

TESTATE ESTATE OF IDONAH SLADE PERKINS, DECEASED. RENATO D. TAYAG, ANCILLARY ADMINISTRATOR-APPELLEE, VS. BENGUET CONSOLIDATED, INC., OPPOSITOR-APPELLANT.*G.R. No. L-23145. November 29, 1968*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/37be36e88056/>**FERNANDO, J.:**

Confronted by an obstinate and adamant refusal of the domiciliary administrator, the County Trust Company of New York, United States of America, of the estate of the deceased Idonah Slade Perkins, who died in New York City on March 27, 1960, to surrender to the ancillary administrator in the Philippines the stock certificates owned by her in a Philippine corporation, Benguet Consolidated, Inc., to satisfy the legitimate claims of local creditors, the lower court, then presided by the Honorable Arsenio Santos, now retired, issued on May 18, 1964, an order of this tenor: "After considering the motion of the ancillary administrator, dated February 11, 1964, as well as the opposition filed by the Benguet Consolidated, Inc., the Court hereby (1) considers as lost for all purposes in connection with the administration and liquidation of the Philippine estate of Idonah Slade Perkins the stock certificates covering the 33, 002 shares of stock standing in her name in the books of the Benguet Consolidated, Inc., (2) orders said certificates cancelled, and (3) directs said corporation to issue new certificates in lieu thereof, the same to be delivered by said corporation to either the incumbent ancillary administrator or to the Probate Division of this Court." [1]

From such an order, an appeal was taken to this Court not by the domiciliary administrator, the County Trust Company of New York, but by the Philippine corporation, the Benguet Consolidated, Inc. The appeal cannot possibly prosper. The challenged order represents a response and expresses a policy, to paraphrase Frankfurter, arising out of a specific problem, addressed to the attainment of specific ends by the use of specific remedies, with full and ample support from legal doctrines of weight and significance.

The facts will explain why. As set forth in the brief of appellant Benguet Consolidated, Inc., Idonah Slade Perkins, who died on March 27, 1960 in New York City, left among others, two stock certificates covering 33,002 shares of appellant, the certificates being in the possession of the County Trust Company of New York, which as noted, is the domiciliary administrator of the estate of the deceased. [2] Then came this portion of the appellant's brief: "On August 12, 1960, Prospero Sanidad instituted ancillary administration proceedings in the Court of First Instance of Manila; Lazaro A. Marquez was appointed ancillary administrator; and on January 22, 1963, he was substituted by the appellee Renato D. Tayag. A dispute arose between the domiciliary administrator in New York and the ancillary administrator in the Philippines as to which of them was entitled to the possession of the stock certificates in question. On January 27, 1964, the Court of First Instance of Manila ordered the domiciliary administrator, County Trust Company, to 'produce and deposit' them with the ancillary administrator or with the Clerk of Court. The domiciliary administrator did not comply with the order, and on February 11, 1964, the ancillary administrator petitioned the court to 'issue an order declaring the certificate or certificates of stocks covering the 33,002 shares issued in the name of Idonah Slade Perkins by Benguet Consolidated, Inc. be declared [or] considered as lost.'" [3]

It is to be noted further that appellant Benguet Consolidated, Inc. admits that "it is immaterial" as far as it is concerned as to "who is entitled to the possession of the stock certificates in question; appellant opposed the petition of the ancillary administrator because the said stock certificates are in existence, they are today in the possession of the domiciliary administrator, the County Trust Company, in New York, U. S. A. * * *." [4]

It is its view, therefore, that under the circumstances, the stock certificates cannot be declared or considered as lost. Moreover, it would allege that there was a failure to observe certain requirements of its by-laws before new stock certificates could be issued. Hence, its appeal.

As was made clear at the outset of this opinion, the appeal lacks merit. The challenged order constitutes an emphatic affirmation of judicial authority sought to be emasculated by the wilful conduct of the domiciliary administrator in refusing to accord obedience to a court decree. How, then, can this order be stigmatized as illegal?

As is true of many problems confronting the judiciary, such a response was called for by the realities of the situation. What cannot be ignored is that conduct bordering on willful defiance, if it had not actually reached it, cannot without undue loss of judicial prestige, be condoned or tolerated. For the law is not so lacking in flexibility and resourcefulness as to preclude such a solution, the more so as deeper reflection would make clear its being buttressed by indisputable principles and supported by the strongest policy considerations.

