

when the defendant was not an alien enemy; which, it was said, was "irrevocable" and rendered further "intercourse" with the defendant unnecessary—and it is said the position was practically as if the defendant had conveyed the property in trust for sale. Such a transaction it is affirmed is not a trading with the enemy within the meaning of the common law, or the Proclamation, and it is said the power of attorney was not necessarily revoked when the defendant became an alien enemy. But unless it was the fact that the donee of the power was also the person beneficially interested in the proceeds of the sale, or a trustee thereof for persons other than the defendant, who were not alien enemies, it is very difficult to understand how the decision could have been reached. It would seem as if some part of the proceeds of the sale, at all events, was payable to the defendant, because he was willing that any such moneys should be payable to the Public Trustee as custodian.

If the defendant really retained any beneficial interest in the property, the question naturally arises how could he by his attorney enter into a contract with the plaintiff, which he could not himself have entered into, in his own person? The question before the Court appears really to have been this, could the defendant himself, at the time the contract was made, have made the contract with the plaintiff. On the facts found by the Court of Appeal, he was on that date an alien enemy, and therefore incapable of making the contract; but the Court of Appeal have in effect said—though he could not himself have made the contract he could validly do so by his attorney, which it is hard to understand unless the fact be that the defendant after the giving of the power ceased to have any beneficial interest or became a mere *cestui que trust* with others in the proceeds of the sale.

Probably a fuller report may disclose facts and circumstances throwing a somewhat different complexion on the case; at any rate we think it would be quite unsafe to infer from this decision that an alien enemy may in ordinary circumstances make valid contracts through an attorney.