

T. E. CESS PELHAM, Appellant, v. WILLIAM N. WITHERSPOON and RICHARD P. GREENE, SR.,
Curator of Intestate Estates, Sinoe County.

OBJECTIONS TO PROBATE OF DEED.

Argued March 19, 20, 1945. Decided May 4, 1945.

An agent may not use the position obtained by him during the course of his agency to acquire for himself without his principal's knowledge and consent any adverse right or interest in the subject matter of the agency, nor shall he acquire for himself during the course of his agency any adverse right or title to the principal's property.

A motion to dismiss the appeal in this cause on a procedural issue was denied by this Court in *Cess Pelham v. Witherspoon*, 8 L.L.R. 296 (1944). In the case herein appellant objected to probate of a deed executed to appellee Witherspoon by co-appellee Greene, the Curator of Intestate Estates for Sinoe County, but his objections were overruled. On appeal to this Court, *judgment* of lower court *affirmed*.

Nete Sie Brownell for appellant. *H. Lafayette Harmon* and *Charles B. Reeves* for appellees.

MR. JUSTICE DAVID delivered the opinion of the Court.

As the result of what appears to be a breach of understanding and good faith between the appellant and William N. Witherspoon, one of the appellees, this case now finds its way to this tribunal for review and final decision.

According to the records certified to this Court, it would appear that appellee Richard P. Greene, Sr., the Curator of Intestate Estates for Sinoe County, had up for sale at public auction to the highest bidder the premises

lot Number 34 with the building thereon known as the Coliseum of the estate of the late W. J. Clarke situated at Greenville, Sinoe County. Witherspoon, one of the appellees, became interested in the purchase of the property and asked his friend Pelham, the appellant, to act as his agent and bid in the property on his behalf, with a further understanding that Pelham would advance an initial sum of thirty pounds sterling against the purchase price in order to seal the bid, which amount Witherspoon was to refund to Pelham. Pelham accordingly bid in said property for one hundred pounds sterling against which sum he made the initial payment of thirty pounds as arranged on behalf of his principal, Witherspoon, and explained the arrangement to the curator as appears from the receipt issued, which we quote hereunder:

"GREENVILLE, SINOE COUNTY,
October 31, 1942.

"Received from Hon. T. E. Cess Pelham the sum of thirty pounds sterling (£30.0.0) as cash advance on one house and lot of the estate of the late Hon. W. J. Clarke, and known commonly as the Coliseum, and leaving a balance of seventy pounds (£70.0.0) sterling on the bid. This lot and building is being bought also for the benefit of Hon. William N. Witherspoon, after he shall have fully satisfied the amount that has been paid thereon to Hon. T. E. Cess Pelham as per agreement.

[Sgd.] RICHARD P. GREENE
Curator for Sinoe County.

"Witnesses:

[Sgd.] I. WASHINGTON BROWN
E. B. KANSWENH
FRANK COOPER."

Subsequently, on the same day, according to the date of the document made profert, Witherspoon refunded to Pelham fourteen pounds of the thirty pounds advanced by Pelham on Witherspoon's behalf and gave a demand

note of hand for payment of the balance of sixteen pounds with interest thereon, which note reads as follows:

“GREENVILLE, SINOE COUNTY,
October 31, 1942.

“On demand for value received I promise to pay to Hon. T. E. Cess Pelham or his order the sum of sixteen pounds sterling (£16.0.0) on or before the 7th of November A.D. 1942, and a further rate of interest of forty shillings (40/-) if the amount is not paid within said time and against which the lot and building known as the Coliseum of the late Hon. W. J. Clarke which is being bought by me through Hon. T. E. Cess Pelham is herein employed as a guaranty on the said loan.

[Sgd.] WILLIAM N. WITHERSPOON

“Witnesses:

I. WASHINGTON BROWN

FRANK COOPER.”