It can truly be said then that the result arrived at upheld and vindicated the honor of the judiciary no less than that of the country. Through this challenged order, there is thus dispelled the atmosphere of contingent frustration brought about by the persistence of the domiciliary administrator to hold on to the stock certificates after it had, as admitted, voluntarily submitted itself to the jurisdiction of the lower court by entering its appearance through counsel on June 27, 1963, and filing a petition for relief from a previous order of March 15, 1963.

Thus did the lower court, in the order now on appeal, impart vitality and effectiveness to what was decreed. For without it, what it had been decided would be set at naught and nullified. Unless such a blatant disregard by the domiciliary administrator, with residence abroad, of what was previously ordained by a court order could be thus remedied, it would have entailed, insofar as this matter was concerned, not a partial but a well-nigh complete paralysis of judicial authority.

1. Appellant Benguet Consolidated, Inc. did not dispute the power of the appellee ancillary administrator to gain control and possession of all assets of the decedent within the jurisdiction of the Philippines. Nor could it. Such a power is inherent in his duty to settle her estate and satisfy the claims of local creditors.[5] As justice Tuason speaking for this Court made clear, it is a "general rule universally recognized" that administration, whether principal or ancillary, certainly "extends to the assets of a decedent found within the state or country where it was granted," the corollary being "that an administrator appointed in one state or country has no power over property in another state or country." [6]

It is to be noted that the scope of the power of the ancillary administrator was, in an earlier case, set forth by Justice Malcolm. Thus: "It is often necessary to have more than one administration of an estate. When a person dies intestate owning property in the country of his domicile as well as in a foreign country, administration is had in both countries. That which is granted in the jurisdiction of decedent's last domicile is termed the principal administration, while any other administration is termed the ancillary administration. The reason for the latter is because a grant of administration does not ex proprio vigore have any effect beyond the limits of the country in which it is granted. Hence, an administrator appointed in a foreign state has no authority in the [Philippines]. The ancillary administration is proper, whenever, a person dies, leaving in a country other than that of his last domicile, property to be administered in the nature of assets of the deceased liable for his individual debts or to be

distributed among his heirs." [7]

It would follow then that the authority of the probate court to require that ancillary administrator's right to "the stock certificates covering the 33,002 shares * * * standing in her name in the books of [appellant] Benguet Consolidated, Inc. * * *" be respected is equally beyond question. For appellant is a Philippine corporation owing full allegiance and subject to the unrestricted jurisdiction of local courts. Its shares of stock cannot therefore be considered in any wise as immune from lawful court orders.

Our holding in *Wells Fargo Bank and Union v. Collector of Internal Revenue* [8] finds application. "In the instant case, the actual situs of the shares of stock is in the Philippines, the corporation being domiciled [here]." To the force of the above undeniable proposition, not even appellant is insensible. It does not dispute it. Nor could it successfully do so even if it were so minded.

2. In the face of such incontrovertible doctrines that argue in a rather conclusive fashion for the legality of the challenged order, how does appellant Benguet Consolidated, Inc. propose to carry the extremely heavy burden of persuasion of precisely demonstrating the contrary? It would assign as the basic error allegedly committed by the lower court its "considering as lost the stock certificates covering 33,002 shares of Benguet belonging to the deceased Idonah Slade Perkins, * * *." [9] More specifically, appellant would stress that the "lower court could not 'consider as lost' the stock certificates in question when, as a matter of fact, his Honor the trial Judge knew, and does know, and it is admitted by the appellee, that the said stock certificates are in existence and are today in the possession of the domiciliary administrator in New York." [10]

There may be an element of fiction in the above view of the lower court. That certainly does not suffice to call for the reversal of the appealed order. Since there is a refusal, per-sistently adhered to by the domiciliary administrator in New York, to deliver the shares of stocks of appellant corporation owned by the decedent to the ancillary administrator in the Philippines, there was nothing unreasonable or arbitrary in considering them as lost and requiring the appellant to issue new certificates in lieu thereof. Thereby, the task incumbent under the law on the ancillary administrator could be discharged and his responsibility fulfilled.

Any other view would result in the compliance to a valid judicial order being made to depend on the uncontrolled discretion of the party or entity, in this case domiciled abroad, which thus far has shown the utmost persistence in refusing to yield obedience. Certainly, appellant would not be heard to contend in all seriousness that a judicial decree could be treated as a mere scrap of paper, the court issuing it being powerless to remedy its flagrant disregard.

