

found that the defendant was in truth himself the purchaser, and that Erbach was a trustee for him. I do not so understand the Referee's finding, which is: "It seems to me that the whole legal effect of what was done must hinge upon the fact that he had financed the whole scheme, and that, excepting for his arrangement with the bank, the scheme could not have been carried out. In this view of the evidence, I must find that the defendant was in fact the purchaser at the sale in question, and that he must account to the estate for what he received for the property when it was sold by the . . . company which he controlled and practically owned."

As I understand this finding, it is not that the defendant was in fact the purchaser, but that, by the application of some supposed legal principle, the fact that "the defendant financed the whole scheme, and that, excepting for his arrangement with the bank, the scheme could not have been carried out," made it necessary for the Referee to find that the defendant was in fact the purchaser.

I know of no such legal principle, and am quite unable to understand why it was not open to the defendant, both as a matter of morals and a matter of law, to provide the money which the purchaser required to enable him to acquire the property and carry on the business. The defendant had as large an interest in the property as the representatives of his deceased brother, and surely there was nothing wrong in his providing the money to enable the purchaser to buy, and by so doing prevent the property being sacrificed. No case was cited in support of the Referee's view of the law, and I should be surprised to find any case which gives countenance to the view that a surviving partner who lends his credit to a bonâ fide purchaser of partnership property is to be held to be for that reason the real purchaser, even though the purchase would not and could not have been made but for the lending of his credit. In saying this, I am not dealing with a case in which the partner is to share in the profits, but only with that of a bonâ fide lending of his credit by the partner to a real purchaser.

I am unable, in view of the facts . . . , to agree with the view of my learned brother that the conclusion is "irresistible that Livingston was in truth the purchaser."

This disposes of all the grounds of the appeal of the plaintiffs, and there remains to be considered the cross-appeal of the defendant.

That, unless entitled to it under the provisions of the Trustee Act, the defendant is clearly not entitled to compensation for his