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G. W. McCRANIE,
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PROFESSIONAL CARDS.

Robt. J. Caldwell,
LAWYER, MONROE, LA.
Jan. 25, 1873. 19:tf

James T. Strother,
ATTORNEY AT LAW, MONROE, LA.
May 31, 1873. 37:1y

R. C. COBB. A. A. GUNBY.
Cobb & Gunby,
ATTORNEYS AT LAW, MONROE, LA.
Aug. 2, 1873, 46 tf.

W. R. Hardy,
ATTORNEY AT LAW, MONROE, LA.
Feb. 25, 1874. n24-1y

A. L. Slack,
ATTORNEY AT LAW and Commissioner for Texas. Office Wood Street Monroe, La. Prompt attention given to collections in North Louisiana. Aug. 26, 68.5:17

L. N. Polk,
SURVEYOR, Civil Engineer and Draughtsman. All orders left with Richardson & McEnery, Monroe, La., will meet with prompt attention. Terms, CASH.
May 11, 1872. 34-1y

FRANK P. STUBBS. JNO. B. STONE.
Stubbs & Stone,
ATTORNEYS AT LAW, Monroe, La., Office in Henry Kindermann's building, upstairs, on DeSiard street.
October 2, 1874. tf.

T. P. RICHARDSON. W. H. RICHARDSON.
Drs. T. P. & W. H. Richardson
HAVING associated in the practice of medicine, offer their services in the different branches of their profession to the citizens of Monroe and surrounding country. Office, on Jackson Street, adjoining Methodist Church. May 29, 1874. tf

Benjamin McLeran,
PARISH SURVEYOR OF OUACHITA. Office at the Land Office, Monroe, La. Will survey land, furnish Plans and Specifications for the construction of Levees, Embankments, Drainage canals, Roads, Bridges, and other works of public improvement. Oct. 17, 1873. 1y

DR. J. CALDERWOOD. DR. THOS. Y. ABY.
Drs. Calderwood & Aby.
MONROE, LA.
OFFICE in rear of Bernhardt's building, Second street, between DeSiard and the Railroad. Jan 5, 1872 d&w

R. WILLIS RICHARDSON. ROB'T RICHARDSON. JAS. D. M'ENERY.
Richardsons & McEnery,
ATTORNEYS AT LAW, Monroe, La., practice in all the Parishes of North Louisiana, in the Supreme Court at Monroe, the Federal Courts, and in the Land Office Department of the General Government.
June 22, 1872. 40-tf

Dr. R. C. Strother,
RESUMES the practice of his profession, and offers his services to the citizens of Monroe and vicinity. Office: In second story of Breard's Brick Store, corner Grand and DeSiard streets. June 28, 1873. 1y

C. H. MORRISON. W. W. FARMER.
Morrison & Farmer,
ATTORNEYS AT LAW, Monroe, La., will practice in the Courts of the Parishes of Ouachita, Morehouse, Richland, Franklin and Caldwell, in the Supreme Court, and in the United States Courts. Will also attend to all business intrusted to hem in the State and Federal Land Offices.
n41v3

Dr. Wm. Sandel
TENDERS his services as Physician and Surgeon, to the public. He can be found upon his plantation, four miles below Monroe. March 11, 1873. 25-1y

JOHN M'ENERY. S. D. M'ENERY.
J. & S. D. McEnery,
ATTORNEYS AT LAW, Monroe, La., practice in the Parish and District Courts of Ouachita, Morehouse, Franklin, Richland, Caldwell and Catahoula Parishes, in the Supreme Court at Monroe, and United States Courts. Particular attention paid to business in the Land Office Department of the General Government. n17tf

Dentistry.
DR. S. L. BRACEY, Dentist, respectfully offers his professional services to the citizens of Monroe and surrounding country. Having an experience of fourteen years in the practice, he feels confident of giving satisfaction in all branches of his profession. Is willing to warrant all work. Office near the Courthouse and next door south of the *Ouachita Telegraph* office on Grand street, Monroe, La. v7-mar:161

U. S. SUPREME COURT.

No. 58.—October Term, 1874.

