

FRED M. HARDEN, J. D. HIGHSMITH, AND JOHN C. HART, IN THEIR OWN BEHALF AND IN THAT OF ALL OTHER STOCKHOLDERS OF THE BALATOC MINING COMPANY, ETC., PLAINTIFFS AND APPELLANTS, VS. ...

G.R. No. 37331. March 18, 1933

Ponente: STREET, J.

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STREET, J.:

This action was originally instituted in the Court of First Instance of the City of Manila by F. M. Harden, acting in his own behalf and that of all other stockholders of the Balatoc Mining Co. who might join in the action and contribute to the expense of the suit. With the plaintiff Harden two others, J. D. Highsmith and John C. Hart, subsequently associated themselves. The defendants are the Benguet Consolidated Mining Co., the Balatoc Mining Co., H. E. Renz, John W. Haussermann, and A. W. Beam. The principal purpose of the original action was to annul a certificate covering 600,000 shares of the stock of the Balatoc Mining Co., which had been issued to the Benguet Consolidated Mining Co., and to secure to the Balatoc Mining Co. the restoration of a large sum of money alleged to have been unlawfully collected by the Benguet Consolidated Mining Co., with legal interest, after deduction therefrom of the amount expended by the latter company under a contract between the two companies, bearing date of March 9, 1927. The complaint was afterwards amended so as to include a prayer for the annulment of this contract. Shortly prior to the institution of this lawsuit, the Benguet Consolidated Mining Co. transferred to H. E. Renz, as trustee, the certificate for 600,000 shares of the Balatoc Mining Co. which constitute the principal subject matter of the action. This was done apparently to facilitate the splitting up of the shares in the course of sale or distribution. To prevent this, the plaintiffs, upon filing their original complaint, procured a preliminary injunction restraining the defendants, their agents and servants, from selling, assigning or transferring the 600,000 shares of the Balatoc Mining Co., or any part thereof, and from removing said shares from the Philippine Islands. This explains the connection of Renz with the case. The other individual defendants are made such merely as officials of the Benguet Consolidated Mining Co. Upon hearing the cause the trial court dismissed the complaint and dissolved the preliminary injunction, with costs against the plaintiffs. From this judgment the plaintiffs appealed.

The facts which have given rise to this lawsuit are simple, as the financial interests involved are immense. Briefly told these facts are as follows: The Benguet Consolidated Mining Co. was organized in June, 1903, as a sociedad anonima in conformity with the provisions of Spanish law; while the Balatoc Mining Co. was organized in December, 1925, as a corporation, in conformity with the provisions of the Corporation Law (Act No. 1459). Both entities were organized for the purpose of engaging in the mining of gold in the Philippine Islands, and their respective properties are located only a few miles apart in the subprovince of Benguet. The capital stock of the Balatoc Mining Co. consists of one million shares of the par value of one peso (P1) each.

When the Balatoc Mining Co. was first organized the properties acquired by it were largely undeveloped; and the original stockholders were unable to supply the means needed for profitable operation. For this reason, the board

of directors of the corporation ordered a suspension of all work, effective July 31, 1926. In November of the same year a general meeting of the company's stockholders appointed a committee for the purpose of interesting outside capital in the mine. Under the authority of this resolution the committee approached A. W. Beam, then president and general manager of the Benguet Company, to secure the capital necessary to the development of the Balatoc property. As a result of the negotiations thus begun, a contract, formally authorized by the management of both companies, was executed on March 9, 1927, the principal features of which were that the Benguet Company was to proceed with the development and construct a milling plant for the Balatoc mine, of a capacity of 100 tons of ore per day, and with an extraction of at least 85 per cent of the gold content. The Benguet Company also agreed to erect an appropriate power plant, with the aerial tramlines and such other surface buildings as might be needed to operate the mine. In return for this it was agreed that the Benguet Company should receive from the treasurer of the Balatoc Company shares of a par value of P600,000, in payment for the first P600,000 to be thus advanced to it by the Benguet Company.

