Lectures on Eminent Lawyers

The series of lectures on eminent members of the Bar which The Law School is sponsoring, and which began with Mr. Tappan Gregory's lecture on "Stephen Strong Gregory," was continued during the Winter Quarter. Mr. John C. Slade, of Winston, Strawn, Smith and Patterson, spoke on "Silas H. Strawn." Mr. Slade was a partner of the late Mr. Strawn for many years and as such was uniquely qualified to present a balanced portrait of Silas Strawn's great contribution, both to the Bar and to society generally. Mr. Slade's address will be found elsewhere in this issue of the Record.

Prior to the lecture, which was presented in Breasted Hall, the Faculty was host at a dinner in Mr. Slade's honor in the Quadrangle Club.

The next lecture in the series will be delivered by Mr. Henry F. Tenney, JD '15, of Tenney, Sherman, Bentley and Guthrie, Chicago. Mr. Tenney will speak on his father, Horace Kent Tenney, in Breasted Hall, Fifty-eighth Street and University Avenue, on Monday, April 22, at 8:30 p.m.

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of controlling shareholders to sell their shares does not include freedom to sell to one known to be intending to loot the corporation. Furthermore, general principles of negligence may be invoked if reasonable inquiry has not been made in the face of circumstances which would suggest to a reasonable man the likelihood of such intentions.

In these cases recovery is measured by the loss to the corporation, although in the Gerdes case the court also required accounting for the excessive portion of the sale price as a separable consideration for sale of control.

There are two other cases imposing liability on sellers of control which are more difficult to classify and which arguably afford some basis for a broader rule of liability. The first of these is Commonwealth T. I. & T. Co. v. Seltzer, 227 Pa. 410 (1910). The defendant was president of a hotel corporation; he had no substantial stockholding and was approached by interests desiring to purchase the corporate property. Although knowing that "his company was willing to sell," he led the outsider to believe that the property was not for sale and then formed a plan to acquire the controlling shares and sell them to the outsider at a profit. It was part of the plan that the purchaser would then acquire the corporate property. This plan was carried out with the help of the co-defendant director. The defendants remained corporate officers after the resale of the shares and acted as such in the sale of the corporate property. The price paid for the property was "not found to be inadequate." The defendants were required to account to the plaintiffs (apparently shareholders who did not sell out) for the fraction of their profits allocable to the plaintiffs' shares.

The court's theory was that the defendants had violated their duties as officers by making a profit in connection with the sale of corporate property; the stock transactions were viewed as mere devices to appropriate a part of the consideration for the property. The relief was given "on the peculiar facts" of the case, with "full and express recognition of the general rule that a stockholder, even though he be one of the managing officers . . ., has the right to buy and sell its stock and to keep any profits which he may thus acquire."

Suppose, however, that the defendants had owned the controlling shares from the outset and that they had frankly rejected the offer for the corporate assets in order to realize more through the sale of their shares at a premium. Would they be required to account? No confident answer can be drawn from the Seltzer opinion.

The other case which is difficult to classify is Perlman v. Feldmann, 129 F. Supp. 162 (D. Conn., 1952), 219 F. 2d 173 (C.A. 2d, 1955). Here a 37 per cent block of shares of Newport Steel Corporation was sold in 1950 to a group of industrial users of steel at $20 per share when recent market sales had not exceeded $12. The purchasers were concededly interested in securing supplies of steel in the tight Korean war market. Steel price levels were being maintained by voluntary "controls," but steel companies, including Newport, had found ways to realize advantages in allocating their production, including interest-free loans from customers. The plaintiffs contended that the defendant's sale constituted an appropriation of the value of these advantages. The district court dismissed the action after trial, but the court of appeals reversed (Swan, J., dissenting). The court said:

We do not mean to suggest that a majority stockholder cannot dispose of his controlling block of stock to outsiders without having to account to his corporation for profits or even never do