Henry R. Jackson, Moses D. Wadley, et al., Appellants,
vs.
The Vicksburg, Shreveport, and Texas Railroad Company, John T. Ludeling, et al.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA

Mr. Justice Strong delivered the opinion of the court.

The complainants are holders of six hundred and sixty, out of seven hundred and sixty-one, bonds of one thousand dollars each, issued by the Vicksburg, Shreveport and Texas Railroad Company, and secured by a mortgage upon the railroad and its appurtenances, and upon the franchises and personal effects of the company, together with more than four hundred thousand acres of land. Their bill is filed as well for themselves as for all other bondholders whose situation is similar to theirs. Some of them are also preferred stockholders of the company to a large amount. The mortgage was made by an authentic act on the first day of September, A. D. 1857, to John Ray or bearer, to secure the full, faithful, and punctual payment and redemption of each and all the bonds issued under it to any and all the future holders thereof, and to each and every one of them, when the same should become due and payable, together with the interest accruing thereon. The relief sought by the bill is that the mortgage may be declared to be a valid lien upon all the property described therein: that a sale averred to have been made under it in 1866, to the defendant Ludeling and his associates, may be set aside, and the deed made to them may be declared to be fraudulent and void; that the defendants may be enjoined against setting up any title under the sale and the deed; prohibited from selling any of the property, rights, and privileges of the railroad company, and required to account for all money received by them on account of the corporation, and that the mortgaged property may be decreed to be sold for the benefit of the bondholders, the preferred and other stockholders. The bill also prays for the appointment of a receiver and for other relief.

To the bill and the relief asked the only defense set up is what is alleged to have been a judicial sale of the mortgaged property under executory process at the suit of William R. Gordon, one of the defendants, and the importance presented by the record is whether that sale, as against these complainants, extinguished the lien of the mortgage.

The sale was made under an ex parte order, obtained from a judge in chambers on the 23d day of December, 1865, at the suit of Gordon, who described himself as owner of four of the mortgage bonds, upon which interest coupons amounting to $720 were due and remained unpaid. The petition for the order of sale did not aver that Gordon was the owner or bearer of the mortgage, or that he had any rights therein superior to the rights of any other bondholder for whom the mortgage was a security. It might, perhaps be doubted, therefore, whether under the law of Louisiana he was in a condition to petition for executory process for a sale of the mortgaged premises, and whether the judge had any authority on his petition to order a sale. No question of this kind, however, is seriously made here, and we proceed to notice at once the manner in which the process was used, the proceedings prior to the sale and at the sale, and the actions and relations of the purchasers. Gordon's petition made no disclosure of the name of any other holder of bonds secured by the mortgage. Ostensibly he sued for himself alone. He asked for no notice, and none was given, of his application to any other bondholder, though there were seven hundred and sixty-one bonds outstanding, held principally in other States. The order of seizure was granted by the judge on the 23d day of December, 1865, but it was not filed in the clerk's office until Saturday, the 30th of that month, late in the afternoon, and on that day the sheriff made a seizure and served a notice thereof upon H. M. Bry, who was then acting as the President of the corporation, and who subsequently became one of the purchasers at the sale. On the 2d of January, 1866, the sheriff advertised the property for sale in one newspaper published in the town of Monroe, and by posting a copy of the advertisement on the church door and another at the door of his office. The sale was appointed for the first Saturday of February, which was the earliest day on which it could be made under the law of the State. By that law the property seized was required to be appraised, and could not be sold for less than two-thirds of its appraised value. It consisted of a railroad about one hundred and ninety miles in length, with numerous water stations, buildings, warehouses, depots and depot grounds, cars, locomotive engines, wagons, machinery, utensils, bills receivable from numerous promissors, aggregating more than $40,000, unpaid stock, subscriptions exceeding $320,000, and a large land grant of several hundred thousand acres, together with the franchises of the company. To appraise all this property the appraisers were summoned to meet on February 3, the day of the sale, at 10 o'clock A. M. They were appointed by Gordon and Bry, both of whom were purchasers at the sale. Obviously it was impossible for the persons appointed to make any fair appraisement at that time. Yet they reported one of all the property at $75,000 in legal tender notes, and the sale proceeded. From the sheriff's return as first made, drawn by John T. Ludeling, Gordon's attorney, and one of the purchasers, the sheriff exacted an illegal and onerous condition. The condition was, that the purchaser should pay cash to the interest coupons then due, with credit to meet the immature interest and bonds, and should give bond, with personal security, for the credit portion of the bid. At the first cry the property was struck to George M. Branner & Co., for $550,000; but because they failed to pay at once the interest coupons then due and presented, the sheriff immediately set up the property again in bulk, and sold and adjudicated it to John T. Ludeling, John Ray, Francis P. Stubbs, Wesley J. Q. Baker, William R. Gordon, Henry M. Bry, Joseph F. M'Guire, John A. M'Guire, Robert Ray, Joseph P. Crosley, Charles W. Phillips, Robert C. Strother, Christopher H. Dabbs, George C. Waddell, William M. Pinckard and James U. Horne, the said John T. Ludeling having bid in the property for them for the sum of $50,000, and they having complied with the terms of sale by paying the proportional amounts of the several coupons due, which were presented for payment, to wit, $10,739 83, to William R. Gordon, John T. Ludeling and James U. Horne, the holders of one hundred and fifty-four bonds, and to F. P. Stubbs $850 68, being the amount due on the coupons he presented for payment. Such was the sheriff's return. Two days afterward he made a deed to the purchasers.

