section can be applied to sales of real estate made by assignees under orders of district courts having general jurisdiction of proceedings in bankruptcy. But it is not necessary now to pass upon this point. The limitation certainly could not affect any suit, the cause of which accrued from an adverse possession taken after the bankruptcy, until the expiration of two years from the taking of such possession; and there is nothing in the record which shows when the adverse possession relied on by the defendant in error commenced, and therefore nothing which warrants the application of the limitation to the petition for the order of sale.

We think the court below erred in instructing the jury that the defendant in error, upon the case made, was entitled to their verdict. Its judgment must therefore be reversed, and the cause remanded with directions to issue a

NEW VENIRE.

BROOKS *v.* MARTIN.

1. After a partnership contract confessedly against public policy has been carried out, and money contributed by one of the partners has passed into other forms,—*the results* of the contemplated operation completed,—a partner, in whose hands the profits are, cannot refuse to account for and divide them on the ground of the illegal character of the original contract.
2. Where one partner, who is in sound health, is made sole agent of the partnership by another, who is not, and who relies on him wholly for true accounts, and the party thus made agent manages the business at a distance from the other, communicating to him no information, the relation of partners, whatever it may be in general, becomes fiduciary, and the law governing such relations applies.

MARTIN filed a bill in equity in the Federal Court of Wisconsin to set aside a contract of sale which he had made to Brooks of his interest in a partnership venture, and for an account and division of the profits; the ground of the prayer being his own alleged embarrassed condition at the time of the sale; his ignorance of the partnership business; fraud on the part of the defendant, Brooks; concealment by Brooks of what he knew; misrepresentation in what he

professed to tell; and want of consideration proportioned to the real value of the interest which the complainant had in the concern. The answer admitted the purchase by Brooks, but denied the fraud. The court gave the relief prayed; and from its decree herein an appeal, the present suit, came here.

The case, as proved by the evidence, and as shown and assumed by this court after a very careful examination of an immense mass of testimony,—twelve hundred pages closely printed,—set forth in part in the opinion, but, as involving very voluminously controverted issues of fact, not necessary, nor indeed possible, to be presented here,* was in substance this.

On the 11th February, 1847, the United States, being then at war with Mexico, Congress passed a law by which warrants were directed to be issued to soldiers for a certain quantity of land each; but in order to protect the soldier entitled to the warrant against the rapacity of land brokers and others who would profit of his improvidence, the statute provided, by a ninth section, that any sale or contract going to affect the title or claim to any such bounty made *prior* to the issue of such warrant, should be "null and void *to all intents and purposes whatsoever.*"† Just after the passage of this statute, that is to say, in June, 1847, the complainant, Martin (who was a banker in New Orleans), Brooks, the defendant, and a certain Field, entered into a partnership at New Orleans; the *ostensible* object of the firm being "the purchase and sale of bounty land warrants that may *have* been or *may be* issued under the law of Congress," &c. The purchases and sales were to be conducted by Brooks and Field, and the money was to be furnished by Martin. *Brooks was the brother-in-law of Martin, and had been a clerk in his banking-house.* Field was a stranger. It was, therefore, agreed that Brooks should, in the actual management of affairs, re-

* The printed record made a book of 1201 pages of long primer, solid; a volume, of itself, larger than any volume of reports of this court ever published.

† 9 Stat. at Large, 125.

present Martin, and have full and exclusive control of the business; an agreement, of course, by which he obtained a preponderating influence in the management of the partnership over Field. The bill, indeed, alleged that Brooks had a power of attorney from Martin, authorizing him, on all occasions, to represent him in the partnership business. This fact was denied in the answer; but the answer admitted that Brooks was authorized by Martin to control the business. Martin advanced, in cash, over $57,000; and large purchases having been made of soldiers' claims, the parties closed their operations in New Orleans, where little was done after a few months in the way of purchasing warrants. Brooks then came to Washington to attend to the issue of warrants. Field, with two brothers of his, went to Wisconsin to locate the warrants and sell the lands. Martin still remained in New Orleans, carrying on his business of banker. From the time that Brooks and Field left New Orleans, *the management of the entire business fell, apparently, under the direction of Brooks.* None of it was conducted in New Orleans, nor, except five or six, which Brooks bought at the suggestion of Martin, were any further warrants bought there. The accounts were kept in Wisconsin, two thousand miles from where Martin was, and who had no opportunity of hearing anything about the partnership except as it was communicated to him by Brooks or Field, or one of the brothers Field, who were employed as clerks or agents in the business. No reports of the business were made to Martin; and, as the testimony showed, Brooks and Field managed it entirely without consulting him, irrespectively of his interest. The firm was known indifferently as Brooks & Field, and as Brooks, Field *& Co.*

