

This bill does not set forth that the complainants were shareholders at the time of the transactions of which they complain; it does not set forth any efforts which have been made by complainants to obtain redress from the corporation; it is, therefore, in these particulars insufficient. It is not enough to say that it appears from the bill that the corporation would probably refuse relief. The rule is imperative that efforts shall be made to obtain relief in that direction before such a suit as this shall be commenced in the courts.

On this ground the demurrer to the bill will be sustained.

### MEEKER and others v. WINTHROP IRON Co. and others.<sup>1</sup>

(Circuit Court, W. D. Michigan, N. D. June, 1883.)

#### 1. OFFICERS OF A CORPORATION DEALING WITH THEMSELVES—CONTRACT VOIDABLE.

Officers of a corporation are but agents, and cannot, as such officers, while acting for the corporation, deal with themselves, to the detriment of the corporation for whom they are acting. All such contracts, if not void, are voidable at the option of the corporation.

#### 2. SAME—EFFECT OF STOCKHOLDERS' MEETING.

Nor can the holders of a majority of the capital stock of a corporation, by their votes in a stockholders' meeting, lawfully authorize its officers to lease its property to themselves, or to another corporation formed for the purpose and exclusively owned by them, unless such lease is made in good faith, and is supported by an adequate consideration; and in a suit, properly prosecuted, to set aside such a contract, the burden of proof, showing fairness and adequacy, is upon the party or parties claiming thereunder. All doubts will be solved in favor of the corporation for whom such stockholders assumed to act.

#### 3. SAME—POWER OF MAJORITY.

The holders of a majority of the stock of a corporation may legally control the company's business, prescribe its general policy, make themselves its agents, and take reasonable compensation for their services. But, in thus assuming the control, they also take upon themselves the correlative duty of diligence and good faith. They cannot lawfully manipulate the company's business in their own interests, to the injury of other stockholders.

#### 4. COSTS—COUNSEL FEES.

An owner of capital stock in a corporation, who sues for himself and all other shareholders, and successfully prosecutes the action, for a wrong done to the corporation, is entitled to be reimbursed his actual and necessary expenditures, including attorney's fees, out of the corporate funds.

#### 6. SAME—CASE STATED—RELIEF GRANTED.

The four brothers S. leased the mine of the W. Iron Co. for five years, at a royalty of 50 cents per ton of ore mined, they to furnish the requisite machinery, which was to be purchased by the lessor upon the expiration of the lease. They incorporated the W. Hematite Co. to operate the mine, they being the sole owners of its stock. Shortly before the expiration of their lease, being unable to obtain a renewal of it, they purchased a majority of the stock of the W. Iron Co., and called a meeting of its stockholders, but at which no other stockholder attended. That meeting ordered an expenditure of \$50,000 of the company's capital in sinking a shaft in the mine to facilitate its operation; directed a lease for 18 years of the mine, machinery, and all of the company's other property to the W. Hematite Co. at a royalty of 25 cents per ton of ore mined, with certain

<sup>1</sup> Reported by J. C. Harper, Esq., of the Cincinnati bar.

other advantages to the lessee; voted one of the brothers a salary of \$3,000 a year as president; and in pursuance of said action such a lease was executed by two of the brothers, acting as president and secretary of the W. Iron Co., and by the other two acting as secretary and superintendent of the W. Hematite Co. Upon a bill filed by stockholders in behalf of themselves and all other stockholders, *held*, that such a lease was inequitable, and a fraud upon the rights of stockholders not concurring therein.

In Equity.

*Morris & Uhl*, for complainants.

*C. T. Walker and Mr. Crocker*, for defendants.

BAXTER, J. The defendants, the Winthrop Iron Company and the Winthrop Hematite Company, are corporations organized under the laws of Michigan. The capital stock of the former consists of an iron ore mine rated at \$500,000. In August, 1877, it made a lease thereof to the St. Clair Brothers, a partnership composed of the four defendants by that name sued herein. Soon after securing said lease they organized the Winthrop Hematite Company, for the purpose of working the mine thereunder. They continued thus to operate until the summer of 1881, when they made an effort to obtain a renewal thereof to the Winthrop Hematite Company. But failing to secure it, they proceeded to purchase a majority of the capital stock of the Winthrop Iron Company, and assume control of its business. At their instance a stockholders' meeting was called for October, 1881. The meeting was accordingly held by one of the St. Clairs, (who acted for himself and brothers,) assisted by W. S. Hollert, their attorney, and one G. B. Breese. Neither Hollert nor Breese owned any stock in the company. Hollert was made president, and Breese secretary, of the meeting. Being thus organized they adopted certain resolutions, in which, among other things, they removed two directors of the company, and appointed three of the St. Clairs in their stead; authorized the sinking of a shaft at the mine, and appropriated \$50,000 of the company's money to complete and equip it; authorized and directed a lease of the company's mine for 18 years from and after December 1, 1882,—the time at which the former lease was to expire,—to the Winthrop Hematite Company; and soon thereafter Eugene G. St. Clair as president, and J. N. St. Clair as secretary, of the Winthrop Iron Company; and Eugene G. St. Clair as secretary, and George A. St. Clair as superintendent, of the Winthrop Hematite Company, professing to act for and in behalf of their respective companies, entered into a contract wherein and whereby it was agreed that said first company should lease its mine, with all the improvements, machinery, etc., thereon, for 18 years to the Winthrop Hematite Company at a royalty of 25 cents per ton.

The relief sought by complainants, who sue as well for all other stockholders in the Winthrop Iron Company as for themselves, is a rescission of said lease and an account of rents and profits; and to