

gheny county, Pa., about a mile distant from the works of the Pittsburgh Plate-Glass Company, and to compel the said Pittsburgh Plate-Glass Company to purchase the same, to prevent a dangerous and destructive competition therefrom, for the price of 10,000 shares of the capital stock of said company, of the par value of \$1,000,000, worth then in the market \$155 per share, making the real consideration \$1,550,000; and that at the time the said John Pitcairn, Jr., Edward Ford, Emory Ford, Artemus Pitcairn, and J. B. Ford held together 4,350 shares out of 6,000 shares of the capital stock; that said sale was consummated; that any information as to the actual cost of the works was refused to stockholders; and the bill avers that the actual cost of the said works did not exceed \$647,000. (5) That thereupon the capital stock of the Pittsburgh Plate-Glass Company was increased to the amount of \$2,000,000, and purchase-money shares, as aforesaid, were issued to the vendors; and that, a division of the purchase-money stock having been made, the said J. B. Ford was made to appear as the owner of 4,000 shares, John Pitcairn, Jr., of 8,212 shares, Emory L. Ford of 500 shares, and Artemus Pitcairn of 200 shares. That the board of directors at that time consisted of John Pitcairn, Jr., Edward Ford, Emory L. Ford, Artemus Pitcairn, and John Scott, (since dead,) Edward Ford being the president, Emory L. Ford, secretary, and John Pitcairn, Jr., having resigned the vice presidency, Artemus Pitcairn succeeded him in that office. (6) The bill further avers that the said John Pitcairn, Jr., Edward Ford, E. L. Ford, and Artemus Pitcairn, directors of said company, entered into a conspiracy with J. B. Ford to erect another and additional plate-glass works at Ford City, Armstrong county, Pa., and to compel the Pittsburgh Plate-Glass Company to purchase the same, at such price as they might see fit to exact, by reason of the menace which said works so constructed would present of disastrous or ruinous competition should the Pittsburgh Plate-Glass Company not make the purchase of the same; and that these persons formed a conspiracy, under the name of J. B. Ford & Co., to construct such works, and at the date of the filing of the bill had proposed to sell them to the Pittsburgh Plate-Glass Company for \$750,000 of first-mortgage bonds and \$750,000 of the capital stock of the company, to be issued at par, the bonds to mature in three, four, and five years, with interest at 6 per cent.; and that the capital stock of the company at that time commanded a premium of \$62.50 per share, so that the price aforesaid in reality amounted to \$1,968,750; and that the said works when completed would not cost more than \$1,000,000. (7) That said directors and J. B. Ford claimed the right to build competitive works for their own benefit, to be operated by themselves, or to be sold to others for that purpose; and that said Ford City works were then in partial operation, and constituted a direct threat and menace to the Pittsburgh Plate-Glass Company to compel them to accede to the demands of the syndicate; and that said syndicate controlled about seven-tenths of the capital stock of said company, upon the then capitalization of the company. (8) That the directors, together with J. B. Ford, in pursuance of such conspiracy, by their undue influence and efforts, had procured a vote authorizing the acceptance of said offer to sell said Ford City works, and to that end had taken steps to procure an increase of the capital stock of the company to \$2,750,000, and to procure the amendment of their charter powers to enable them to carry on their corporate business in other counties than the county of Allegheny. (9) That all the members of the board of directors of the Pittsburgh Plate-Glass Company, and all the officers thereof except the treasurer, were members of the syndicate firm of J. B. Ford & Co., and were interested in the consummation of the proposed sale of the Ford City works, and that seven-tenths of the capital stock of the company were held by them.

The bill then proceeds to aver that the said directors, acting in concert with the said J. B. Ford, he, the said J. B. Ford, knowing their official and trust relation, are prohibited from acting in derogation of the interests they represent as officers and directors to the prejudice of the Pittsburgh Plate-Glass Company, and that the works so erected by them were equitably the property of said Pittsburgh Plate-Glass Company, for the construction of which they, said corporation, should pay the actual cost thereof, with such reasonable profit as the court might allow to the constructors thereof.

