

**JACINTO DEL SAZ OROZCO Y MORTERA AND MARIA PAZ
ALCANTARA, PLAINTIFFS AND APPELLANTS, VS. SALVADOR
ARANETA, FRANCISCO DEL SAZ OROZCO Y LOPEZ, AND THE
MINORS FELISA, EUGENIO, ANTO...**

G. R. No. L-3691. November 21, 1951

Ponente: JUGO, J.

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JUGO, J.:

Eugenio del Saz Orozco died on February 7, 1922, leaving a will which he had executed on March 5, 1921, and was afterwards duly admitted to probate. The pertinent clause of that will provided that certain properties should be given in life usufruct to his son Jacinto del Saz Orozco y Mortera, with the obligation on his part to preserve said properties in favor of the other heirs who were declared the naked owners thereof. Among these properties were 5,714 shares of stock of the Benguet Consolidated Mining Company and 94 shares of stock of the Manila Electric Company, according to the project of partition executed pursuant to said will and duly approved by the court.

On September 11, 1934, the Benguet Consolidated Mining Company declared and distributed stock dividends out of its surplus profits, the plaintiff receiving his proportionate portion of 11,428 shares. On November 17, 1939, said Mining Company again declared stock dividends out of its surplus profits, of which the plaintiff received 17,142 shares, making a total of 28,570 shares.

The question at Issue is whether the stock dividend is part of the capital which should be preserved in favor of the owners or an income or fruits of the capital which should be given to and enjoyed by the life usufructuary, the plaintiff herein, as his own exclusive property.

The same question was raised in the Matter of the Testate Estate of Bail Maurice Bachrach,[*] G. R. No. L-2659 the decision of which was promulgated on October 12, 1950. In that case, the question raised was stated as follows:

"Is a stock dividend fruit or income, which belongs to the usufructuary, or is it capital or part of the corpus of the estate, which pertains to the remainderman? That is the question raised in this appeal."

In said case, Bail Maurice Bachrach was the owner of 108,000 shares of stock of the Atok Big Wedge Mining Co., Inc. He received 54,000 shares, representing 50% stock dividend on said original shares. On June 10, 1948, Mary MacDonald Bachrach as life tenant or usufructuary of the estate filed a motion asking the Court of First Instance to authorize the Peoples Bank and Trust Company, as administrator of the estate of Bail Maurice Bachrach, to transfer to her the said 54,000 shares of stock dividend by indorsing and delivering to her the corresponding certificates of stock, claiming that said dividend, although paid out in the form of stock, was fruit or income and, therefore, belonged to her as a usufructuary. The other heirs of Bachrach portion of 11,428 shares. On November 17, 1939, said Mining Company again declared stock dividends out of its surplus profits, of which

the plaintiff received 17,142 shares, making a total of 28,570 shares.

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Justice Ozaeta, with the unanimous concurrence of the other Members of this Court, ruled that a dividend, whether in the form of cash or stock-, is income and, consequently, should go to the usufructuary, taking into consideration that a stock dividend as well as a cash dividend can be declared only out of profits of the corporation, for if it were declared out of the capital it would be a serious violation of the law.

For the reasons sustaining the doctrine, we refer to that recent decision.

The appellees attempt to differentiate the present case from that case, contending that, while the doctrine in that case effected a just and equitable distribution, the application of it in the present case would cause an injustice, for, quoting Justice Holmes, "abstract propositions do not decide concrete cases." We have examined the two cases carefully and we have not perceived any difference which would justify a reversal or modification ef the doctrine in the Bachrach case.

One of the differences pointed out is that by the declaration of stock dividends the voting power of the original shares of stock Is considerably diminished, and, if the stock dividends are not given to the remaindermen, the voting power of the latter would be greatly impaired. Bearing in mind that the number of shares of stock of the Benguet Consolidated company is so large, the diminution of the voting power of the origiaal shares ff stock in tills ease cannot possibly affect or influence the control of the policies of the corporation which is vested in the owners of the great blocks of shares. This would not lie a sufficient reason for modifying the doctrine jof the Bachrach case. These remarks are made in answer to the argument of the appellees in this particular case, but they do not imply that if the diminution of the voting power were considerable the doctrine should be. modified.

With regard to the sum of P3,428.40 which is alleged to have been received by the plaintiff from the Benguet Consolidated Hining Company, as a result of the reduction of its capital in January, 1926, it appears that it has net been proven, that the plaintiff has received said sum; en the contrary, it was denied by him as soon as he arrived in the Philippines from Spain, There is no ground, therefore, for ordering the plaintiff to deliver such sum to the defendants.

In view of the foregoing, the judgment appealed from is reversed, and it is declared that the stock dividends

amounting to 28,570 shares, above mentioned, belong to the plaintiffappellant Jacinto del Sax Orozco y Hbrtera exclusively and in absolute ownership. Without costs. It is so ordered.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Reyes and Bautista Angelo, JJ., concur.

[*] 48 Off. Gaz., 569; 87 Phil., 483.

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