Were there nothing more in this case than is narrated by the brief history thus given, which is uncontradicted, it would be difficult to characterize the transaction as anything less than a great wrong perpetrated by the agency of legal forms. The great body of the bondholders could have known nothing of the proceeding to sell the mortgage property and discharge their lien. Their residence was remote and the sale was hurried as fast as the forms of law permitted. Not a day was lost. They were not afforded an opportunity to attend and bid at the sale, or pay off Gordon's small claim of $720. Neither they nor their trustee were consulted. The sale was made in a village far in the interior. It was advertised in only one local newspaper, and not a day longer than the law required. A farcical appraisement was made at the last moment, obviously intended to facilitate a hasty sale for a nominal price. Onerous and illegal conditions of sale were exacted from other bidders, but not from these purchasers, who paid nothing except to themselves. A property upon which had been expended nearly $2,000,000, together with large stock subscription, a large grant of lands, and considerable movable property, was bought for $50,000 by the very persons who defeated a sale for a much larger price, and the purchase money was retained by themselves.

But to a thorough understanding of the case it is necessary to consider the relation in which many of the purchasers at the sale, who are the present defendants, stood to the complainants, and how far their conduct was consistent with that relation. As we have seen, William R. Gordon, at whose suit the executory process for the sale was ordered, was the holder of four bonds. These he obtained in the month of October, immediately preceding the sale, paying for them $640, and by his purchase he became entitled to the security of the mortgage ratably with the holders of the other bonds. In equity he was a quasi owner in common with the other bondholders of whatever rights the mortgage gave. He was not a partner with them, nor strictly a tenant in common, but the relation into which he introduced himself by his purchase imposed upon him some duties. If he actually held the mortgage, he held it as a trustee. Whether he did or not, it was a duty which he owed to the other bondholders not to destroy its value. When two or more persons have a common interest in a security, equity will not allow one to appropriate it exclusively to himself, or to impair its worth to the others. Community of interest involves mutual obligation. Admitting, then, that Gordon had a right to make use of the mortgage to enforce the payment of the bonds which he held, he had no right so to use it as to obtain an advantage for himself over the other bondholders. He had no right to employ it as an instrument by which he might become the owner of the property mortgaged at the lowest possible price at which it could be obtained, leaving the bonds held by his associate holders unpaid. His duty, if he used it at all, was to make it productive of the most that could be obtained for all who were interested in it, and if he sought to make a profit out of it at the expense of those whose rights in it were the same as his own, he was unfaithful to the relation he assumed, and was guilty of fraud. In Gue vs. The Tidewater Canal Company, 24 How., 263, it was said by Chief Justice Taney, when delivering the opinion of the court, that "it would be against the principles of equity to allow a single creditor to destroy a fund to which other creditors had a right to look for payment, and equally against the principles of equity to permit him to destroy the value of the property of the stockholders by dissevering from the franchise property which is essential to its useful existence."