A demurrer was filed, which was overruled, and thereafter the defendants made answer, admitting the building and sale of the Tarentum works, and the proposed sale of the Ford City works, and also admitting the withholding of information from the stockholders as to the cost of either of those works, and deny that the cost of the Tarentum works was only \$650,000, or that the cost of the Ford City works was only \$1,000,000. They admit that the stock of the company bore a premium in the market at the time of these transactions, but deny that the premium was as much as is averred in the bill. They also deny that Edward Ford, Emory L. Ford, and Artemus Pitcairn were interested in the building or in the profits derived from the sale of the Tarentum works, but they admit that the Ford City works were built by a partnership consisting of all the directors of the Pittsburgh Plate-Glass Company then living, including therein the president and vice president of said company. The answers set up as justification for the purchase of the Tarentum works that such purchase was the unanimous vote of the stockholders, at a meeting called to consummate the purchase thereof, and, as respects the Ford City works, that the stockholders had refused to build such works; and aver good faith to the minority stockholders in both transactions, and also aver their legal right to act as they did.

The bill was filed to May term, 1889, prior to the meeting called for the purpose of increasing the capital stock and the indebtedness of the company to provide means for the purchase of the Ford City works, but that meeting was subsequently held, and a vote taken, and the property conveyed, with full notice of the pendency of this bill.

A replication having been filed, testimony was taken before an examiner. The case was argued upon the testimony and the law involved before the circuit judge, presiding in the circuit court of the United States for the western district of Pennsylvania, who adjudged that the bill should be dismissed, at the cost of the plaintiff; and in his opinion filed held that the plaintiff was not entitled to the relief prayed for as to either of the properties; that the defendants in the various transactions had a right to build the two works specifically described, and that their action in the premises was in good faith, and that the said purchase had been duly ratified by the stockholders, and that offers of rescission made by the vendors of said works to the stockholders had been refused.

S. Schoyer, for appellant.

D. T. Watson, for appellees.

Before DALLAS, Circuit Judge, and BUTLER and WALES, District Judges.

WALES, District Judge, (after stating the facts.) The charges of conspiracy and fraudulent combination made against the defendants, and which are specifically set forth in the plaintiff's bill, involve questions of fact which are to be decided on the proofs. These charges cover two distinct and separate transactions, which will be considered in the order of their occurrence.

1. The sale and purchase of the Tarentum works. It is very clear that J. B. Ford was the original and sole projector of these works, and that he had made all the preparations for building them, by the purchase of land and materials, on his own responsibility, without the knowledge or aid of any one of his codefendants, and that as soon as his design became known to them they immediately opposed its further prosecution. At this time—in the year 1885—the defendants owned a majority of the stock of the Pittsburgh Plate-Glass Company, and, with the exception of J. B. Ford, were directors of the company. Edward and Emory L. Ford, the sons of

J. B. Ford, opposed the erection of the Tarentum works by their father on account of his advanced age, and for fear that he would become embarrassed financially; and the other defendants saw in the new enterprise a serious rival to the works already in successful operation at Creighton; but, finding their remonstrances to be unavailing to deter J. B. Ford from the prosecution of his plan, it was proposed by John Pitcairn that the Tarentum works should be built by the Pittsburgh Plate-Glass Company, which would thus have the control of them and prevent competition. In this measure, however, he had no support from any of his fellow stockholders. The junior Fords were unwilling to embark on such an undertaking, because it might stop dividends on their stock, and run the company in debt. The majority of the stockholders were opposed to the company assuming the work for various reasons. Finally, at the instance and on persuasion of the Ford brothers and others, who together owned nearly five-sixths of the outstanding shares of the company, John Pitcairn formed a partnership with J. B. Ford by purchasing with his own money one-half of the latter's interest in the Tarentum works as far as they had progressed, and the partnership thus formed, under the name of J. B. Ford & Co., carried on the works to completion, without further objection or opposition from any member of the Pittsburgh Plate-Glass Company. Under the terms of the partnership agreement between J. B. Ford and John Pitcairn, dated the 6th of October, 1885, John Pitcairn was to contribute \$65,000 to the capital of the firm on the understanding that after that sum had been expended all additional amounts required should be furnished in equal shares by the partners. One, if not the principal, object in view in forming this partnership was to keep the Tarentum works in friendly hands, and to prevent them from being operated to the prejudice or injury of the Pittsburgh Plate-Glass Company. In the spring or summer of 1886, the new works being nearly completed, and it being evident that they were of larger capacity, and would manufacture plate glass cheaper and in greater quantities than could be done at Creighton, Mr. John Scott, then a large stockholder and a director of the Pittsburgh Plate-Glass Company, considered that it would be greatly to the advantage of the company to acquire Tarentum. There was some difficulty at first in bringing about that result, and it encountered the opposition of each of the partners of J. B. Ford & Co. John Pitcairn was on the eve of going abroad, and J. B. Ford thought it would be more advantageous to his interests not to sell. Application, however, being made to J. B. Ford & Co. to state on what terms a sale or consolidation could be effected, the firm thought that the relative capacity of the two works should be the basis of the union, and that, as the Tarentum works had double the capacity of those at Creighton, the same proportion should be observed in providing for the union of the two concerns, a reasonable allowance being made for the unfinished condition of the Tarentum works. The first plan of consolidation, consented to by J. B. Ford & Co., was that the capital stock of the

