, and he says, "Lord Eldon, though fully aware of the danger attending a purchase of the inheritance by a tenant for life, seems to think it cannot be impeached upon general principles." Then he refers to the case, which appears to me very important indeed, where the House of Lords actually refused to pass a bill sanctioning a sale, for fear of throwing a doubt upon the established practice of conveyancers respecting the right of sale to a tenant for life. Then Lord St. Leonards says, "The point has at last been set at rest (that is in 1826) by the decision of the Lord Chancellor in favour of the validity of the execution of the power in the late case of *Howard v. Ducane*." From 1826 to the present time I am not aware that there has ever been the slightest attempt to unsettle that which was so considered settled. I take it that the meaning of the rule, and the only ground upon which that rule can be sustained, is that the tenant for life has given to him the power of consent, or the power to request, for his own benefit, and he has not in any way whatever a fiduciary character as between him and the tenants in remainder in respect of his consent or request. That being so, the tenant for life has the same right to buy from the trustees as any other person. Then it is alleged that in this particular case the sale was improper, because it was preceded, to the knowledge of the trustees, by a negotiation for an exchange with Lord Balcarras. There were conveyancing difficulties—not suggested as sham difficulties for the purpose of inducing them to sell to the tenant for life—but conveyancing difficulties of a *bona fide* character existing, which made the negotiation for an exchange incapable of being carried into effect. Upon that, of course, the negotiation failed, and the thing passed into history. It was a sort of thing from which the parties had a new starting-point, and thereupon this gentleman said to the trustees, As you cannot do that, I am very anxious to accommodate my friend, Lord Balcarras, and it would be a convenience to me, and therefore I propose to buy from you, and I tell you that my object in buying from you is to do a thing which will accommodate my neighbour and be a benefit to myself. I am not aware of any rule of law, or any Act of Parliament, or any decision of this court, which says that, if a man is otherwise entitled to buy an estate from the trustees, he is not entitled to buy it if his intention is to do an act of kindness to his neighbour, or to obtain some benefit for himself, provided he gives the full value for the estate. This gentleman might have said, "I want to buy the estate

because I wish to make a speculation of it, which you, the trustees, cannot enter into;" or he might have said, "I want to give it for a church or school-house," or "I want to save my neighbour from an annoyance which he may otherwise be subjected to." It appears to me, as I said before, that there is no Act of Parliament or rule of this court which says that that is wrong or improper. That seems to me to be the whole case as to the Bottlingwood property, except that it is said that there was something which the tenant for life was aware of which he ought to have communicated to the trustees; and possibly—I will say more than possibly—probably the tenant for life may not be exactly in the same position of a stranger with respect to non-communication of facts. It may be supposed that he has a knowledge which may to a certain extent enlarge the obligation which may be imposed on every man not to conceal something which he knows and which ought to be known to the other side, that is, the vendor.

[His Lordship then reviewed the evidence of the alleged concealment of the value of the Bottlingwood property by the tenant for life, and of his having bought it at an undervalue, which evidence he considered entirely failed to prove the plaintiff's allegations. He also expressed his opinion that the evidence as to the Hurst House Estate equally failed, and added—] I am of opinion, therefore, that the case has wholly failed as to both points, and that the Vice-Chancellor's decree was perfectly right.

MELLISH, L. J.—I am of the same opinion. Since the case of *Howard v. Ducane*, at any rate, it appears to have been the settled rule of this court that there is no objection in itself to a sale from trustees to a tenant for life, although the consent of the tenant for life is necessary for such a sale. This rule was acted upon apparently in the practice of conveyancers for many years before *Howard v. Ducane* was decided, and has been acted upon ever since, and certainly we should do very wrong if we allowed any doubt to be cast upon that. The sale being in itself perfectly good, the tenant for life not being in any respect a trustee for the persons in remainder, what ground is there for setting aside either of these sales? As I understand it, the argument insisted upon is this—that because it was originally contemplated in both cases that there should be an exchange, and that these sales were effected as it were for the purpose of effecting the exchange, therefore the exchange ought to be carried out by this court for the benefit of the persons entitled in remainder. I cannot see what ground there is for that. In both cases there seems no doubt that Mr. Scarisbrick did in the first instance intend to effect an exchange *bona fide*, if the exchange could properly be effected under the power; but in both cases the lawyers raised difficulties, and said there were doubts whether the exchange could take place under the power, and those difficulties seem to have been, as far as appears, perfectly *bona fide*. The matter was therefore given up, and certainly it would be a very extraordinary thing if, it having been given up because there was no power to effect it, and not having been carried out, we should now, because it would happen to be for the advantage