It may be admitted of course that such alleged loss as found by the lower court did not correspond exactly with the facts. To be more blunt, the quality of truth may be lacking in such a conclusion arrived at. It is to be remembered however, again to borrow from Frankfurter, "that fictions which the law may rely upon in the pursuit of legitimate ends have played an im-portant part in its development." [11]

Speaking of the common law in its earlier period, Cardozo could state that fictions "were devices to advance the ends of justice, [even if] clumsy and at times offensive." [12] Some of them have persisted even to the present, that eminent jurist, noting "the quasi contract, the adopted child, the constructive trust, all of flourishing vitality, to attest the empire of 'as if' today." [13] He likewise noted "a class of fictions of another order, the fiction which is a working tool of thought, but which at times hides itself from view till reflection and analysis have brought it to the light." [14]

What cannot be disputed, therefore, is the at times indispensable role that fictions as such played in the law. There should be then on the part of the appellant a further refinement in the catholicity of its condemnation of such judicial technique. If ever an occasion did call for the employment of a legal fiction to put an end to the

anomalous situation of a valid judicial order being disregarded with apparent impunity, this is it. What is thus most obvious is that this particular alleged error does not carry persuasion.

3. Appellant Benguet Consolidated, Inc. would seek to bolster the above contention by its invoking one of the provisions of its by-laws which would set forth the procedure to be followed in case of a lost, stolen or destroyed stock certificate; it would stress that in the event of a contest or the pendency of an action regarding ownership of such certificate or certificates of stock allegedly lost, stolen or destroyed, the issuance of a new certificate or certificates would await the "final decision by [a] court regarding the ownership [thereof]."[15]

Such reliance is misplaced. In the first place, there is no such occasion to apply such a by-law. It is admitted that the foreign domiciliary administrator did not appeal from the order now in question. Moreover, there is likewise the express admission of appellant that as far as it is concerned, "it is immaterial * * * who is entitled to the possession of the stock certificates * * *." Even if such were not the case, it would be a legal absurdity to impart to such a provision conclusiveness and finality. Assuming that a contrariety exists between the above by-law and the command of a court decree, the latter is to be followed.

It is understandable, as Cardozo pointed out, that the Constitution overrides a statute, to which, however, the judiciary must yield deference, when appropriately invoked and deemed applicable. It would be most highly unorthodox, however, if a corporate by-law would be accorded such a high estate in the jural order that a court must not only take note of it but yield to its alleged controlling force.

The fear of appellant of a contingent liability with which it could be saddled unless the appealed order be set aside for its inconsistency with one of its by-laws does not impress us. Its obedience to a lawful court order certainly constitutes a valid defense, assuming that such apprehension of a possible court action against it could possibly materialize. Thus far, nothing in the circumstances as they have developed gives substance to such a fear. Gossamer possibilities of a future prejudice to appellant do not suffice to nullify the lawful exercise of judicial authority.

4. What is more the view adopted by appellant Benguet Consolidated, Inc. is fraught with implications at war with the basic postulates of corporate theory.

We start with the undeniable premise that, "a corporation is an artificial being created by operation of law * * *." [16] It owes its life to the state, its birth being purely dependent on its will. As Berle so aptly stated: "Classically, a corporation was conceived as an artificial person, owing its existence through creation by a sovereign power." [17] As a matter of fact, the statutory language employed owes much to Chief Justice Marshall, who in the Dartmouth College decision, defined a corporation precisely as "an artificial being, invisible, intangible, and existing only in contemplation of law." [18]

The well-known authority Fletcher could summarize the matter thus: "A corporation is not in fact and in reality a person, but the law treats it as though it were a person by process of fiction, or by regarding it as an artificial person distinct and separate from its individual stockholders. *** It owes its existence to law. It is an artificial person created by law for certain specific purposes, the extent of whose existence, powers and liberties is fixed by its charter." [19] Dean Pound's terse summary, a juristic person, resulting from an association of human beings granted legal personality by the state, puts the matter neatly. [20]

There is thus a rejection of Gierke's genossenschaft theory, the basic theme of which to quote from Friedmann, "is the reality of the group as a social and legal entity, independent of state recognition and concession." [21] A corporation as known to Philippine jurisprudence is a creature without any existence until it has received the imprimatur of the state acting according to law. It is logically inconceivable therefore that it will have rights and privileges of a higher priority than that of its creator. More than that, it cannot legitimately refuse to yield

obedience to acts of its state organs, certainly not excluding the judiciary, whenever called upon to do so.