The performance of this contract was speedily begun, and by May 31, 1929, the Benguet Company had spent upon the development the sum of P1,417,952.15. In compensation for this work a certificate for six hundred thousand shares of the stock of the Balatoc Company has been delivered to the Benguet Company, and the excess value of the work in the amount of P817,952.15 has been returned to the Benguet Company in cash. Meanwhile dividends of the Balatoc Company have been enriching its stockholders, and at the time of the filing of the complaint the value of its shares had increased in the market from a nominal valuation to more than eleven pesos per share.

While the Benguet Company was pouring its million and a half into the Balatoc property, the arrangements made between the two companies appear to have been viewed by the plaintiff Harden with complacency, he being the owner of many thousands of the shares of the Balatoc Company. But as soon as the success of the development had become apparent, he began this litigation in which he has been joined by two others of the eighty shareholders of the Balatoc Company.

Briefly, the legal point upon which the action is planted is that it is unlawful for the Benguet Company to hold any interest in a mining corporation and that the contract by which the interest here in question was acquired must be annulled, with the consequent obliteration of the certificate issued to the Benguet Company and the corresponding enrichment of the shareholders of the Balatoc Company.

When the Philippine Islands passed to the sovereignty of the United States, the attention of the Philippine Commission was early drawn to the fact that there is no entity in Spanish law exactly corresponding to the notion of the corporation in English and American law; and in the Philippine Bill, approved July 1, 1902, the Congress of the United States inserted certain provisions, under the head of Franchises, which were intended to control the lawmaking power in the Philippine Islands in the matter of granting of franchises, privileges and concessions. These provisions are found in sections 74 and 75 of the Act. The provisions of section 74 have been superseded by section 28 of the Act of Congress of August 29, 1916, but in section 75 there is a provision referring to mining corporations, which still remains the law, as amended. This provision, in its original form, reads as follows: "** * * it shall be unlawful for any member of a corporation engaged in agriculture or mining and for any corporation organized for any purpose except irrigation to be in any wise interested in any other corporation engaged in agriculture or in mining."

Under the guidance of this and certain other provisions thus enacted by Congress, the Philippine Commission entered upon the enactment of a general law authorizing the creation of corporations in the Philippine Islands. This rather elaborate piece of legislation is embodied in what is called our Corporation Law (Act No. 4459 of the Philippine Commission). The evident purpose of the commission was to introduce the American corporation into

the Philippine Islands as the standard commercial entity and to hasten the day when the sociedad anonima of the Spanish law would be obsolete. That statute is a sort of codification of American corporate law.

For purposes of general description only, it may be stated that the sociedad anonima is something very much like the English joint stock company, with features resembling those of both the partnership and the corporation. Its affinity to the partnership is shown in the fact that sociedad, the generic component of its name in Spanish, is the same word that is used in that language to designate other forms of partnership, and in its organization it is constructed along the same general lines as the ordinary partnership. It is therefore not surprising that for purposes of loose translation the expression sociedad anonima has not infrequently been translated into English by the word partnership. On the other hand, the affinity of this entity to the American corporation has not escaped notice, and the expression sociedad anonima is now generally translated by the word corporation. But when the word corporation is used in the sense of sociedad anonima and close discrimination is necessary, it should be associated with the Spanish expression sociedad anonima either in a parenthesis or connected by the word "or". This latter device was adopted in sections 75 and 191 of the Corporation Law.

In drafting the Corporation Law the Philippine Commission inserted bodily, in subsection (5) of section 13 of that Act (No. 1459) the words which we have already quoted from section 75 of the Act of Congress of July 1, 1902 (Philippine Bill); and it is of course obvious that whatever meaning originally attached to this provision in the Act of Congress, the same significance should be attached to it in section 13 of our Corporation Law.

