The courts of this state have drawn a distinction between accidents arising through "ordinary means".[25] Accidental means arise where in the act preceding the injury something unforeseen, unexpected, or unusual occurs which produces the injury. It is extremely difficult to apply this definition to factual situations. One case[26] holds that an injury to the back of one pitching quoits occurred through ordinary means, voluntarily employed in a not unusual or unexpected way. Another[27] holds that a back sprain suffered by a farm laborer while clearing a field by pulling weeds and bushes was caused by something unforseen, unexpected, or unusual. *Query*—is the injury from quoit pitching any more voluntarily inflicted than that from weed pulling?

In summary then it can be said that the term "accident" which at first meant a specific unexpected extraneous event taking place at a specific time has come to mean, when used in connection with an injury, something quite different. Any injury not the result of disease or design is the result of an accident. Thus by judicial legislation the scope of the Workmen's Compensation Act has been greatly extended.

DISABILITY OF THE TESTAMENTARY FIDUCIARY TO PURCHASE PROPERTY UPON FORECLOSURE, EXECUTION OR THE EXERCISE OF A POWER OF SALE.—A trustee, while engaged as such, is obliged to conduct himself in a manner conducive to promotion of the interests of the corpus estate and to furthering the welfare of his cestui.[1] The nullifica-

25. Lower v. Metropolitan Life Ins. Co., 111 N.J.L. 426, 168 Atl. 592 (E. & A., 1933); Lawrence v. Mass. Bonding & Ins. Co., 113 N.J.L. 265, 174 Atl. 226 (S. C., 1934). These are not Workmen's Compensation cases but cases arising under accident insurance policies. The problem is the same, however.

26. Lawrence v. Mass. Bonding & Ins. Co., 113 N.J.L. 265, 174 Atl. 226 (S. C., 1934).

27. Van Meter v. E. R. Morehouse, Inc., 13 M. 558, 179 Atl. 678 (S. C., 1935).

1. *In re* Westhall, 125 N.J.Eq. 551 5 Atl. (2nd) 757 (E. & A. 1939) Marshall v. Carson, 38 N.J.Eq. 250 (E. & A. 1884); Staats v. Bergen, 17 N.J.Eq. 554 (E. & A. 1867).

tion of various personal opportunities for gain and the prevention of illegal subterfuge has been the source of constant vigilence by the courts. The result of such surveillance has tended to restrain the fiduciary from advancing himself through the manipulation of fiduciary funds and property.

The purchase by a fiduciary of estate property which has been sold by him in his representative capacity, under a power granted by the testator, or by public sale, presents a problem of conflicting interests and leads to many claims of breach of fiduciary relation.[2] In the former, where sale by the trustee or executor is accomplished to pay estate debts, and the representative purchases personally, the right to purchase is in discord with the duty owed as a fiduciary to the cestui and creditors, who, in the case of a trust are entitled to an accounting of funds.[3] While the older New Jersey cases held such a transaction void[4] more recent decisions call it voidable and require affirmative action in order that the fiduciary be charged with holding in a continuing trust, or if the property be sold to a bona fide purchaser, to account for the proceeds thereof to his cestui.[5]

The probable harm flowing from such a situation would seem to entail the effort of the fiduciary to purchase the property below its true value, thereby prohibiting the estate from realizing that which it is the duty of the fiduciary to protect. However, where a fair market value is offered it would seem that the difficulty is alleviated, as the estate would suffer no material harm if A rather than B purchased, paying the same

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2. *In re* Westhall, 125 N.J.Eq. 551 5 Atl. (2nd) 757 (E. & A. 1939); Gibbs v. Gibbs, 151 Ga. 745, 108 S.E. 214 (1921); Abernathie v. Rich, 256 Ill. 166, 99 M.E. 833; *Dem ex Dem* Rickey v. Hillman, 7 N.J.L. 180 (S.C. 1924).

It has been held that the trust relationship does not only cover the property which is held in trust for the complaining party but also property to which he had no trust obligation although part of the estate. . . . Distinction has been made when property has no trust obligation owed it although connected, and persons who are beneficiaries although no direct duty runs to them, but to other beneficiaries.

3. *In re* Bender, 122 N.J.Eq. 192, 192 Atl. 718 (Prer. 1937).

