

satisfied that there is no sufficient reason for the appointment of a receiver. The corporation of which complainant is a stockholder was overcapitalized at the outset of its organization, and it appears to have at this time nearly as large an amount of assets in value as it had when the removal was effected from Minneapolis to Faribault. A court will not interfere in the internal policy and management and control of a corporation, unless it is manifest that it is about to exceed its corporate powers, and do an act which would be in fraud of the rights of stockholders. The records of the corporation show that on June 25, 1895, at a stockholders' meeting, the following resolution was proposed and adopted, three persons representing stock voting in the negative:

"Resolved, that we, the stockholders of the Pioneer Threshing Company, do hereby instruct the board of directors elect to take the following action, at any time after this meeting, during their term of office, if in their judgment they deem such action advisable: (1) To buy from the resident stockholders of Faribault, and those joining with them, the stock issued on account of removal of the business of the company from Minneapolis, and pay therefor in plant, machinery, etc., property or assets of the company."

It is a mooted question in this country as to whether a corporation may purchase shares of its own stock. Many states forbid it. In the absence of a charter prohibition or a statute forbidding it, there is no reason why the stock should not be purchased, at least with the profits derived from the business of the corporation, where all the stockholders assent thereto. The tendency of the decisions in the state of Minnesota is on this line. See *State v. Minnesota Thresher Manuf'g Co.*, 40 Minn. 227, 41 N. W. 1020. But in the case at bar the purchase of the stock was to be made by a transfer of nearly all the assets and property of the corporation to a few favored stockholders, and, evidently, there would be no equal exchange in value. This, it seems to me, would be in fraud of the rights of the minority stockholders, who protested against the resolution to make this purchase of stock. I shall therefore refuse the motion for the appointment of a receiver, but shall order an injunction, restraining the directors from carrying out the plan contemplated by the resolution of June 25, 1895.

A decree will be entered accordingly.

---

TUG RIVER COAL & SALT CO. v. BRIGEL et al.

(Circuit Court of Appeals, Sixth Circuit. November 6, 1895.)

No. 249.

1. COSTS—PERSONAL LIABILITY OF TRUSTEES.

A bill by trustees to foreclose a mortgage failed to show jurisdiction in the circuit court, but no objection was made in that court, and there was a decree for complainants. On defendant's appeal, the decree was reversed, and the circuit court of appeals awarded defendant costs in the circuit court, and divided the costs of the appeal. *Held*, that the judgment as to costs should not be modified so as to show that complainants were liable as trustees only, and not personally.

## 2. SAME—SET-OFF OF COSTS.

Nor should the judgment be modified so as to allow complainants to set off their liability for costs against the debt due by defendant.

## 3. SAME—ON REVERSAL—WANT OF JURISDICTION.

The circuit court of appeals, on reversing a decree for complainants for failure of the bill to show jurisdiction in the circuit court, may award defendant costs in the circuit court.

Appeal from the Circuit Court of the United States for the District of Kentucky.

In equity. Bill by Leo. A. Brigel and Logan C. Murray, trustees, against the Tug River Coal & Salt Company and others, to foreclose a mortgage, and for further relief. There was a decree for complainants, and the Tug River Coal & Salt Company appealed. The circuit court of appeals reversed the decree for failure of the bill to show jurisdiction in the circuit court, though the objection was not raised below, and remanded the case, with instructions to dismiss the bill, in the absence of an application to amend so as to show jurisdiction. The circuit court of appeals awarded the appellant costs in the circuit court, and divided the costs of the appeal. 67 Fed. 625, 14 C. C. A. 577.

The appellees moved (1) to modify the judgment as to costs, so as to show affirmatively that whatever judgment is rendered is against the appellees as trustees, and not in their individual capacities, on the ground that this was not a proper case in which to charge trustees personally with costs; (2) to modify the judgment so as to allow any judgment for costs to be set off against the debt due by the appellant to the appellees as trustees; (3) to vacate so much of the judgment as awarded to the appellant the costs in the circuit court, on the ground that the circuit court of appeals, on reversing for want of jurisdiction in the circuit court, cannot award such costs.

Bullitt & Shield, for appellees.

Motion to modify judgment as to costs denied.

---

EYERS et al. v. HADDEM et al.

(Circuit Court, W. D. Wisconsin. November 30, 1895.)

## 1. WARRANTY OF CHATTELS—REMEDIES FOR BREACH.

When a chattel is sold with a warranty of quality, accompanied by an agreement that if it proves to be inferior in quality it may be returned to the seller, or exchanged for another article, the buyer, upon breach of the warranty, is not restricted to such special remedy, but may waive it and sue for the breach of warranty.

## 2. SAME.

Defendants sold plaintiffs a stallion, warranting him to be a reasonable foal getter, and agreeing, if he should prove not to be so, to replace him with another horse, if returned as sound and in as good condition as when purchased. The stallion having proved not to be a reasonable foal getter, *held*, that plaintiffs were not bound to return him to defendants, or give them an opportunity to supply another horse, but might sue defendants for breach of the warranty.