In the winter of 1847–8, Martin failed in business, and his health, including specially, it seemed, his nervous condition, became considerably prostrated. During the winter just named, and when much embarrassed and absorbed about his business, he applied for information to Brooks, who was then in New Orleans, and who gave him a very discouraging account of everything; one, the court as-

sumed, which might naturally make Martin "glad to escape with a few thousand dollars which it owed him as a creditor;" an account which the court considered that it was impossible to regard as true.

In June, 1848, Martin, at the invitation of Brooks, went to Pittsburg, in Pennsylvania, to meet Brooks, who then and there, on the 28th June, 1848, bought out his interest in the partnership. *Martin, at this time, had never been in the West, and, in fact, knew little or nothing as to the particulars of what had been done there.* There was no evidence, indeed, except the answer of the defendant, which was discredited by facts, that Martin ever had a remote conception of the condition of the business. On the contrary, there were letters in the record begging for statements on that subject.

On the other hand, when Brooks and Martin met in Pittsburg, Brooks had just come from Wisconsin, where he saw Field and his brothers, and where he had the partnership books for examination, and spent several days in examining them. That *he* knew the real condition of the concern, and was fully and minutely informed as to every item of its business, was considered by the court as "beyond dispute."

It appeared, in addition, by letters from Brooks to one George Field, a brother of Field, the partner, written before the sale was made, that Martin had directed that all remittances should be made to *him* at Washington; showing by allusions in them to a remittance which George Field had proposed to make to Martin, and to certain friends and correspondents of his named Lake & Co., in New York, that Brooks specifically, and apparently with an interested motive, desired that no remittance should thus be made. In one letter, written June 20th, 1848, that is to say, *eight days before the sale*, and after he had invited and was expecting Martin to meet him at Pittsburg in contemplation of the purchase which he there made, Brooks says:

"I can hardly express to you how much I feel obliged to you for the soundness of the judgment that dictated to you to remit directly to me, rather than to New York or any other place, without my direction. I had been rendered somewhat una-

miable the day before by a letter from George Field, in which he suggested the propriety of remitting directly to New York. I feared he had so directed you. *It would have greatly embarrassed my operation. I want all advice*, as well as all remittances, to pass through myself. If Mr. Lake OR ANY ONE ELSE ask information in relation to our matters, refer him to me, advising me of the circumstance."

The partnership at this date,—as the court, after a computation made by it on an analysis of the evidence, showed and assumed,—presented clear cash profits, ...	$15,000
It had, also, as the court showed, and assumed it to be proved, 45,000 acres of land, which, estimated at Government rates,—a low rate of estimate in view of the fact that they had been carefully selected by Field and his two brothers, one of whom had been sent to examine the land personally before the warrants were located, and who was early in the field and made judicious selections,—gave about	57,000
Or a total profit of	$72,000

of which Martin's share, for the partnership, by its terms, was not an equal one, *came to* $30,000.

The consideration of Brooks's purchase was an *agreement* by him to pay all debts of the partnership, about $45,000, and a payment, as *he* alleged, of $3000 to Martin, though, as Martin asserted, a payment of about one-half a balance due him on another account; which balance, it was evident, that Brooks was bound for. Brooks gave no security for his performance of his agreement to pay these debts.

At the time when this bill was filed, to wit, on the 3d of August, 1857, which was apparently so soon as Martin had examined into the facts of the case, *all the claims purchased by the firm had been turned into land warrants, and the warrants had been sold or located. Where the purchase had been made prior to the date of the warrant granted, assignments were subsequently made by the soldier. A portion of the lands thus located had been sold, part for cash, partly on mortgage, and the assets of the partnership consisted now almost wholly of cash securities or of land.*

Besides a full denial of the offensive allegations, as made by the bill, the defendant set up as follows:

That notwithstanding the statement in the articles of partnership that the business of the firm related to the purchase and sale of bounty land *warrants and scrip*, such was not the true purpose of its formation, nor the business which it really transacted; but that the partners intended, and really did engage in buying up the *claims* of the soldiers, who were then returning from Mexico by way of New Orleans, for bounty land or scrip, *long before any scrip or land warrants were issued* by the Government [a fact of which there appeared, indeed, by the evidence, to be no great doubt]; that this was an illegal traffic, forbidden by the act of Congress of February, 1847, above referred to, and against public policy; that, accordingly, the plaintiff could have no relief in a court of equity against his copartner, even if it were made to appear that the latter realized a large sum out of the venture, and defrauded the former of his share of the amount so realized.

