37 A. 807 (R.I. 1897)
20 R.I. 176
PEABODY ET AL.
v.
WESTERLY WATERWORKS ET AL.
Supreme Court of Rhode Island
July 7, 1897
Page 808

N. F. Dixon, John W. Sweeney, and Thomas A. Peabody, for complainants.

Ropes, Gray & Loring, R. W. Boyden, Francis Colwell, and A. B. Crafts, for respondents.

PER CURIAM.

This is a bill to enjoin the town of Westerly from purchasing the property of the Westerly Waterworks. The complainants are taxpayers of the town, and one of them is also a stockholder in the Westerly Waterworks. The bill sets forth not only causes of suit which concern the complainants as taxpayers, but also, in so far as the complainant Peabody is concerned, a cause of suit which relates to him as a stockholder in the Westerly Waterworks, and in which that corporation alone of the several respondents is interested. We think that the bill, in thus combining causes of suit not common to both the complainants, and with one of which only one of the respondents is concerned, is multifarious, and consequently demurrable. The grounds of appeal, in so far as it is a bill in favor of taxpayers, are: (1) That the proposed purchase by the town is ultra vires. (2) That the Westerly Waterworks cannot sell, nor the town acquire, that portion of the plant of the former, with its appurtenances, rights, privileges, and franchises, situated in the towns of Stonington and North Stonington, in the state of Counecticut. (3) That by the purchase the town of Westerly would incur an indebtedness in excess of 3 per cent. of its taxable property, without having obtained special statutory authority, as required by Gen. Laws R.I. c. 36, § 21. (4) That the town of Westerly cannot purchase the Westerly Waterworks at the expense of the town, to be paid for by a tax levied on all the taxable property of the town, because such action would be in conflict with Const. R.I. art. 1, §§ 2, 5, 10, 16, and with article 14,§ 1, Const. U.S. Amend., the property of the complainant Sweeney and of other taxpayers outside of the limits of the Westerly fire district being in no manner benefited by the waterworks, and therefore not liable to be taxed therefor.

1. As to the claim that the proposed purchase and sale are ultra vires, it is necessary only to refer to the act of the general assembly of May 26, 1897, expressly authorizing the Westerly Waterworks to sell, and the town of Westerly to purchase, all or any of the lands, water, water rights, estates, real, personal, or mixed, property contracts, franchises, rights and privileges of the former, and whether situated, held, enjoyed, or exercised by it within or without the state of Rhode Island.

2. The claim that the waterworks cannot sell, nor the town acquire, that portion of the plant of the former situated in the towns of Stonington and North Stonington, Conn., rests on the assumption that the right granted by the legislature of Connecticut to the waterworks to construct

and maintain that portion of its plant in that state is merely a revocable license specially conferred on the waterworks. Granting this to be true, it is not to be assumed that the legislature of Connecticut will arbitrarily revoke the license because of a change of ownership from the waterworks to the town. No reason is shown why the ownership of the plant by the town of Westerly instead of by the waterworks should be deemed objectionable by the legislature of Connecticut. Moreover, the charter of the Westerly Waterworks expressly provides for a sale of its plant to the town, and it is not inprobable that that provision was known to the legislature of Connecticut when it granted the license and the possibility of such a sale was contemplated in granting the license.

3. The act of the general assembly of May 26, 1897, authorizes the town of Westerly to hire the sum of $200,000 for the purpose of purchasing, acquiring, building, or constructing a system of waterworks, and of improving and adding to the same, and to issue its notes or bonds therefor. The town is thus granted special authority to borrow the sum of $200,000, and has, therefore, the statutory authority required by Gen. Laws R.I. c. 36, § 21, to incur an indebtedness to that extent in excess of 3 per cent. of its taxable property; and though the town has incurred, as appears by the affidavits filed, other liabilities under a contract made by it for a system of waterworks of its own, it does not appear that its present indebtedness, or that its indebtedness in the future outside of the $200,000 specially authorized, will at any time exceed the 3 per cent. limit imposed by the statute.

4. We see no constitutional objection to the proposed action on the ground of inequality of benefits to be derived by taxpayers resident in different parts of the town. It is assumed by the complainants that only those who are residents within the limits of the Westerly fire district will be benefited by the purchase. The authority, however, to the town to make the purchase, and the vote of the town, contemplate the acquisition of a waterworks system for the town, not merely for the fire district; and we cannot assume that its benefits will not be extended beyond the limits of the fire district as rapidly as can reasonably be done.

In so far as the bill relates to the rights of the complainant Peabody as a stockholder, it proceeds on the ground that a majority of the stockholders of the waterworks are disposing of its property at a price which he thinks inadequate. The action of the company has been taken by a vote of more than 1,100 out of a total of 1,350 shares. There is no proof of any unfairness, oppression, or fraud in such action. The case as presented is simply that of a stockholder who differs from a

large majority of his fellow stockholders as to the expediency of a sale. No reason is shown for the intervention of the court.

We see no ground for the continuance of the ex parte injunction, and, in accordance with the stipulation of the parties that the hearing on the question of injunction should have the same effect as a hearing on the bill, the bill is dismissed.