As it was the intention of our lawmakers to stimulate the introduction of the American corporation into Philippine law in the place of the sociedad anonima, it was necessary to make certain adjustments resulting from the continued co-existence, for a time, of the two forms of commercial entities. Accordingly, in section 75 of the Corporation Law, a provision is found making the sociedad anonima subject to the provisions of the Corporation Law "so far as such provisions may be applicable", and giving to the sociedades anonimas previously created in the Islands the option to continue business as such or to reform and organize under the provisions of the Corporation Law. Again, in section 191 of the Corporation Law, the Code of Commerce is repealed in so far as it relates to sociedades anonimas. The purpose of the commission in repealing this part of the Code of Commerce was to compel commercial entities thereafter organized to incorporate under the Corporation Law, unless they should prefer to adopt some form or other of the partnership. To this provision was added another to the effect that existing sociedades anonimas, which elected to continue their business as such, instead of reforming and reorganizing under the Corporation Law, should continue to be governed by the laws that were in force prior to the passage of this Act "in relation to their organization and method of transacting business and to the rights of members thereof as between themselves, but their relations to the public and public officials shall be governed by the provisions of this Act."

As already observed, the provision above quoted from section 75 of the Act of Congress of July 1, 1902 (Philippine Bill), generally prohibiting corporations engaged in mining and members of such from being interested in any other corporation engaged in mining, was amended by section 7 of Act No. 3518 of the Philippine Legislature, approved by Congress March 1, 1929. The change in the law effected by this amendment was in the direction of liberalization. Thus, the inhibition contained in the original provision against members of a corporation engaged in agriculture or mining from being interested in other corporations engaged in agriculture or in mining was so modified as merely to prohibit any such member from holding more than fifteen per centum of the outstanding capital stock of another such corporation. Moreover, the explicit prohibition against the holding by any corporation (except for irrigation) of an interest in any other corporation engaged in agriculture or in mining was so modified as to limit the restriction to corporations organized for the purpose of engaging in agriculture or in mining.

As originally drawn, our Corporation Law (Act No. 1459) did not contain any appropriate clause directly penalizing the act of a corporation, or member of a corporation, in acquiring an interest contrary to paragraph (5) of section 13 of the Act. The Philippine Legislature undertook to remedy this situation in section 3 of Act No. 2792 of the Philippine Legislature, approved on February 18, 1919, but this provision was declared invalid by this court in *Government of the Philippine Islands vs. El Hogar Filipino* (50 Phil., 399), for lack of an adequate title to the Act. Subsequently the Legislature reenacted substantially the same penal provision in section 21 of Act No. 3518, under a title sufficiently broad to comprehend the subject matter. This part of Act No. 3518 became effective upon approval by the Governor-General, on December 3, 1928, and it was therefore in full force when the contract now in question was made.

This provision was inserted as a new section in the Corporation Law, forming section 190 (A) of said Act as it now stands. Omitting the proviso, which seems not to be pertinent to the present controversy, said provision reads as follows:

"Sec. 190 (A). Penalties.—The violation of any of the provisions of this Act and its amendments not otherwise penalized therein, shall be punished by a fine of not more than five thousand pesos and by imprisonment for not more than five years, in the discretion of the court. If the violation is committed by a corporation, the same shall, upon such violation being proved be dissolved by quo warranto proceedings instituted by the Attorney-General or by any provincial fiscal by order of said Attorney-General: * * *."

Upon a survey of the facts sketched above it is obvious that there are two fundamental questions involved in this controversy. The first is whether the plaintiffs can maintain an action based upon the violation of law supposedly committed by the Benguet Company in this case. The second is whether, assuming the first question to be answered in the affirmative, the Benguet Company, which was organized as a sociedad anonima, is a corporation within the meaning of the language used by the Congress of the United States, and later by the Philippine Legislature, prohibiting a mining corporation from becoming interested in another mining corporation. It is obvious that, if the first question be answered in the negative, it will be unnecessary to consider the second question in this lawsuit.

