

CELSO S. GUANCO, ADMINISTRATOR AND APPELLEE, VS. PHILIPPINE NATIONAL BANK, OPPOSITOR AND APPELLANT.

G. R. No. 31679. January 14, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

On January 18,1921, the now deceased Espiridion Guanco obtained a credit, not exceeding P175,000, with interest, from the Philippine National Bank, pledging as security 250 shares of the capital stock of the Binalbagan Estate, Inc., and 6,196 shares of the capital stock of the Hinigaran Sugar Plantation, Inc. In the following year, the Hinigaran Sugar Plantation, Inc., gave the bank a promissory note for P273,932.11, the original debt of Guanco being included therein. Shortly afterwards, the Hinigaran Sugar Plantation gave a mortgage on real property in favor of the Philippine National Bank for P350,000 as security for the note and for such future credits as might be granted the company. The shares given the bank as security for the transaction of January 18,1921, were not mentioned in the mortgage.

After Guanco's death, the administrator of his estate, on October 5,1928, filed a petition in the intestate proceedings asking that the Court of First Instance issue an order requiring the president or manager of the bank to appear in court for examination in regard to the 250 shares of the Binalbagan Estate under section 709 of the Code of Civil Procedure. The court issued the order in conformity with the administrator's motion and ordered the manager of the bank, Miguel Cuaderno, to appear before the court. Cuaderno did not appear, but the attorney for the bank filed an answer to the administrator's motion in which answer it was asserted that the pledge of the 250 shares was still in force as security for the debts of Guanco and the Hinigaran Estate. Thereupon the court, in the same proceedings and without any trial, ordered the manager of the bank to deliver the said 250 shares to the administrator of the Guanco Estate within thirty days from notice of the order.

Upon appeal to this court, counsel for the bank maintains that the court below exceeded its jurisdiction in ordering the delivery of the shares to the administrator in a proceeding under section 709 of the Code of Civil Procedure. This contention is entirely correct. The section in question reads as follows:

"Sec. 709. If an executor or administrator, heir, legatee, creditor, or other person interested in the estate of a deceased person complains to the court having jurisdiction of the estate, that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession, or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of, or tends to disclose the right, title, interest, or claim of the deceased to real or personal

estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it, and may examine him on oath on the matter of such complaint; if the person so cited refuses to appear and answer such examinations, or to answer such interrogatories as are put to him, the court may, by warrant, commit him to jail or prison of the province, there to remain in close custody until he submits to the order of the court; and such interrogatories and answers shall be in writing and signed by the party examined, and filed in the clerk's office."

As will be seen, the section quoted only provides a proceeding for examining persons suspected of having concealed, embezzled, or conveyed away property of the deceased or withholds information of documentary evidence tending to disclose rights or claims of the deceased to such property or to disclose the possession of his last will and testament. The purpose of the proceeding is to elicit evidence, and the section does not, in terms, authorize the court to enforce delivery of possession of the things involved. To obtain the possession, recourse must therefore generally be had to an ordinary action. It has so been held in the cases of *Chanco vs. Madrilejos* and *Abreu* (12 Phil., 543) and *Alafriz vs. Mina* (28 Phil., 137).

In issuing the order from which the appeal has been taken, the court below relied largely on a dictum in the *Alafriz* case that "there may be cases, where papers and documentary evidence of ownership of property are held by a third person belonging to the estate of a deceased person, in which it would be perfectly proper for the court to order the same turned over to the court." That may be true; it might, for instance, apply to the possession of a Will. But in the same case, the court also said that "the court had no right to deprive her (the appellant) of her evidence relating to the property, until the question of ownership had been settled."

That is practically this case. The bank maintains that the pledge of the 250 shares is still in force. It may have documentary evidence to that effect, and it was not under obligation to turn such evidence over to the court or to a third party, on the strength of a citation under section 709. The possession of the certificates of the shares in question is a part of that evidence and it is obvious that if they are surrendered to the administrator of the estate and possibly disposed of by him, the bank will lose its hold on the shares as a pledge. The bank is entitled to its day in court, and its rights can only be determined in a corresponding action.

The appealed order is hereby reversed and annulled without costs. So ordered.

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

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