As a matter of fact, a corporation once it comes into being, following American law still of persuasive authority in our juris-diction, comes more often within the ken of the judiciary than the other two coordinate branches. It institutes the appropriate court action to enforce its rights. Correlatively, it is not immune from judicial control in those instances, where a duty under the law as ascertained in an appropriate legal proceeding is cast upon it.

To assert that it can choose which court order to follow and which to disregard is to confer upon it not autonomy which may be conceded but license which cannot be tolerated. It is to argue that it may, when so minded, overrule the state, the source of its very existence; it is to contend that what any of its governmental organs may lawfully require could be ignored at will. So extravagant a claim cannot possibly merit approval.

5. One last point. In *Viloria v. Administrator of Veterans Affairs*,^[22] it was shown that in a guardianship proceeding then pending in a lower court, the United States Veterans Administration filed a motion for the refund of a certain sum of money paid to the minor under guardianship, alleging that the lower court had previously granted its petition to consider the deceased father as not entitled to guerilla benefits according to a determination arrived at by its main office in the United States. The motion was denied. In seeking a reconsideration of such order, the Administrator relied on an American federal statute making his decisions "final and conclusive on all questions of law or fact" precluding any other American official to examine the matter anew, "except a judge or judges of the United States court."^[23] Reconsideration was denied, and the Administrator appealed.

In an opinion by Justice J. B. L. Reyes, we sustained the lower court. Thus: "We are of the opinion that the appeal should be rejected. The provisions of the U. S. Code, invoked by the appellant, make the decisions of U. S. Veteran Administrator final and conclusive when made on claims properly submitted to him for resolution; but they are not applicable to the present case, where the Administrator is not acting as a judge but as a litigant. There is a great difference between actions against the Administrator (which must be filed strictly in accordance with the conditions that are imposed by the Veterans' Act, including the exclusive review by United States courts), and those actions where the Veterans' Administrator seeks a remedy from our courts and submits to their juris-diction by filing actions therein. Our attention has not been called to any law or treaty that would make the findings of the Veterans' Administrator, in actions where he is a party, conclusive on our courts. That, in effect, would deprive our tribunals of judicial discretion and render them mere subordinate instrumentalities of the Veterans' Administrator."

It is bad enough as the *Viloria* decision made patent for our judiciary to accept as final and conclusive, determinations made by foreign governmental agencies. It is infinitely worse if through the absence of any coercive power by our courts over juridical persons within our jurisdiction, the force and effectivity of their orders could be made to depend on the whim or caprice of alien entities. It is difficult to imagine of a situation more offensive to the dignity of the bench or the honor of the country.

Yet that would be the effect, even if unintended, of the proposition to which appellant *Benguet Consolidated* seems to be firmly committed as shown by its failure to accept the validity of the order complained of; it seeks its reversal. Certainly we must at all pains see to it that it does not succeed. The deplorable consequences attendant on appellant prevailing attest to the necessity of a negative response from us. That is what appellant will get.

That is all then that this case presents. It is obvious why the appeal cannot succeed. It is always easy to conjure extreme and even oppressive possibilities. That is not decisive. It does not settle the issue. What carries weight and conviction is the result arrived at, the just solution obtained, grounded, in the soundest of legal doctrines and distinguished by its correspondence with what a sense of realism requires. For through the appealed order, the imperative requirement of justice according to law is satisfied and national dignity and honor maintained.

WHEREFORE, the appealed order of the Honorable Arsenio Santos, the Judge of the Court of First Instance, dated May 18, 1964, is affirmed. With costs against oppositor-appellant Benguet Consolidated, Inc.

Makalintal, Zaldivar, and Capistrano, JJ., concur.

Concepcion, C.J., Reyes, J.B.L., Dizon, Sanchez, JJ., and Castro, JJ., concur in the result.

[1] Statement of the Case and Issues Involved, Brief for the Oppositor-Appellant, p. 2.

[2] Ibid, p. 3.

[3] Ibid, pp. 3 to 4.

[4] Ibid, p. 4.

