

HAYDEN *v.* OFFICIAL HOTEL RED-BOOK & DIRECTORY CO. *ET AL.*

*Circuit Court, S. D. New York.*

July 11, 1890.

STOCKHOLDERS—SALE OF CORPORATE PROPERTY—PURCHASE BY MAJORITY.

The stockholders of a corporation financially embarrassed, resolved to wind up the business, and authorized the trustees to sell the property to pay debts. At a sale duly advertised, of which the stockholders had notice, and at which many were present, the property was struck off to the secretary, who was also one of the trustees, and bought in the interest of a combination of stockholders formed in good faith, for their own protection, after it seemed probable that the property would not sell except at a great sacrifice. It appears to have been sold for all that it was worth, and the purchase by the secretary was approved by a majority of the stockholders,—by all except the complainant. *Held*, that it is not shown that the action of the majority was oppressive or in bad faith, that the sale would not be set aside on these facts, and a preliminary injunction will be refused.

In Equity.

Bill by a stockholder to set aside a sale of the corporate property to a combination formed by the majority. On motion for a preliminary injunction.

*Louis F. Post*, for complainant.

*William J. Fanning*, for defendants.

WALLACE, J. It appears upon this motion that the Travelers & Publishing Company, a commercial corporation, became financially embarrassed, and its stockholders, at a meeting called to consider its affairs, concluded to wind up the business, and sell its property to pay its debts, and at this meeting authorized the board of trustees to make sale of the whole or any part of the property at public or private sale, as in their judgment should seem best; that the trustees concluded to sell the property at public auction, and after reasonably advertising the sale, and giving notice there of to all the stockholders, they sold that part of it involved in this action; that many of the stockholders, as well as the trustees, were present at the sale, and after several bids were made the property was struck off to one Jacques, the secretary, and one of the trustees of the corporation, he being the highest bidder; that he bought the property in the interest of a combination of stockholders, who had united to protect themselves when, and not until, it appeared that the property could not probably be sold except at a great sacrifice; and that, immediately after the purchase by Jacques, he transferred the property to a new corporation, the stockholders of which consisted principally of those stockholders in the other corporation who had united together.

So far as now appears, the price at which the property was sold to Jacques was all that it was worth, and everything that was done had the approval of all the stockholders except the complainant. Under these circumstances the sale cannot be annulled at the suit of the complainant, or of the corporation, assuming that the complainant represents it for the purposes of this action, merely because the property was bought by one of the trustees of the corporation. He was acting with the assent of those who, being the majority of stockholders, were entitled to represent the whole body of beneficiaries; and the rule which forbids a trustee from purchasing for himself or for another the property of which he is the fiduciary does not extend to a case where he does so with the consent of all interested. The real question in the case is whether the majority stockholders were acting in good faith towards the complainant, as a minority stockholder, in authorizing the sale of the property, and its purchase by the new corporation. The right of the majority stockholders of a corporation established for manufacturing or trading purposes to wind up its affairs, and dispose of its assets, even against the objections of the minority stockholders, whenever it appears that the business can be no longer advantageously carried on, is well recognized. *Treadwell v. Manufacturing Co.*, 7 Gray, 393; *Wilson v. Proprietors*, 9 R. I. 590; *Lauman v. Railroad Co.*, 30 Pa. St. 42. But they cannot be permitted to exercise this right in a manner inconsistent with good faith towards the minority stockholders; and if it is exercised oppressively, and they purchase the property of the corporation for themselves at an inadequate price, the transaction will not be permitted to stand. *Ervin v. Navigation Co.*, 23 Blatchf. 517, 27 Fed. Rep. 625. There are circumstances in this case which suggest unfavorable inferences; but there is quite convincing evidence that the only

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purpose of the stockholders who combined together, and purchased the property, was to prevent a sacrifice

of the property, and enable enough to be realized from it to pay off the debts of the corporation, and that they had no design to disregard the interests of the complainant.

It may be that at the final hearing the facts will present a different aspect, but on the case as it now appears a preliminary injunction should not be granted. The motion is denied.