2. That no such fiduciary relation existed between the parties, from the mere fact of *partnership*, or from anything shown in the case, as entitled the complainant to relief.

Mr. Howe for the appellant, Brooks.

1. It is quite apparent what was the true purpose of this partnership. However that purpose was veiled,—and the veil was but a transparent one,—the enterprise was set on foot to do exactly that thing which the sixth section of the act of Congress declared no one should do; to do that which the act makes "null and void *to all intents whatsoever*." That the traffic was actually one in *claims* is, in effect, confessed. The evidence on that point is conclusive. The suit, then, is brought in violation of a maxim of the very horn-books, *Ex turpi causâ non oritur actio*. In *Russell* v. *Wheeler*,* the Supreme Court of Massachusetts say: "No principle of law is better settled, than that no action will lie upon a contract made in violation of a statute, or of a principle of the common law." In *Shiffner* v. *Gordon*,† Lord Ellenborough laid

* 17 Massachusetts, 281. † 12 East, 304.

it down as a settled rule, "that when a contract which is illegal remains to be executed, the court will not assist either party in an action to recover for the non-execution of it." In the New York case of *Beldin* v. *Pitkin*,* Thompson, J., says: "It is a *first principle*, and not to be touched, that a contract, in order to be binding, must be lawful." Other cases, English and American, show how deep and firm are the foundations of the rule, and how far the rule itself will reach and ramify.†

2. Partners, in a case like this, do not stand to each other in the relations of trustee and *cestui que trust*. All the partners were business men. Martin's business was that of a banker, a pursuit requiring great business intelligence and sharpness. Partners do not rely on each other as the ward relies on its guardian, or as the *cestui que trust* of any kind on her trustee. On the contrary, they consult as equals in capacity, caution, and ability, to take care, each, of himself; and guard themselves as often, one against the other, as all do, against third parties.‡

3. As respects facts, it is vain to say that Martin's *mind* was enfeebled, though his body may have been. This, indeed, is not pretended. He was competent, perfectly competent, to attend to business. The consideration was as much as the case called for. The concern was yet on the tide of experiment; a tide which was as likely to ebb as to flow, and which, in its ebb, might leave the shore strewed with wreck. Uncertainty and risk,—risks, civil and, perhaps, criminal,—belonged, as yet, to the whole enterprise. Without any doubt at all, the sales of their warrants by the soldiers, before the issue of them, were void to "all intents." Being void to "*all* intents," the soldiers could come forward *at any time*, and successfully claim the land as their own. Here is a fact to be kept constantly in view. What profits

* 2 Caines, 149.

† Springfield Bank *v.* Merrick, 14 Massachusetts, 322; Russell *v.* DeGrand, 15 Id. 39; Wheeler *v.* Russell, 17 Id. 281; Simpson *v.* Bloss, 7 Taunton, 246; Aubert *v.* Maze, 2 Bosanquet & Puller, 371.

‡ See Wheeler *v.* Sage, 1 Wallace, 518.

the concern would ultimately give was a matter which, like the "means" of Signor Antonio in the Merchant of Venice, was still "in supposition." It was a worse case still; for the outlays were both certain and large; and what penalties might attend the violation of the statute, as we have said, remained to be seen.

Mr. Carpenter, contra.

1. We do not admit that the parties meant to violate the act of Congress. The act, moreover, did not declare it criminal to buy bounty rights. This case is analogous to cases arising under the Statute of Frauds, which declares contracts of certain kinds void, unless in writing. The contract, though voidable, has never been regarded as criminal.