If, now, the conduct of Gordon be observed and compared with the relation he sustained to the other mortgage bondholders, it will be apparent he was utterly regardless of his duty. Before he sued out the executory process he conceived the scheme of forcing a sale of the mortgaged premises, not for the purpose of paying the debt which was a lien upon them, but for the profit that might be made out of the purchase, or as he represented in substance to one whom he requested to join in his plans, because there "was a probability of a very decided speculation from the sale." And in pursuance of this scheme, on 10th day of January, 1866, only a few days after the executory process was placed in the sheriff's hands, he entered into a written agreement with John T. Ludeling, W. J. Q. Baker, F. P. Stubbs, G. C. Waddell, and John Ray, which had for its object the purchase of the railroad mortgaged property for the exclusive benefit of the parties to the agreement, with no reference to the other bondholders. By this agreement he placed himself in an antagonistic position to those creditors of the company whose security he was using. Their interest was that the property should bring a full price, but his, under the agreement, was that it should be sold for the lowest price possible. Nor is this all. He himself appointed one of the two appraisers who, on the day of sale, made an appraisement so obviously inadequate and unfair that it forces a conviction it was made collusively to enable the parties to the agreement to obtain property at a price nearly nominal. The entire property was appraised at seventy-five thousand dollars. Five hundred and fifty thousand dollars were bid for it, (though the bid was rejected), and immediately after it was adjudicated to Gordon and his associates, they were offered for their bid one million dollars, as testified by the person who made the offer, or six hundred thousand dollars, as admitted by Ludeling, and the offer was rejected. Gordon was also a party to the steps taken by which the sheriff was induced to reject the bid of five hundred and fifty thousand dollars made by Branner & Co., and put the property out for a resale. It is impossible to look at all this without coming to the conclusion that Gordon's conduct was, from beginning to end, a violation of the duty he owed to the other bondholders, a duty growing out of his relation to them, and out of his appropriation of a security in which they had an interest nearly two hundred times greater than his own.

And the situation of the other defendants is little, if any better. John Ray, Joseph F. McGuire, John A. McGuire, Christopher H. Dabbs, Wesley J. Q. Baker, Robert Ray and Henry M. Bry were directors of the railroad company when the executory process was sued out, and when the sale was made. Bry was the vice president and acting president, in consequence of the absence of the president, who was in Georgia. Joseph F. McGuire was the company's secretary and treasurer. All these parties were at hand, residents in or near Monroe. As officers of the company they had the custody and charge of the railroad and all the property of the corporation. And they held it in a very legitimate sense as trustees. Certainly they were the trustees of the stockholders, and also, to a considerable degree, of the bondholders, owners of the mortgage. We do not say they might not have purchased the property at a sale over which they had no control, and made under judicial process adverse to the company. Perhaps they might. But we do say they had no right to join hands with Gordon. They had no right to enter into or participate in a combination, the object of which was to divest the company of its property and obtain it for themselves at a sacrifice, or at the lowest price possible. They had no right to seek their own profit at the expense of the company, its stockholders or even its bondholders. Such a course was forbidden by their relation to the company. It was their duty, to the extent of their power, to secure for all those whose interests were in their charge the highest possible price for the property which could be obtained for it at the sheriff's sale. They could not rightfully place themselves in a position in which their interests became adverse to those of either the stockholders or bondholders. And this rule was peculiarly applicable to these defendants. On the 11th of October, 1865, only about two and a half months before Gordon instituted his proceeding to effect a sale of the road, the directors had resolved that, "in pursuance of resolutions passed by a meeting of the stockholders, held on the 2d of October, the President of the company be appointed to make arrangements with any company who in his judgment might be able to put the road in repair which was theretofore in operation, and complete the balance of the road, and 'pay the debt of the company;' and if such arrangements could be made, that the same be reported to the directors, and upon their approval, that such steps should be taken as might vest the road, its franchises and other property in such company. One of the purposes of this resolution was the payment of the debts of the company. How, then, can it be claimed that directors who had thus resolved, in obedience to the instructions of the stockholders, were at liberty to participate in a scheme, the object and effect of which was to divest the company of all its property and franchises without the payment of its debts? How can they be permitted to join hands with those who sought to obtain that property at the lowest price, whose interest it was to have no other bidder than themselves at the sale, and whose action tended to defeat the avowed object of the resolution passed by the directors, as well as to make worthless the security which it was their duty to protect and render in the highest possible degree fruitful?

