

ing such debt until after this stock has been transferred to the complainants upon the books of said company; and that the said defendants, and each of them, may be restrained and prohibited from voting upon any stock so, as aforesaid, assigned to complainants; and from further increasing the debt of said company by any proceeding, or in any manner whatever, until the further order of the court. A perpetual injunction is also prayed for, as well as general relief.

The defendant corporation was organized under the laws of the state of Minnesota, (Minn. Rev. St. 396,) and has been in operation since May 30, 1879, incurring an indebtedness, up to this time, for improvements and milling machinery, to the maximum allowed by the articles of association.

It is proposed to call a meeting for the purpose of increasing the stock of the corporation, in accordance with the law, to meet the demands of business, and no notice has been given the complainants.

It is pretty well settled that the assignees of stock certificates in a corporation, by assignment from persons to whom the certificates were originally issued, are not, by virtue of such assignment, shareholders, when the transfer of shares is required to be made upon the books of the company. See Field on Corporations, 75; Angel & Ames on Corporations; Minn. Rev. St. 398, § 135.

The mere assignment gives the assignee an equitable title only, except as against the assignor. The certificates do not constitute property in the corporation; they are the muni-ments of title, but it is the shares of stock which constitute the property, and the persons whose names appear upon the books of the corporation are presumed to be the stockholders; they have the right to vote and participate in directing the policy of the company. The corporation has not recognized the complainants as stockholders, and thus waived any right to require such registry, and the affidavits read on the hearing do not make it clear that a demand for the transfer of the stock was ever made. If it was, and there was a refusal to comply, legal proceedings would undoubtedly secure to the complainants the proper relief. It is clear that if this court

has jurisdiction of the case to grant other equitable relief prayed it could also entertain a claim for damages on account of a refusal to make the proper transfer. This disposes of the preliminary motion to dismiss the bill.

It appears from the affidavits read that complainants, being the owners of a flouring mill in the village of Wells, Minnesota, sold it to the defendants Eaton, Thombs, Barnes, Southwick and Stevens, who organized, under the laws of the state of Minnesota, the corporation called "The Wells Flouring Mill Co." They paid a part of the purchase price and gave notes for the balance, pledging, as collateral security for payment, shares of stock, viz.: Twenty-five shares owned by Eaton, 20 shares owned by Southwick, 15 shares owned by Stevens, and 9 shares owned by Barnes, were assigned and pledged to L. A. Becher; and 40 shares, owned by Thombs, were assigned and pledged to E. G. Becher. The Southwick shares, by the terms of the pledge, became absolutely the property of L. A. Becher on failure to pay his obligations.

It is objected that these affidavits should not be received to vary or change the absolute assignment of the shares expressed in writing on the certificates. Whatever the rule may be, as between the assignors and assignees, I think the corporation can show the true character of the contract of assignment, and thus determine the relation of these assignees of stock certificates. If the shares of stock are merely pledged by the assignment of the certificates, the holders would not be entitled to the rights, nor subject to the liabilities, of the owners of shares; they could only become owners by a sale and purchase of the stock pledged, on failure of the pledgors to pay the debt.

The pledgees holding the certificates, and the corporation having notice thereof, it will be liable for any transfer upon the books of the company, of the pledged stock, without their consent. The bill charges that the defendants propose to increase the indebtedness of the company wrongfully and unnecessarily, but the opposing affidavits controvert this allegation.

It is clear that the stockholders have a right to increase

the stock, or indebtedness, of the corporation, if such policy is regarded necessary for the interests of the company. See Minn. Rev. St. 396, § 121; Laws Minn. 1875, p. 53.

A court of equity will not interfere with the internal policy of a corporation unless it is manifest that the proposed act is *ultra vires*. I am not satisfied, from the affidavits read at the hearing, that an increase of stock will cripple the corporation and make it insolvent, or that an increase of indebtedness may not be proper. There is no fraud or conspiracy on the part of the defendants, who are stockholders, to injure the complainants. I have not considered the question whether the complainants are entitled to any equitable relief, but, for the purposes of this motion, concede it.

An injunction is refused, and the restraining order is dissolved.

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MEGUIAR, Trustee, etc., v. GROVES and others.

(District Court, D. Kentucky. March 4, 1880.)

SURETIES—CHATTEL MORTGAGE—EXTENSION OF TIME OF PAYMENT—EVIDENCE.—A chattel mortgage, partly given to secure a pre-existing debt, will not discharge the sureties of the debtor, unless such mortgage purports upon its face to extend the time of the payment of the debt for a definite period.

*W. O. & J. L. Dodd*, for plaintiff.

*D. W. Armstrong*, for defendants.

BROWN, J. This is a bill in equity to foreclose a mortgage given by Meriah L. Mayes and John B. Mayes, her husband, to F. S. J. Ronald, of whom the complainant is trustee in bankruptcy. This mortgage was given by Mayes and wife, upon the property of the wife, to secure a note for \$2,000, dated January 26, 1875, payable to Ronald, and made by Groves as principal, and Mayes and wife as sureties. Mayes and wife have answered, and pleaded in defence (1) the coverture of Meriah L. Mayes at the date of the note and mortgage; (2) that the mortgage was without consideration as to the said Meriah L. Mayes and John B. Mayes, but was given

for the accommodation of Groves, to secure an antecedent indebtedness; (3) that in consideration of a mortgage from Groves to Ronald, made September 18, 1876, to secure the same debt and a further indebtedness of \$1,000, the said Ronald bound himself to, and did extend the time to, Groves within which to pay said note, and agreed to forbear suit thereon without the knowledge and consent of said sureties, and that they were thereby released; (4) that the said Groves has paid on account of said note, on the sixteenth of November, 1876, \$400, and on the fourteenth of February, 1877, \$739.65; (5) that Groves shipped tobacco to Ronald for sale sufficient to pay said note, and instructed him to so apply it, which he failed to do.

So far as the foreclosure is concerned, the first, second and fifth defences were abandoned upon the hearing. The claim of payment of \$400 on the sixteenth of November, 1876, set up in the fourth defence, was also abandoned, the proof being clear that Groves paid Ronald the \$400 as a part and on account of a purchase that day made by Ronald, of Groves & Shurley, for Groves' accommodation. It seems that Groves & Shurley claimed that Groves was indebted to them in about the sum of \$5,000; that Ronald undertook to settle and did settle the claim for \$1,100, and paid \$500 in cash, of which Groves advanced him \$400 on the sixteenth of November, 1876.

The payment of \$739.65 of February 14, 1877, is still insisted upon, but, in my opinion, it is not made out by a preponderance of testimony that such payment was ever applied, or intended to be applied, upon the note in suit. Defendant Groves was a farmer and tobacco speculator, and Ronald was the senior member of the firm of Ronald & Co., composed of F. S. J. Ronald and his son W. A. Ronald.

The business of this firm was that of tobacco warehousemen and commission merchants. In January, 1875, Groves applied to them to advance him money to be used by him in the purchase of tobacco, which he was to consign to them. They exacted of him a reasonable security, as indemnity against loss, before they would open an account with him.