4. Blauvelt v. Ackerman, 20 N.J.Eq. 141 (Ch. 1869).

5. Welsh v. McGrath, 58 Iowa 519, 10 N.W. 810 (1882). (Administrator purchased property upon foreclosure of mechanics lien—*held*. purchase valid until its voidable nature was declared and acted upon.)

consideration. Nevertheless, it has been held that it is not of pertinent significance that the sale was bona fide, or that a fair market value was received; but the factor that the fiduciary may receive a profit from dealing with estate property and further that he has placed himself in a position of possible temptation is sufficient to allow an application by the cestui to have the property resold.[6] In contradiction, a more recent decision allowed a surviving executor to sell his father's estate, which he represented, to his daughter at a greatly reduced price in relation to its value at the time of the testator's death. The sale was characterized as valid because of the great depreciation involved and thereby bona fide.[7]

The harshness of the rule is illustrated where the estate is a mortgagee and the fiduciary is personally a second mortgagee on the same property. It has been held in New York that a trustee could not, in order to protect himself, purchase the first mortgage.[8] It would follow that the fiduciary should be precluded from purchasing at the foreclosure sale as well. Under a strict interpretation the fiduciary in a purchase of this kind is not dealing with the estate property as such, but his purpose would necessarily be the same as if the estate was mortagor, namely, to expend the least for the most to the detriment of the estate. However, if there be a scarcity of bidders at the sale, should the fiduciary then be permitted to overstep his restrictions under the guise of benefit to the estate by reason of his singular bid even though it be motivated by selfish interests? As early as 1876 the affirmative reasoning was refuted on numerous occasions and such sales were voided entailing a total disregard of the possible benefits to the estate through a bid for the property.[9]

The disability which extends to the purchasing fiduciary also extends to his spouse.[10] Representing a method of subterfuge, the courts

6. *In re* Westhall, 125 N.J.Eq. 551, 5 Atl. (2nd) 757 (E. & A. 1939).; Marshall v. Carson, 38 N.J.Eq. 250 (E. & A. 1884); National Manufacturers Co. v. Bird, 97 N.J.Eq. 242, 127 Atl. 819 (Ch. 1924).

6. Staats v. Bergen, 17 N.J.Eq. 554 (E. & A. 1867).

7. Oliphant v. Carr, 103 N.J.Eq. 165, 152 Atl. 130 (Ch. 1928).

8. Van Epps v. Van Epps, 9 Paige (N.Y.) 237 (1841); Jewitt v. Miller, 10 N.Y. 401 (1852).

9. Fulton v. Whitney, 66 N.Y. 548 (1876).

10. Scott v. Gamble and wife, 9 N.J.Eq. 218 (Ch. 1852); Hartman v. Hartle,

have endeavored to disable the wife from purchasing unless leave to do so has been previously obtained by an order of the court to have the sale supervised by a Master.[11] If a trustee formulates a plan whereby a third person becomes the purchaser for the spouse at a sale of trust property by the trustee, the sale will be set aside upon application by the cesui.[12] If the wife does purchase and subsequently realizes a profit from a resale, the trustee is held to an accounting for such gain.[13] The wife of the trustee is not excluded because of the possibility that the trustee may ultimately become the owner of the land, but is based primarily on the degree of unity which is present in a marriage.[14]

A trustee may not use trust funds for a trust investment which is comprised of a mortgage executed by the trustee as mortgagor.[15] Likewise, if a trustee forms a corporation to serve the purpose of a holding company and through this means, the corporation of which the fiduciary is in control, executes a mortgage to him which he endeavors to assign to the trust estate as a worthy investment, the courts will lift the corporate veil to prohibit the trustee from effectuating a participation by the estate in the investment.[16] It is without the scope of the trustee to lend trust funds to himself or purchase securities from himself and it is unimportant that he pays a fair consideration and that no profit was realized as an encumbent duty is in process of being violated.[17]

A strong majority has advocated the proposition that whether the trust property be sold perforce the fiduciary's position or through a channel over which the executor has no control, the trustee is in both situations precluded from participating.[18] A distinct minority, however,

95 N.J.Eq. 123, 122 Atl. 615 (Ch. 1923).

11. *Ibid.*, Bassett v. Shoemaker, 46 N.J.Eq. 538, 20 Atl. 52 (E. & A. 1890).