[5] Rule 84, Sec. 3, Rules of Court. Cf. *Pavia v. de la Rosa*, 8 Phil. 70 (1907); *Suiliong and Co. v. Chio-Taysan*, 12 Phil. 13 (1908); *Malahacan v. Ignacio*, 19 Phil. 434 (1911); *McMicking v. Sy Conbieng*, 21 Phil. 211 (1912); *In re Estate of De Dios*, 24 Phil. 573 (1913); *Santos v. Manarang*, 27 Phil. 209 (1914); *Jaucian v. Querol*, 38 Phil. 707 (1918); *Buenaventura v. Ramos*, 43 Phil. 704 (1922); *Roxas v. Peceon*, 82 Phil. 407 (1948); *De Borja v. De Borja*, 83 Phil. 405 (1949); *Barraca v. Zayco*, 88 Phil. 774 (1951); *Pabilonia v. Santiago*, 93 Phil. 516 (1953); *Sison v. Teodoro*, 98 Phil. 680 (1956); *Ozaeta v. Palanca*, 101 Phil. 976 (1957); *Natividad Castelví de Raquiza v. Castelví, et al.*, L-17630, Oct. 31, 1963; *Habana v. Imbo*, L-15598 & 15726, March 31, 1964; *Glicería Liwanag v. Hon. Luis Reyes*, L-19159, Sept. 29, 1964; *Ignacio v. Elchico*, L-18937, May 16, 1967.

[6] *Leon and Ghezzi v. Manuf. Life Ins. Co.*, 90 Phil. 459 (1951).

[7] *Johannes v. Harvey*, 43 Phil. 175, 177-178 (1922).

[8] 70 Phil. 325 (1940) Cf. *Perkins v. Dizon*, 69 Phil. 186 (1939).

[9] Brief for Oppositor-Appellant, p. 5. The Assignment of Error reads: "The lower court erred in entering its order of May 18, 1964, (1) considering as lost the stock certificates covering 33,002 shares of Benguet belonging to the deceased Idonah Slade Perkins, (2) ordering the said certificates cancelled, and (3) ordering appellant to issue new certificates in lieu thereof and to deliver them to the ancillary administrator of the estate of the deceased Idonah Slade Perkins or to the probate division of the lower court."

[10] Ibid, pp. 5 to 6.

[11] *Nashville C. St. Louis Ry v. Browning*, 310 US 362 (1940).

[12] *Cardozo, The Paradoxes of Legal Science*, 34 (1928).

[13] Ibid, p. 34.

[14] Ibid, p. 34. The late Professor Gray in his *The Nature and Sources of the Law*, distinguished, following Ihering, historic fictions from dogmatic fictions, the former being devices to allow the addition of new law to old without changing the form of the old law and the latter being intended to arrange recognized and established doctrines under the most convenient forms. pp. 30, 36 (1909) Speaking of historic fictions, Gray added: "Such fictions have had their field of operation largely in the domain of procedure, and have consisted in pretending that a person or thing was other than that which he or it was in truth, (or that an event had occurred which had not in fact occurred) for the purpose of thereby giving an action at law to or against a person who did not really come within the class to or against which the old action was confined." Ibid, pp. 30-31 See also Pound, *The Philosophy of Law*, pp. 179, 180, 274 (1922).

[15] This is what the particular by-law provides: Section 10. Lost, Stolen or Destroyed Certificates. - Any registered stockholder claiming a certificate or certificates of stock to be lost, stolen or destroyed shall file an affidavit in triplicate with the Secretary of the Company or with one of its Transfer Agents, setting forth, if possible, the circumstances as to how, when and where said certificate or certificates was or were lost, stolen or destroyed, the number of shares represented by the certificate or by each of the certificates, the serial number or numbers of the certificate or certificates, and the name of this Company. The registered stockholder shall also submit such other information and evidence which he may deem necessary.

* * *.

If a contest is presented to the Company, or if an action is pending in court regarding the ownership of said certificate or certificates of stock which have been claimed to have been lost, stolen or destroyed, the issuance of the new certificate or certificates in lieu of that or those claimed to have been lost, stolen or destroyed, shall be suspended until final decision by the court regarding the ownership of said certificate or certificates. Brief for Oppositor-Appellant, pp. 8-10.

[16] Sec. 2, Act No. 1459 (1906).

[17] Berle, The Theory of Enterprise Entity, 47 Co. Law Rev. 343 (1907).

[18] Dartmouth College v. Woodward, 4 Wheat. 518 (1819). Cook would trace such a concept to Lord Coke. See 1 Cook on Corporations, p. 2 (1923).

[19] 1 Fletcher, Cyclopedia Corporations, pp. 19-20 (1931). Chancellor Kent and Chief Justice Baldwin of Connecticut were likewise cited to the same effect. At pp. 12-13.

[20] 4 Pound on Jurisprudence, pp. 207-209 (1959).

[21] Friedmann, Legal Theory, pp. 164-168 (1947). See also Holdsworth, English Corporation Law, 31 Yale Law Journal, 382 (1922).

[22] 101 Phil. 762 (1957).

[23] 38 USCA, Sec. 808.

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