RANGER v. CHAMPION COTTON-PRESS CO. *et al.*

(*Circuit Court, D. South Carolina.* July 25, 1892.)

CORPORATIONS—APPOINTMENT OF RECEIVERS—RIGHTS OF STOCKHOLDER.

Where a bill by one stockholder against the corporation and the other stockholders charges that the president refuses to account for money intrusted to him for the interests of the company, or to allow any inspection of the books by complainant, and an affidavit filed with the bill charges that the president is insolvent, and since the inauguration of the suit has mortgaged all his real estate with intent to defeat the claim of the company, there being no allegation of fraud on the part of the other stockholders, but rather a distinct intimation that the president is sustained by them, and the solvency of the corporation being unquestioned, the court will not, before the time for answer has expired, grant a motion for the appointment of a receiver, and thereby take the corporation out of the control of the large majority of the stockholders.

In Equity. Bill by Louis Ranger, a stockholder, against the Champion Cotton-Press Company and all other stockholders. Heard on motion for the appointment of a receiver. Denied.

Mitchell & Smith and *Smythe & Lee*, for the motion.

J. N. Nathans, *Lord & Burke*, and *Bryan & Bryan*, opposed.

SIMONTON, District Judge. This is a motion for the appointment of a receiver. The time for answering has not yet expired, and no answers are in. The motion, therefore, is on the bill and affidavits. The suit is brought by Louis Ranger, the holder and owner of 20 shares in the Champion Cotton-Press Company, against that corporation and all the other stockholders. The capital stock of the company is subdivided into 120 shares. The corporation purchased some time ago 19 of these, and has recently acquired title to 20 more. The defendants to this bill represent 61 shares. The bill charges abuse of his authority on the part of B. F. McCabe, the president, refusal on his part to account for some $25,000 intrusted to him by the company to be used in the promotion of its interests, the application of this money to his own use, and his repeated and obstinate refusal to give complainant an inspection of the books of the company, or any information whatever of its affairs. The affidavit with the bill charges that McCabe is insolvent, and that since the inauguration of this suit he has been mortgaging—has in fact mortgaged—all of his real estate, with manifest intent to defeat the claim of the company. There is no allegation of fraud or fraudulent collusion on the part of the other stockholders, and there is a distinct intimation in the bill that McCabe, as president, is sustained by the other stockholders. Upon these allegations is based the motion for a receiver. The solvency of the corporation is unquestionable. So far as appears, there are no creditors.

At this stage of the case we deal with the allegations of the bill as if they were true. They present a grave condition of things, and without doubt, even with the qualifying statements of Mr. McCabe's affidavit, there does seem reason for great apprehension in the mind of the complainant. But this motion is, in effect, to take the control of this company out of

the hands of the majority of its stockholders and put it under the control of the court and its receiver; this, too, at the request of a person who is in a minority of the stockholders. The majority entertain and favor a certain method in the management of the affairs of the company, by which a large, and perhaps uncontrolled, power is given to the president. He thinks this all wrong. The majority have confidence and trust—up to this stage of the case, a remarkable degree of confidence—in their president. He has no confidence in him whatever, and is willing to believe the worst of him. The complainant, therefore, invites the interference of the court to remove this president, and change this, to him, dangerous method. He bases his prayer for the favorable consideration of the court upon the fact that he is a stockholder. But so are the others. Each one of them has as much right to the aid of the court, and to its interference, as he; and, as the aggregate of them have a larger number of shares than he, this majority have a paramount claim upon the court. The bill seeks no relief against the stockholders; makes no charge against them. It attacks Mr. McCabe, and seeks judgment against him. If a receiver be appointed, this would be in effect a decree against all the other stockholders, and against the corporation. Were it necessary in order to secure a proper account from Mr. McCabe, and a judgment against him, that a receiver should be appointed, this would be done at once. He is a trustee, and, as such, he can and should be made to account at the instance of all or any of his *cestuis que trustent*. The inevitable result of this bill, assuming that its allegations are in the main correct, is to secure such an accounting. But this will not warrant the court, at this stage of the proceedings, against or without the consent of the majority of the stockholders in this solvent corporation, to take its property out of its hands, to assume control of its management, and to wind up its affairs as if it were dissolved. One of the results of membership in a corporation—one of the evils, we may say—is that the minority are largely under the control of the majority. So long as the latter act in good faith, and within the constitution and by-laws of the corporation, they can adopt any line of policy which commends itself to their judgment, however great may be the hostility of the minority to it, or however deep their conviction that it is destructive of their interests. If this minority were original stockholders, they are themselves responsible for the powers left with the majority. If they have acquired the stock after the organization of the company, they have voluntarily assumed the risk. In any event, they are bound to the life of the corporation during the term of its charter, unless the other stockholders concur with them to dissolve it. In no event, therefore, can the court, at this stage of these proceedings, upon the prayer of a minority, appoint a receiver, and so defeat and disappoint the majority of the stockholders, and practically put an end to the existence of the corporation.[1]