But quite independently of this, the bill relates to transactions wholly subsequent to and independent of the purchase of the bounty rights. The case falls within the English precedent of *Tenant* v. *Eliott.** In that case, the defendant, a broker, effected an insurance for the plaintiff, which was illegal, being in violation of the navigation laws; but on a loss happening, the underwriters paid the money to the broker, who refused to pay it over to the insured, setting up the illegality upon which an action for money had and received was brought. The plaintiff recovered, on the ground that the implied promise of the defendant, arising out of the receipt of the money for the plaintiff, was a new contract, not affected by the illegality of the original transaction. The same principle was applied and enforced in *Farmer* v. *Russell,*† and in *Thomson* v. *Thomson,*‡ by Sir William Grant, as great a judge as ever sat in Chancery.

2. The general position taken on the other side, as to the relations of partners to each other, may be true in some cases. It is not true in all, nor true here. Brooks was not the partner, but the agent of Martin. He was his brother-in-law, and had been his clerk. He had a special know-

* 1 Bosanquet & Puller, 3.

† Id. 296.

‡ 7 Vesey, 473; and see, also, Sharp *v.* Taylor, 2 Phillips's Ch. 801.

ledge of the condition of the business, which Martin had not. It matters not that the parties did not stand in the *technical* relation of trustee and *cestui que trust.* That is not essential in any case. The principle is a general one, and it applies to "all cases where confidence is reposed, to agents, attorneys, solicitors, guardians," &c.* In all such cases, "the transaction is scanned with the most searching and questioning suspicion." The party must show that "he took no advantage *whatever* of his situation; that he gave to his *cestui que trust* all the information which he possessed or *could obtain* upon the subject; that he advised him as he would have done in relation to a third party offering to become a purchaser, and that the price was fair and adequate." And the *onus* is on the party purchasing.†

3. How can these principles be applied, and the purchase stand? Martin relied wholly on Brooks, who systematically prevented his getting information. The letter of Brooks, June 20, 1848, to George Field, proves this fact, and proves, also, a fraudulent design. The purpose of this letter cannot be concealed. Neither was there any consideration. Brooks, indeed, agreed to pay the partnership debts; but, in the first place, the debts were far more than provided for by the vast profits; and, second, Brooks gave no *security* to pay them or save Martin harmless, if they had not been. As a partner, he was bound to pay them at any rate. So he *gave* nothing. Neither did Martin *get* anything, for he was bankrupt already; and the agreement to discharge the debts was of no value. Even if it had been, the consideration was wholly inadequate in view of the large profits made.

Mr. Justice MILLER, stating the facts of the case, as he proceeded, and showing that its different parts were proved by the testimony, delivered the opinion of the court to the following effect:

We think that, in point of fact, the allegation of the an-

* 1 Leading Cases in Equity, by Hare & Wallace, note to Fox *v.* Mackreath, 72.

† Id.

swer,—that the traffic in which this firm engaged was the buying up of soldiers' *claims*, before any scrip or land warrants were issued, and not the purchase and sale of bounty land warrants and scrip,—is true. We have as little doubt that the traffic was illegal. Undoubtedly, the main object of the ninth section of the act of February 11, 1847, was to protect the soldier against improvident contracts of the precise character of those developed in this record. It was a wise and humane policy, and no court could hesitate to enforce it, in a case which called for its application. If a soldier, who had thus sold his claim to Brooks, Field & Co., had refused to perform his contract, or to do any act which was necessary to give them the full benefit of their purchase, no court would have compelled him to do it, or given them any relief against him. And if they had, by any such means, got possession of the land warrant or scrip of a soldier, no court would have refused, in a proper suit, to compel them to deliver up such land warrant or scrip to the soldier. Or if Brooks, after the signing of these articles of partnership, had said to Martin, "I refuse to proceed with this partnership, because the purpose of it is illegal," Martin would have been entirely without remedy. If, on the other hand, he had said to Martin, "I have bought one hundred soldiers' claims, for which I have agreed to pay a certain sum, which I require you to advance according to your agreement," Martin might have refused to comply with such a demand, and no court would have given either of his partners any remedy for such a refusal. To this extent go the cases of *Russell* v. *Wheeler*,* *Sheffner* v. *Gordon*,† *Belding* v. *Pitkin*,‡ and the others cited by counsel for appellant, and no further.

