

**BALDOMERO ROXAS, ENRIQUE ECHAUS AND ROMAN J. LACSON,
PETITIONERS, VS. HONORABLE MARIANO DE LA ROSA, AUXILIARY
JUDGE OF FIRST INSTANCE OF OCCIDENTAL NEGROS, AGUSTIN
CORUNA, MAURO...**

G. R. No. 26555. November 16, 1926

Ponente: STREET, J.

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STREET, J.:

This is an original petition for the writ of certiorari whereby the petitioners, Baldomero Roxas, Enrique Echaus, and Roman J. Lacson, seek to procure the abrogation of an order of the respondent judge granting a preliminary injunction in an action in the Court of First Instance of Occidental Negros, instituted by Agustin Coruña and Mauro Ledesma against the petitioners and the Binalbagan Estate, Inc. The cause is now before us upon the issues made by the answers filed by the respondents.

It appears that the Binalbagan Estate, Inc., is a corporation having its principal plant in Occidental Negros where it is engaged in the manufacture of raw sugar from canes grown upon farms accessible to its central. In July, 1924, the possessors of a majority of the shares of the Binalbagan Estate, Inc., formed a voting trust composed of three members, namely, Salvador Laguda, Segundo Montebanco, and Arthur F. Fisher, as trustees. By the document constituting this voting trust the trustees were authorized to represent and vote the shares pertaining to their constituents, and to this end the shareholders undertook to assign their shares to the trustees on the books of the company. The total number of outstanding shares of the corporation is somewhat over 5,500, while the number of shares controlled by the voting trust is less than 3,000.

On February 1, 1926, the general annual meeting of the shareholders of the Binalbagan Estate, Inc., took place, at which Mr. J. P. Heilbronn appeared as representative of the voting trust, his authority being recognized by the holders of all the other shares present at this meeting.

Upon said occasion Heilbronn, by virtue of controlling the majority of the shares, was able to nominate and elect a board of directors to his own liking, without opposition from the minority. After the board of directors had been thus elected and had qualified, they chose a set of officers consisting of Jose M. Yusay, president, Timoteo Unson, vice-president, Jose G. Montalvo, secretary-treasurer, and H. W. Corp and Agustin Coruña, as members. Said officials immediately entered upon the discharge of their duties and have continued in possession of their respective offices until the present time.

Since the creation of the voting trust there have been a number of vacancies caused by resignation or the absence of members from the Philippine Islands, with the result that various substitutions have been made in the personnel of the voting trust. At the present time the petitioners Roxas, Echaus, and Lacson presumably constitute its membership. We say presumably, because in the present proceeding an issue of fact is made by the respondents upon the point whether the three individuals named have been regularly substituted for their several predecessors. In the view we take of the case it is not necessary to determine this issue; and we shall assume provisionally that

the three petitioners are the lawful components of the voting trust.

Although the present officers of the Binalbagan Estate, Inc., were elected by the representative of the voting trust, the present trustees are apparently desirous of ousting said officers, without awaiting the termination of their official term at the expiration of one year from the date of their election. In order to effect this purpose the petitioners; in their character as members of the voting trust, on August 2, 1926, caused the secretary of the Binalbagan Estate, Inc., to issue to the shareholders a notice calling for a special general meeting of shareholders to be held at 10 a. m., on August 16, 1926, "for the election of the board of directors, for the amendment of the By-Laws, and for any other business that can be dealt with in said meeting."

Within a few days after said notice was issued Agustin Coruña, as member of the existing board, and Mauro Ledesma, as a simple shareholder of the corporation, instituted a civil action (No. 3840) in the Court of First Instance of Occidental Negros against the trustees and the Binalbagan Estate, Inc., for the purpose of enjoining the meeting contemplated in the notice above-mentioned.

In response to a prayer for a preliminary injunction, in connection with said action, the respondent judge issued the restraining order, or preliminary injunction, which gave rise to the present petition for the writ of certiorari. In the dispositive part of said order the Binalbagan Estate, Inc., its lawyers, agents, representatives, and all others who may be assisting or collaborating with them, are restrained from holding the general shareholders' meeting called for the date mentioned and from electing new directors for the company in substitution of the present incumbents, said injunction to be effective until further order of the court. It is now asserted here by the petitioners that the making of this order was beyond the legitimate powers of the respondent judge, and it is accordingly prayed that said order be set aside.

We are of the opinion that this contention is untenable and that the respondent judge acted within his legitimate powers in making the order against which relief is sought. In order to expose the true inwardness of the situation before us it is necessary to take note of the fact that under the law the directors of a corporation can only be removed from office by a vote of the stockholders representing at least two-thirds of the subscribed capital stock entitled to vote (Act No. 1459, sec. 34) ; while vacancies in the board, when they exist, can be filled by mere majority vote (Act No. 1459, sec. 25). Moreover, the law requires that when action is to be taken at a special meeting to remove the directors, such purpose shall be indicated in the call (Act No. 1459, sec. 34).

Now, upon examining into the number of shares controlled by the voting trust, it will be seen that, while the trust controls a majority of the stock, it does not have a clear two-thirds majority. It was therefore impolitic for the petitioners, in forcing the call for the meeting of August 16, to come out frankly and say in the notice that one of the purposes of the meeting was to remove the directors of the corporation from office. Instead, the call was limited to the election of the board of directors, it being the evident intention of the voting trust to elect a new board as if the directorate had been then vacant

But the complaint in civil action No. 3840 directly asserts that the members of the present directorate were regularly elected at the general annual meeting held in February, 1926; and if that assertion be true, the proposal to elect another directorate, as per the call of August 2, if carried into effect, would result in the election of a rival set of directors, who would probably need the assistance of judgment of court in an independent action of quo warranto to get them installed into office, even supposing that their title to the office could be maintained. That the trial judge had jurisdiction to forestall that step and enjoin the contemplated election is a matter about which there cannot be the slightest doubt. The law contemplates and intends that there shall be one set of directors at a time and that new directors shall be elected only as vacancies occur in the directorate by death, resignation, removal, or otherwise.

It is insinuated that there was some irregularity or another in the election of the present directorate. We see nothing upon which this suggestion can be safely planted; and at any rate the present board of directors are de facto incumbents of the office whose acts will be valid until they shall be lawfully removed from office or cease from the discharge of their functions. In this case it is not necessary for us to agitate ourselves over the question whether the respondent judge properly exercised his judicial discretion in granting the order complained of. It suffices to know that in making the order he was acting within the limits of his judicial powers.

It will be noted that the order in question enjoins the defendants from holding the meeting called for August 16; and said order must not be understood as constituting any obstacle for the holding of the regular meeting at the time appointed in the by-laws of the corporation.

For the reasons stated the petition will be denied, and it is so ordered, with costs.

Johnson, Malcolm, Ostrand, Johns, Romualdez, and Villa- Real, JJ., concur.

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