Without discussing whether or not Witherspoon legally could give a lien on property to which he had not up to that time secured complete title, since this issue has not been specially pleaded, the documents quoted *supra* show on their face: (1) That Pelham had acted as the agent for Witherspoon in bidding in this property for one hundred pounds sterling; (2) That Pelham had advanced thirty pounds sterling on behalf of Witherspoon against the purchase price for which a promissory note for payment of the balance due had been executed by Witherspoon after payment of a portion of said advance to Pelham by Witherspoon; and (3) That Witherspoon subsequently, without paying the balance of sixteen pounds with interest which he owed Pelham, approached the curator, Mr. Greene, and paid the balance of seventy pounds sterling of the purchase price, thereby completing the transaction with the curator, who thereupon executed a curator's deed for said premises to Witherspoon whose behalf said property was purchased.

Upon the deed being offered for probate, Pelham, the appellant, objected to the probate of same, claiming that the curator is barred from executing said deed to Witherspoon in the face of the receipt, *supra*, that the curator executed to him, the appellant, which constituted an agreement between them. In view of the conditions laid down in said receipt executed by Richard P. Greene, Sr., to Pelham, the Court must consider: (1) Whether or not the curator has been released from his part of the agreement, if at all it can be considered an agreement, as found in the receipt in question; and (2) Whether or not where one bids as an agent of another and discloses the name of his principal to the auctioneer at the time, the auctioneer may enforce the contract directly with the principal.

The appellant contended that the receipt issued on October 31, 1942 contains a condition that the curator is said to have bound himself unto the said T. E. Cess Pelham, the appellant, to the extent that he would not execute a deed to Witherspoon until Witherspoon shall have satisfied the amount of the thirty pounds loan which the appellant had paid to the curator on Witherspoon's behalf. However, on the same day the appellant received a part of the amount advanced and accepted a promissory note for the balance with interest thereon. It would seem to us that by this subsequent transaction the appellant did by his own act release the curator from any further performance and responsibility for said agreement, if at all it can be considered one as laid in the receipt, for the remedy of the appellant thereafter was an action of debt upon said promissory note, should the said Witherspoon fail to pay same, and not objection to the probate of the deed upon which property lien had been given; for in this case of what value would the lien be if the mortgagor had not complete legal title? Under the law a promissory note is defined as "a written promise by one person to pay to another person therein named or order

a fixed sum of money, at all events, and at a time specified therein, or at a time which must certainly arrive. . . .” 3 R.C.L. *Bills and Notes* § 6, at 833 (1914). And our statute defines debt to be “an action to enforce the payment of a sum of money, which the defendant has contracted to pay to the plaintiff.” Stat. of Liberia (Old Blue Book) ch. I, § 6, 2 Hub. 1525. Furthermore, it is a general principle of law that:

“Good faith and loyalty to his principal’s interest also require that an agent shall not use his position or information obtained by him during the course of his agency to acquire for himself, without the principal’s knowledge and consent, any adverse right, title, or interest in the subject-matter of the agency, as that he shall not acquire for himself during the course of his agency in relation thereto any adverse right or title to the principal’s property, although he purchases such title at a judicial sale; and that he shall not acquire for himself any outstanding claims or liens against such property. . . .” 31 Cyc. of Law & Proc. *Principal and Agent* 1444 (1909); 21 R.C.L. *Principal and Agent* § 13, at 829 (1918).

It is our opinion, therefore, that the action taken by the appellant in objecting to the probate of a deed, which he had negotiated for and obtained on behalf of William N. Witherspoon as Witherspoon’s agent, cannot bring to him the remedy sought. The judgment of his honor the trial judge is in harmony with the law and facts of the case and should not be disturbed; but appellant should enforce the payment of the amount due him upon said promissory note through the appropriate action. The judgment of the court below is therefore affirmed and the deed ordered admitted to probate, with costs against the appellant; and it is hereby so ordered.

Affirmed.