Having thus noticed the relation in which these defendants stood towards the company, its shareholders, and its bondholders, and some of the duties and disabilities attendant upon that relation, we are prepared to inquire how those duties were performed. It is proved that a combination was formed as early as November 18, 1865, by some of these directors to become the purchasers of the property and franchises of the company exclusively for the benefit of those whom they might consent to associate with them. A written agreement to that effect was made and signed by John Ray, Wm. S. Parham and W. J. Q. Baker, both Ray and Baker being then directors. By the agreement John T. Ludeling was appointed the agent of the parties to make the purchase in their name. This was very shortly after the resolution of the board of directors, to which we have called attention, was adopted. The agreement was repugnant to that resolution, which contemplated no disposition of the property which did not provide for the payment of the debts of the company, none that might be for the exclusive advantage of some directors. The agreement was made after Wadley, the President, had left the State and gone to Georgia, where most of the bondholders resided, with a view, if possible, to effect such an arrangement as the resolution of October 11th recommended. There is no direct evidence that at this time these parties were in direct combination with Gordon to obtain the property for themselves by a hurried sale, conducted with the least possible opportunity for notice of his proceeding to those stockholders and bondholders resident at a distance, who had the greatest interest. But that such a confederacy subsequently existed we think ought to be inferred from what subsebuently occurred. Indeed, many facts point to such a combination and can be accounted for only by it.

On the 10th of January, 1866, Ludeling, Baker and John Ray entered into another agreement with Gordon, Stubbs and Waddell (Stubbs being then a director of the company) by which, after reciting that proceedings had been instituted to sell the railroad, with the property thereto attached and appertaining, they agreed severally to deposit with Ludeling a sum of money to be used for the purpose of forwarding the interests of the company (i. e., the associated parties) relatively to the railroad and property bought, and that the parties to the agreement should be interested in the stock, shares and property of the company in the proportion of the amount of money put in by each, regardless of what the property might have cost. Ludeling was designated to bid for the property, and, should he buy, was required to take the title in the names of the contracting parties and such others as might be necessary to preserve the existence of the Vicksburg, Shreveport and Texas Railroad Company. No one was permitted to sell out his interest within six months after the purchase without the consent of a majority of the other joint owners or co-partners, and after that time, namely, the expiration of the six months, the refusal was given to the company. This agreement was also signed about February 1, 1866, by Robert Ray, another director, as he has testified. Thus these directors became avowedly confederates with Gordon to purchase the property and to purchase it for their own benefit. Thus they took a position in which it became their interest that the property should be sold at a low price: that there should be as little competition as possible, and that no efforts should be made to stay the sale, or give any more notice than a formal compliance with the law required. Thus their interests were brought into direct antagonism with the interests of the stockholders and bondholders. Thus they combined to defeat the accomplishment of the arrangement proposed by the resolution of the directors of October 11, 1865. It is impossible to regard this combination as anything less than a plain violation of their duty, a breach of the trust imposed in them, and, if not an actual, at least a constructive, fraud.