12. *Ibid.*, Giehrach v. Rupp, 112 N.J.Eq. 296, 164 Atl. 456 (Ch. 1923).

13. Hartman v. Hartle, 95 N.J.Eq. 123, 122 Atl. 615 (Ch. 1923).

14. National Manufacturers Co. v. Bird, 97 N.J.Eq. 242 (127 Atl. 819), (Ch. 1924).

15. McAllister v. McAllister, 120 N.J.Eq. 407, 184 Atl. 723 (Ch. 1936).

16. *Supra* note 3.

17. *Ibid.*

18. Raleigh v. Fitzpatrick, 43 N.J.Eq. 50, 11 Atl. 1 (1887); McCormick v. Ocean City Asso., 45 N.J.Eq. 561, 18 Atl. 112 (Ch. 1889), *affd.*, 47 N.J.Eq. 599, 22 Atl. 1085 (E. & A. 1890) but see *Den ex. dem* Rickey v. Hillman, 7 N.J.L. 180 (S.C. 1824); Earl v. Halsey, 14 N.J.Eq. 332 (Ch. 1862).

"His being a trustee of the personal fund did not disqualify him to bid for the

has prescribed a distinction and a relaxation of the rule where the sale is brought about through another than the trustee and have therefore permitted the trustee to purchase estate property when such is the circumstance.[19] In an early North Carolina case it was stated, "since it was sold by order of the court and by a public officer, whose duty it is to see that the price is the fair value, the fiduciary may buy below the true value if he can".[20] The majority view would seem the sounder as a fiduciary is often times possessed of knowledge which may aid him in the advisability of a certain investment and the usurpation of such private knowledge may cause, if not all times, a loss to the represented estate. The basis of disallowing the fiduciary to purchase when the sale is brought about through a power vested in him, is the possibility of a selfish tendency to gain at the expense of the estate. The mere circumstance that a public officer rather than the trustee is instrumental in bringing about the sale, would not annihilate the desire of part of the fiduciary to make a good bargain.[21]

The trustee, however, may be relieved of his restriction by reason of some act of the cestui,[22] a rule of law, or by statute. In a recent New Jersey case the business of decedent was purchased by the administrator of decedent's estate and for which he paid a minimum value. At a conference the adult next of kin agreed to the sale as did the guardian of the infant next of kin. The court held the voluntary agreement by the adults precluded them from objecting to the purchase, but the infants

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landed property, he not being the person entrusted to sell it. It is not analogous to the cases where a trustee has sold to himself or employed an agent to bid for him."

19. Allan v. Gillette, 127 U.S. 589, 32 (2nd) 271, 8 S.Ct. 1331 (1881); Starkweather v. Jenner, 27 App. D. C. (1906); *Affd.*, in 216 V.S. 524, 54 L. ed. 602, 305 S.C. 382 (1910).

It is true as a general rule that if a trustee buys trust property even at public sale which he brought about or in any way controlled, the trustee will be presumed to buy and hold for the benefit of the trust. That rule, however, does not apply where the Trustee has no control over or is not instrumental in bringing about the sale. In such case he may bid and become the purchaser of the property free from any trust upon his part. Calvert v. Woods, 246 Pa. 325, 92 Atl. 301 (1914).

20. Tomlinson v. Delestatius, 3 N.C. (2 Hawy) 284 (1803); *contra,* Eagle v. Terrill, 95 Ark. 434, 130 S.W. 550 (1910).

21. *Supra* note 18.