All the cases here supposed, however, differ materially from the one now before us. When the bill in the present case was filed, all the claims of soldiers thus illegally purchased by the partnership, with money advanced by complainant, had been converted into land warrants, and all the warrants had been sold or located. The original defect in

* 17 Massachusetts, 281. † 12 East, 304. ‡ 2 Caines, 149.

the purchase had, in many cases, been cured by the assignment of the warrant by the soldier after its issue. A large proportion of the lands so located had also been sold, and the money paid for some of it, and notes and mortgages given for the remainder. There were then in the hands of defendant, lands, money, notes, and mortgages, the results of the partnership business, the original capital for which plaintiff had advanced. It is to have an account of these funds, and a division of these proceeds, that this bill is filed. Does it lie in the mouth of the partner who has, by fraudulent means, obtained possession and control of all these funds, to refuse to do equity to his other partners, because of the wrong originally done or intended to the soldier? It is difficult to perceive how the statute, enacted for the benefit of the soldier, is to be rendered any more effective by leaving all this in the hands of Brooks, instead of requiring him to execute justice as between himself and his partner; or what rule of public morals will be weakened by compelling him to do so? The title to the lands is not rendered void by the statute. It interposes no obstacle to the collection of the notes and mortgages. The transactions which were illegal have become accomplished facts, and cannot be affected by any action of the court in this case.

In *Sharp* v. *Taylor*,* a case in the English Chancery, the plaintiff and defendant were partners in a vessel, which, being American built, could not be registered in Great Britain, according to the navigation laws of that kingdom. Nor could the owners, who were British subjects, residing in England, have her registered in the United States. They undertook to violate the laws of both countries by having her falsely registered in Charleston, South Carolina, as owned by a citizen and resident of that place. In this condition, she made several trips, which were profitable; and the defendant, colluding with Robertson, the American agent in whose name the vessel had been registered, refused to account with plaintiff for his share of the profits, or to

* 2 Phillips's Ch. 801.

acknowledge his interest in the ship. When plaintiff brought his suit in Chancery in England, the defendant set up the illegality of the traffic, and the violation of the navigation laws of both governments, as precluding the court from granting any relief, on the same principle that is contended for by the defendant in the present case. It will be at once perceived that the principle is the same in both cases, and that the analogy in the facts is so close that any rule on the subject which should govern the one ought also to control the other. The case was decided by Lord Chancellor Cottenham and from his opinion we make the following extracts: "The answer to the objection appears to me to be this,—that the plaintiff does not ask to enforce any agreement adverse to the provisions of the act of Parliament. He is not seeking compensation and payment for an illegal voyage. That matter was disposed of when Taylor" (the defendant) "received the money; and plaintiff is now only seeking payment for his share of the realized profits. . . . . As between these two, can this supposed evasion of the law be set up as a defence by one against the otherwise clear title of the other? Can one of two partners possess himself of the property of the firm, and be permitted to retain it, if he can show that, in realizing it, some provision or some act of Parliament has been violated or neglected? . . . . The answer to this, as to the former case, will be, that the transaction alleged to be illegal is completed and closed, and will not be in any manner affected by what the court is asked to do between the parties. . . . . The difference between enforcing illegal contracts, and asserting title to money which has arisen from them, is distinctly taken in *Tenant* v. *Elliot*,* and *Farmer* v. *Russell*,† and recognized and approved by Sir William Grant, in *Thomson* v. *Thomson*."‡

These cases are all reviewed in the opinion of this court in the case of *McBlair* v. *Gibbes*,§ and the language here quoted from the principal case is there referred to with approbation. We are quite satisfied that the doctrine thus

* 1 Bosanquet & Puller, 3.

† Id. 29.

‡ 7 Vesey, 473.

§ 17 Howard, 232.

announced is sound, and that it is directly applicable to the case before us.

The plaintiff alleges in his bill, that on the 28th day of June, 1848, he sold his interest in the partnership business to the defendant Brooks; that in making the sale he was overreached by the fraud of Brooks, who, by concealment of what he knew, and false representations in what he professed to tell, took advantage of the embarrassed financial condition of plaintiff, and his ignorance of the partnership business, and procured from him the sale for a consideration totally disproportioned to the real value of his interest in the concern. The defendant admits the purchase of plaintiff's interest, but denies the fraud, and insists that the transaction was in all respects fair and honest. The issue thus generally stated here, is the one mainly contested in the case; and so contested that a record of a thousand printed pages is mostly filled with testimony on this subject.