Pittsburgh Plate-Glass Company should be increased from \$600,000 to \$1,920,000, to be divided as follows: To J. B. Ford & Co., for Tarentum, \$1,120,000; to the stockholders of the Pittsburgh Plate-Glass Company, \$200,000; the Tarentum works to be finished by J. B. Ford & Co. A meeting of the board of directors of the Pittsburgh Plate-Glass Company was held on July 2, 1886, at which this proposed arrangement was submitted, and on motion a stockholders' meeting was called for September 6, 1886, to consider the proposal, and the board recommended its acceptance. At the directors' meeting held on July 2, 1886, John Pitcairn asked to be and was excused from voting on account of his personal interest in the transfer of the property. Notice of the stockholders' meeting to be held on September 6, 1886, and of its purpose, was given by public advertisement, and by a circular directed to each stockholder; and on the day appointed for the meeting 5,515 shares out of the whole issue of 5,950 shares were represented. Mr. Barr, the plaintiff, presided at that meeting, and announced to the stockholders present that they had the power to "amend, alter, reject, or affirm the proposition" recommended by the directors. After some discussion J. B. Ford & Co. were requested to state the cost of the Tarentum works, which they refused to do, for the reason that the basis of the proposed transfer was the relative capacity of the two works. Finally, J. B. Ford & Co. submitted the following terms of consolidation, namely: That the capital stock of the Pittsburgh Plate-Glass Company should be increased from \$600,000 to \$2,000,000, of which Creighton should represent \$800,000, subject to a mortgage of \$134,000, and Tarentum should represent a capital stock of \$1,000,000; that of this stock increase \$200,000 should be distributed among the Creighton stockholders at that date as dividend, and that \$1,000,000 in stock at par should be issued to J. B. Ford & Co., leaving \$200,000 to be issued and sold to the stockholders on September 6, 1886, at par, for a working capital. These terms were approved and accepted by the unanimous vote of the stockholders present, and there is no evidence to show that any shareholder who was not represented at the meeting has ever disapproved of its action. On October 27, 1886, J. B. Ford & Co. conveyed the Tarentum works to the Pittsburgh Plate-Glass Company, and received from the latter the entire purchase consideration, \$1,000,000 of its stock at par; but, as the Tarentum works were still incomplete, J. B. Ford & Co. pledged \$200,000 of the stock at par with the treasurer of the Pittsburgh Plate-Glass Company as security for the completion of Tarentum. The Pittsburgh Plate-Glass Company took possession of Tarentum, and have operated the same ever since. The Tarentum works were completed by J. B. Ford & Co. in the spring or summer of 1887, but it was not until April 17, 1888, that the firm made a formal demand on the Pittsburgh Plate-Glass Company for the return of the pledged stock, whereupon, at a meeting of the board of directors, a resolution was adopted instructing the treasurer to deliver the stock. This resolution was passed over the protest of Mr. John Scott, one of the directors, and the