The plan proposed by this arrangement, however, was disturbed unexpectedly by the arrival in Monroe of James U. Horne, another director of the company. He appeared in the latter part of January, 1866, shortly before the day of sale, commissioned by the holders of a large number of the mortgage bonds (nearly three hundred) to have the railroad sold and purchased by a trustee or trustees, to be selected by the bondholders and creditors of the company, in which class the preferred shareholders might be placed; a new company to be formed of the purchasers upon a basis to be previously agreed upon and signed by the several interests, the bondholders to be placed in the class of preferred shareholders, and the other creditors and preferred shareholders to have common stock. This plan proposed the extinction of common stock and the creation of a new mortgage for the purpose of repairing and stocking the road. Horne's commission was in writing. On his way to Monroe he met Gordon in New Orleans, and there learned for the first time that proceedings had been instituted to bring the property to sale. Gordon then proposed to him to unite his interests and those of his constituents with those of the party in Monroe, namely, the party that had combined to purchase the property. Upon Horne's arrival at Monroe he had several interviews with Ludeling, and it appears that he endeavored to procure a postponement of the sale, representing that Gordon had consented to such postponement. To this Ludeling replied that Gordon had no authority to make such an offer or consent. Considering that Ludeling was then a party to, and the active agent of, the combination that had been formed, that reply is most remarkable. It shows that the confederacy had then the control of the executory process and of the sale, and that the directors of the company had put themselves into the position of both sellers and buyers of the property they held in trust, for if Gordon had no authority to consent to the postponement of the sale, it must have been because of his arrangements with the directors. But, passing this by, after many propositions, Horne was persuaded by Ludeling, and without any communication with his constituents, to enter into an agreement, which was made on the second of February, 1866, one day before the sale. The material part of this agreement was that Gordon, Ludeling, Baker, Stubbs, Waddell, and John Ray, of the first part, and Horne, of the second part, for himself and friends should club their funds to buy the property of the Vicksburg, Shreveport and Texas Railroad Company, advertised for sale on the morrow, in partneeship, and, if the property should be bought by them that the party of the first part should own two-thirds and the party of the second part should own one-third. The agreement reveals apprehension that the sale might be stopped by injunction, or declared null and void. It was signed "John T. Ludeling, for himself and friends," and "J. U. Horne, for himself and friends," and it is proved that when it was entered into Ludeling was informed of Horne's mission and of the plan he was instructed to carry out.

It is impossible to characterize this agreement as anything else than a gross fraud. Its obvious purpose was to remove competition at the sale. It was a flagrant breach of trust on the part of Horne, and it was a fraud in Ludeling, with knowledge of the trust Horne had undertaken, to persuade him to violate his instructions and sacrifice the interests of his constituents, himself becoming a party to the violation.

Such were the combinations organized, and such was the object of the combinations, when the day arrived on which the sale had been advertised to be made. This large property was about to be sold for a claim of $720, at a village remote from the residence of the great body of those most interested in it. It must have been known that notice of the sale in all probability had not reached those parties. Their agent, sent to protect their interest, had been tampered with and overcome. Not one of the defendants, who were residents at Monroe and directors of the new company, not even Bry himself, the Vice President, had lifted a finger to stay the sale, or, so far as appears, had requested any delay, or had made any effort to prevent the probable sacrifice of the property, and when Mr. Garrett, a lawyer and resident stockholder at Monroe, obtained an injunction against the sale, he was bought off by the payment of $2500 for common stock, confessedly not worth a cent, yet taken at its par value, and he was required to stipulate that he would take no fee from, or in any manner counsel or advise, either directly, or indirectly, any person who might desire to attack the sale. This arrangement was negotiated by Baker, and the money was paid by Ludeling. We have already noticed the appraisement made after 10 o'clock on the morning of the sale by two person appointed by Gordon and Bry. Of its character we propose to say little more. Manifestly it had been prepared before the appraisers were selected. It was conveniently low to enable the associates to purchase for a sum almost nominal, and one of the appraisers at least was appointed by a person who had combined with others to become a purchaser, and who was, consequently, disqualified from selecting an appraiser, or, certainly, was unfit to make such a selection.

Everything having been thus prepared the sale proceeded, but the scheme of the associates was at first deranged by the interference of other bidders, Branner & Co., who bid for the property $550,000, more than seven times the amount of the appraisement, and to whom it was first struck off. Then en-

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