If the parties are to be regarded in this transaction as holding towards each other no different relations from those which ordinarily attend buyer and seller; and as, therefore, under no special obligation to deal conscientiously with each other, we are satisfied that no such fraud is proven as would justify a court in setting aside an executed contract. But there *are* relations of trust and confidence which one man may occupy towards another, either personally, or in regard to the particular property which is the subject of the contract, which impose upon him a special and peculiar obligation to deal with the other person towards whom he stands so related, with a candor, a fairness, and a refusal to avail himself of any advantage of superior information, or other favorable circumstance, not required by courts of justice in the usual business transactions of life. It is contended that the relation of Brooks towards Martin was of this character; and before we can dispose of the question of fraud, it is necessary to determine whether the claim thus set up is well founded; and if it is, what are the principles upon which courts of equity determine the validity of contracts between parties so situated. It is argued that the partnership exist-

ing between the parties constitutes of itself a relation which calls for the application of the principles which we have alluded to; and Judge Story, in recapitulating the confidential relations to which they are appropriate,* mentions partner and partner as one of them. It is not necessary to decide here whether, in all cases, a sale by one partner to another of his interest in the partnership concern, will be scrutinized with the same closeness which is applied to fiduciary relations generally; for there are special circumstances in this case which bring it clearly within the rules applicable to that class of cases.

1. The defendant was not only the partner of plaintiff, but he was his special agent in the management of the business. The bill alleges that he had a power of attorney from plaintiff, authorizing him to represent, on all occasions, the interest of plaintiff in the conduct of the affairs of the firm; and although this is denied in the answer, and is not proven, the answer *does* state that at the time the partnership was formed, it was distinctly agreed between plaintiff and defendant that the latter was to have the full and exclusive control of the business, and should so far represent the plaintiff as to give defendant a preponderating influence in the management of the partnership over Mr. Field, the third partner. The record leaves no doubt that he acted throughout in accordance with this agreement.

2. It is abundantly established by the testimony that, within some two or three months after the partnership was formed, the parties closed their operations in New Orleans, after having invested over $50,000, advanced by Martin, in the purchase of soldiers' claims; and that thenceforth very little was done in the way of purchasing claims or warrants. That Brooks then came to Washington to procure the warrants to be issued, and Field went to Wisconsin to seek a market for their sale. From that time forward, Brooks and Field had the entire management of the business, mainly under the direction of Brooks; and none of it was conducted

* Equity Jurisprudence, § 323.

in New Orleans save the purchase of five or six warrants made by Brooks on Martin's suggestion, nor were any reports made of the business to Martin.

Brooks and Field thus managed the entire concern, at a distance of near two thousand miles from Martin, and, as we think the testimony shows, without consulting him in any way, and with very little regard for his large interest in the business.

Under these circumstances, Brooks must be held to have been not only the partner, but the special agent of Martin; and the purchase made by him of Martin's interest must be tested by the rules which govern such transactions as between principal and agent.

What are these rules? "On the whole, the doctrine may be generally stated, that wherever confidence is reposed, and one party has it in his power, in a secret manner, for his own advantage, to sacrifice those interests which he is bound to protect, he will not be permitted to hold any such advantage."* Or, to speak more specifically, "if a partner who exclusively superintends the business and accounts of the concern, by concealment of the true state of the accounts and business, purchase the share of the other partner for an inadequate price, by means of such concealment, the purchase will be held void."†

Speaking of a purchase by a trustee from his *cestui que trust*, Lord Chancellor Eldon says, in the case of *Coles* v. *Trecothick*,‡ that though permitted, it is a transaction of great delicacy, and which the court will watch with the utmost diligence; so much, that it is very hazardous for a trustee to engage in such a transaction. "A trustee may buy from the *cestui que trust*, provided there is a distinct and clear contract, ascertained to be such after a jealous and scrupulous examination of all the circumstances; provided the *cestui que trust* intended the trustee should buy; and there is no fraud, no concealment, no advantage taken by the trustee of information acquired by him in the character

* 1 Story's Equity, § 323. † Id. § 220. ‡ 9 Vesey, 234.

of trustee. I admit," he says, "it is a difficult case to make out, wherever it is contended that the exception prevails." This has long been regarded as a leading case, and the above remarks have been often cited by other courts with approbation. We think them fully applicable to a purchase, by an agent from his principal, of the property committed to his agency.*

We lay down, then, as applicable to the case before us, and to all others of like character, that in order to sustain such a sale, it must be made to appear, first, that the price paid approximates reasonably near to a fair and adequate consideration for the thing purchased; and, second, that all the information in possession of the purchaser, which was necessary to enable the seller to form a sound judgment of the value of what he sold, should have been communicated by the former to the latter.

