

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ASIA LUMBER CO., INC., DEFENDANT AND APPELLANT.

G.R. No. 29780, August 23, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

October 18, 1920, Edward J. Pfleider, J. S. Mohler, R. C. Huggan, C. S. Gilchrist and Thomas N. Powell organized the defendant with an authorized capital stock of P150,000, divided into 1,500 shares of the par value of P100 each. At that time Pfleider was the owner of a tract of land at a place called Asia, on the coast of the Island of Negros, which he leased to the defendant for a period of five years and for such further time "as might be necessary for the cutting of the timber then standing on the land." During the time that Pfleider was the president of the defendant, he and Gilchrist, a director, sold it an engine and a boiler for the agreed price of P14,000. August 23, 1922, when Ford became president of the corporation, he severely criticized this purchase, claiming that the property was not worth one-half of the amount of the purchase price. As a result of internal strife, Walter A. Smith acquired control of the defendant company, which was then indebted to Walter A. Smith Co., Inc., in the sum of P161,500. By mutual agreement the defendant paid its debts to Walter A. Smith & Company by issuing 1,615 shares of its capital stock to that company which later sold them to Walter A. Smith. At the expiration of the five-year period, Pfleider brought an action against the defendant to terminate the lease, which case is now pending on appeal in this court.

On investigation the defendant found that a large tract of virgin timber land on the plateau back of the Pfleider property "could be tapped if adequate means of transportation could be furnished." As a result detailed plans were made and construction work started, and a mill pond, a new dock and a new railroad were in the course of construction at the time the investigation was made by the Insular Auditor, whose report, together with the complaint of Pfleider, resulted in the commencement of this action.

The Attorney-General frankly concedes that the first assignment of error must be sustained. The evidence shows that the defendant owed Walter A. Smith & Company P161,500 which it could not pay, and that by mutual agreement, the defendant issued 1,615 shares of its capital stock to the Walter A. Smith & Company in full payment of that debt. To say the least, there was nothing wrong about that transaction, and the fact that the Walter A. Smith & Company later sold that stock to Walter A. Smith for 50 per cent of its par value ought not to be charged to the defendant. The engine and boiler were purchased sometime in the year 1921, and this action was commenced February 12, 1927, at the instigation of Pfleider, who was a party to that alleged fraudulent sale, or about six years after he and Gilchrist made the sale. As a result of its efforts to acquire and open up a new body of timber and the large amount of money expended for that purpose, the defendant may or may not be insolvent, but assuming, without deciding, that it is, that would not be any legal ground for the government to take away its charter. In such a case it would be far better for the defendant, its stock-holders and creditors to wind up its affairs with its corporate charter than without. It appears that the defendant has not kept its minute and stock books in the

manner and form in which they should be kept, but even so, that is a matter which can be very easily corrected. In the final analysis, it is very apparent that the government has made itself a party in this case to the internal strife and friction among the stockholders of the defendant, and that in truth and in fact this proceeding was instituted by the government at the instance of Pfleider, who was the former president of the defendant.

For want of any merit in the petition, the judgment of the lower court is reversed, and this proceeding is dismissed, without costs, with the admonition that the defendant promptly prepare and have its minute book, corporate records, stock and transfer book in all things and respects conform to the Corporation Law. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

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