The motion is dismissed.

[1] Mor. Corp. § 281; Hardon v. Newton, 14 Blatchf. 376; Einstein v. Rosenfeld, 33 N. J. Eq. 309; La Grange v. State Treasurer, 24 Mich. 468.

RANGER *v.* CHAMPION COTTON-PRESS CO. *et al.*

(*Circuit Court, D. South Carolina.* November 3, 1892.)

1. CORPORATIONS—RIGHTS OF STOCKHOLDERS—MISCONDUCT OF OFFICERS—EQUITABLE RELIEF.
   A bill by a stockholder against the corporation, its president, and all the other stockholders, charged that the president was using for his own benefit moneys of the corporation applicable to a dividend, and refused to account therefor; that, aided by the secretary, he refused to entertain or allow to be voted on a motion properly made at a regular stockholders' meeting calling for such an account; that in violation of the by-laws he deposited the corporate moneys in his individual name; that he wasted $3,300 of the corporate moneys by bad management; that he loaned $10,000 to a stockholder, secured by a pledge of the latter's stock; that afterwards the stock was bought by the company against complainant's protest; that the officers declined to make a statement of the company's affairs, or to allow complainant to examine the books; and that the president was attempting to depress the company's stock so as to compel complainant to sell out to him. *Held*, that the bill stated a case for equitable relief, and was good as against a general demurrer.
2. SAME—EQUITY RULE 94.
   The bill did not come within equity rule 94, relating to suits by stockholders, or, if its provisions could be considered as applicable, the allegations substantially complied therewith. *Hawes* v. *Oakland*, 104 U. S. 450, distinguished.
3. EQUITY PLEADING—MULTIFARIOUSNESS.
   An objection to a bill for multifariousness cannot be taken merely at the hearing, but must be specifically stated by demurrer or other pleading.

In Equity. Bill by Louis Ranger against the Champion Cotton-Press Company, B. F. McCabe, and other stockholders, for the declaration of a dividend and other relief. A motion for the appointment of a receiver before the answers were due was denied. 52 Fed. Rep. 609. Heard on demurrer. Overruled.

Mitchell & Smith, for complainant.

Lord & Burke, *J. N. Nathans*, and *J. P. K. Bryan*, for defendants.

SIMONTON, District Judge. This case comes up on the bill and demurrers thereto. The bill is filed by Louis Ranger, alleging that he is a stockholder in the Champion Cotton-Press Company, a body corporate. That the number of shares was 120, at $700 each. That the company purchased and owned 19 of these. That Mrs. Elizabeth Dowie, who is a defendant, owns 15 shares; Miss Margaret B. Mure, another defendant, owns 15 shares; William Mure, another defendant, 10 shares; R. D. Mure, also a defendant, 6 shares; William Fatman and B. F. McCabe, the other defendants, 20 shares and 15 shares, respectively. Thus all the stockholders are parties to the suit, and with them the corporation. The bill further alleges that, having been prevented by the failure to hold, in 1891, the meeting provided by the by-laws, and the consequent failure to make an exhibit of the affairs of the company by the officers thereof, complainant requested and demanded, at the annual meeting in 1892, a clear and full exhibit of the business and affairs of the company, and that this was peremptorily refused by the president and other officers. That he desired also to examine the books of the company so as to ascertain its condition, and that this also was peremp-