In regard to the adequacy of the price, it is obvious that Brooks did not pay to Martin anything which he was not bound to pay before the sale was made, or assume any obligation under which he did not already rest; nor did Martin receive anything which Brooks did not then owe him, or his promise to do anything for which Brooks was not previously bound. The only matter in which their relations were changed was, that Martin sold to Brooks his share of the profits of the business, and Brooks assumed to bear all Martin's share of the losses.

So the condition of the partnership business, at this time, shows a balance of $15,000† of profits, all of which was cash, or funds equal to cash. It further appears, that there were on hand and unsold over 45,000 acres of land, which, at the Government rate of $1.25 an acre, gives an aggregate value of $57,000. Add this to the $15,000 above mentioned, and we have $72,000 as the probable profits of the partnership venture, at the time of this sale.

* See, also, Michoud *v.* Girod, 4 Howard, 503; Bailey *v.* Teakle, 2 Bockenborough, 51–54; Hunter *v.* Atkyns, 3 Mylne & Keene, 113; Maddeford *v.* Austwick, 1 Simons, 89.

† The court here made a computation giving this result.

It is said that the danger that soldiers would seek to reclaim the warrants, or the lands on which they had been located, under the provisions of the act of 1847, already mentioned, must have detracted largely from the amount which any prudent man would have given for Martin's interest in the concern. This danger was, however, a very remote and improbable one, and must have so appeared, when we consider that these claims have been bought from young men scattered over the different States of the Union, with no means of ascertaining where the warrants were located, or in whom the title was vested; and that the amount, in each case separately, was not worth the trouble and expense of the search and subsequent litigation. But while these considerations might have some weight, if the question of adequate price were otherwise in doubt, they can go but a little way to establish that point, in the circumstances of the present case.

Martin's share of the profits were $30,000, for which Brooks gave him substantially nothing.

Was Martin placed by Brooks in possession of all the information known to himself, and which was necessary to enable Martin to form a sound judgment of the value of what he was selling?

[His honor here examined the evidence on this question of fact,—some of it of an inferential kind,—minutely, and went on thus]:

But we are not left alone to this negative and inferential testimony on the subject. We have letters from Brooks to the Fields, written before the sale was made, in which he urges that all remittances shall be made to him at Washington, showing from the allusions in them to a proposed remittance to Martin, and to Lake & Co., who were Martin's correspondents in New York, that his intention was that no remittance should be made to Martin. When we consider that the letter of June 20th was written at a moment when he was expecting in a few days an interview with Martin, which he had himself suggested, and that he was no doubt then contemplating the very purchase which he made at the

Statement of the case.

interview, and that he knew that Lake was the other partner in the firm of Martin & Co., we look upon it as remarkable; pointing clearly to one conclusion, namely, a determination to keep from Martin all the funds of the concern, and all information of its condition, in order that he might perform the *operation* of buying Martin's interest at a sacrifice.

We are of opinion, from a careful examination of the testimony, that Brooks occupied towards Martin a relation of confidence and trust, being his partner, his agent, and his brother-in-law, and having also entire control of the partnership business; that he took advantage of this position to conceal from Martin the prosperous condition of the concern, and purchased from him his interest, for a price totally disproportioned to its real value; and that, under such circumstances, it is the unquestionable duty of a court of chancery to set aside the contract of sale.

DECREE AFFIRMED WITH COSTS.

Mr. Justice CATRON dissented briefly; on the ground that the partnership, having been formed for the purpose of speculating in soldiers' *claims* to warrants, the original transaction was a fraud upon the act of Congress; violating public policy; and that in such a case equity does not interfere.

BADGER *v.* BADGER.

Courts of equity, acting on their own inherent doctrine of discouraging, for the peace of society, antiquated demands, refuse to interfere in attempts to establish a stale trust, except where,

1. The trust is *clearly* established.
2. The facts have been fraudulently and successfully concealed by the trustee from the knowledge of the *cestui que trust.*

And in cases for relief, the *cestui que trust* should set forth in his bill, specifically, what were the impediments to an earlier prosecution of his claim; how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance, and how and when he first came to a knowledge of his rights.

BADGER died in 1818, leaving a widow and ten children, one of whom only was of age at that time; the others being