22. Bechtold v. Read, 49 N.J.Eq., 22 Atl. 1085 (Ch. 1891).

were entitled to an accounting.[23] The cestui may acquiesce in the sale, but it must be clear he knew or ought to have known of the circumstances and that he had an intention to acquiesce.[24] Likewise, where a complainant received the purchase money with a full knowledge of the facts involved, and ratified the sale even though a known fact would have avoided the sale, he was refused relief.[25]

A trustee who has an interest to preserve, such as a share in the trust estate, is generally held to receive a valid title when he purchases at any sale where he is not the direct vendor.[26] Therefore, where an administrator was heir of a mortgagor and the property was sold under a power of sale in the mortgage to the mortgagee who purchased for benefit of the administrator and subsequently conveyed to him, the court held the administrator to have acquired an indefeasible title.[27] Most decisions allow the fiduciary the right to purchase for himself where he has an individual interest in the property involved in the sale, but there is usually a corollary factory which sways the court, the interest of the trustee not being the sole ground for the decision.[28]

When the trust has terminated the purchase may be made on the principle that the trust has ceased to exist and is therefore of no effect.[29] If a lien is foreclosed, such lien representing the entire estate, a trust no longer exists and the duty of the fiduciary is thereby extinguished.[30] It would likewise follow that when a piece of realty represents the sole trust property and said property is subsequently sold because of some forfeiture, the trustee may purchase as he is no longer acting in a trust capacity. Such a result would seem to require a narrowing of the broad principle.

Finally, a trustee may find the prohibition lifted in many jurisdic-

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23. *Supra* note 2.

24. *Supra* note 15.

25. Scott v. Gamble and Wife, 9 N.J.Eq. 218 (Ch. 1852).

26. 28 AM. & ENG. ENC. LAW, 1020; Leath v. Title Guaranty Trust Co., (C. E. A. 8th) 18 F. (2nd) 41 (1927). Certiorari denied in 1927, 275 U.S. 535, 72 L. ed. 412, 485 Ct 30.

27. Randolph v. Vails, 180 Ala. 82, 60 So. 159 (1912).

28. 77 A. L. R. 1515 N., 1521 N.

29. Hosch v. Hosch, 181 Ky. 781, 20 S. Sw. 963 (1918); Griswold v. Comer, (Tex. Civ. App. 1913) 161 S.W. 423.

30. Marquam v Ross, 47 Or. 374, 78 Pae. 698 (1905).

tions and particularly in New Jersey by statute. It is, therefore, a simple matter for the trustee to acquire the right to purchase if his intentions are primarily trustworthy. It is only the scheming fiduciary, fearing a true value estimated by the court as to the state property, who is entangled in the mesh of prohibitions.[31]

CORPORATIONS—THE DUTY OF DISCLOSURES BY DIRECTORS* IN THE PURCHASE OF STOCK FROM THEIR STOCKHOLDERS.—The relation of a director of a corporation to his stockholder has been described as that of trustee and *cestui que trust*.[1] They are the trustees of its business and property for the collective body of stockholders in respect to such business.[2] The mere statement that they are trustees is manifestly inaccurate; the directors lack any interest, legal or equitable, in the assets of the corporation, which are owned by the corporation itself.[3] It is true, however, that there exists a fiduciary duty; the director occupies a position of trust of such a character that his dealings where his interest is opposed to the interest of the corporation will be subjected to the closest scrutiny.[4]

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31. R.S. 3:20-5 . . . when it appears to the Chancellor, by petition of a fiduciary that it will be to the advantage of the estate of which such person is fiduciary, that such fiduciary should purchase real estate, or any part thereof, belonging to the estate, the Chancellor may inquire in a summary manner into the merits of the application, by reference to a master or otherwise, and ascertain the actual money value of the real estate, or part thereof, so to be purchased. If the Chancellor is satisfied that the transaction will be to the advantage of the estate he may order that such fiduciary may purchase the real estate for such prices and in the same manner as though the fiduciary were any person purchasing the same . . .

* "Directors" herein means both directors and officers of the corporation.

1. Stephany v. Marsden, 75 N.J.Eq. 90, 71 A. 598, (Ch. 1910); Cuthbert v. McNeil, 103 N.J.Eq. 199, 142 A. 819, (Ch. 1928); Manson v. Curtis, 223 N.Y. 313, 119 N.E. 559 (1918).

2. Dixmoor Golf Club v. Evans, 325 Ill. 612, 156 N.E. 785 (1927).

3. BOGERT ON TRUSTS, §16; POMEROY'S EQUITY JURISPRUDENCE, (3d. ed.) §1090.

4. Marr v. Marr, 73 N.J.Eq. 643, 70 A. 375, (E.&A. 1907). See also Stewart v. Lehigh Valley R.R. Co., 38 N.J. Law 505. (E.&A. 1875).