Upon the first point it is at once obvious that the provision referred to was adopted by the lawmakers with a sole view to the public policy that should control in the granting of mining rights. Furthermore, the penalties imposed in what is now section 190 (A) of the Corporation Law for the violation of the prohibition in question are of such nature that they can be enforced only by a criminal prosecution or by an action of quo warranto. But these proceedings can be maintained only by the Attorney-General in representation of the Government.

What room then is left for the private action which the plaintiffs seek to assert in this case? The defendant Benguet Company has committed no civil wrong against the plaintiffs, and if a public wrong has been committed, the directors of the Balatoc Company, and the plaintiff Harden himself, where the active inducers of the commission of that wrong. The contract, supposing it to have been unlawful in fact, has been performed on both sides, by the building of the Balatoc plant by the Benguet Company and the delivery to the latter of the certificate of 600,000 shares of the Balatoc Company. There is no possibility of really undoing what has been done. Nobody would suggest the demolition of the mill. The Balatoc Company is secure in the possession of that improvement, and talk about putting the parties in statu quo ante by restoring the consideration with interest, while the Balatoc Company remains in possession of what it obtained by the use of that money, does not quite meet the case. Also, to mulct the Benguet Company in many millions of dollars in favor of individuals who have not the slightest equitable right to that money is a proposition to which no court can give a ready assent.

The most plausible presentation of the case of the plaintiffs proceeds on the assumption that only one of the contracting parties has been guilty of a misdemeanor, namely, the Benguet Company, and that the other party, the

Balatoc Company, is wholly innocent of participation in that wrong. The plaintiffs would then have us apply the second paragraph of article 1305 of the Civil Code which declares that an innocent party to an illegal contract may recover anything he may have given, while he is not bound to fulfill any promise he may have made. But, supposing that the first hurdle can be safely vaulted, the general remedy supplied in article 1305 of the Civil Code cannot be invoked where an adequate special remedy is supplied in a special law. It has been so held by this court in *Go Chioco vs. Martinez* (45 Phil., 256, 280), where we refused to apply that article to a case of nullity arising upon a usurious loan. The reason given for the decision on this point was that the Usury Act, as amended, contains all the provisions necessary for the effectuation of its purposes, with the result that the remedy given in article 1305 of the Civil Code is unnecessary. Much more is that idea applicable to the situation now before us, where the special provisions give ample remedies for the enforcement of the law by action in the name of the Government, and where no civil wrong has been done to the party here seeking redress.

The view of the case presented above rests upon considerations arising upon our own statutes; and it would seem to be unnecessary to ransack the American decisions for analogies pertinent to the case. We may observe, however, that the situation involved is not unlike that which has frequently arisen in the United States under provisions of the National Bank Act prohibiting banks organized under that law from holding real property. It has been uniformly held that a trust deed or mortgage conveying property of this kind to a bank, by way of security, is valid until the transaction is assailed in a direct proceeding instituted by the Government against the bank, and the illegality of such tenure supplies no basis for an action by the former private owner, or his creditor, to annul the conveyance. (*National Bank vs. Matthews*, 98 U. S., 621; *Kerfoot vs. Farmers & M. Bank*, 218 U. S., 281.) Other analogies point in the same direction. (*South & Ala. B. Co. vs. Highland Ave. & Belt R. Co.*, 119 Ala., 105; *MacGinniss vs. B. & M. Consol. etc. Mining Co.*, 29 Mont., 428; *Holmes & Griggs Mfg. Co. vs. Holmes & Wesseli Metal Co.*, 127 N. Y., 252; *Oelbermann vs. N. Y. & N. R. Co.*, 77 Hun., 332.)

Most suggestive perhaps of all the cases is *Compañia Azucarera de Carolina vs. Registrar* (19 Porto Rico, 143), for the reason that this case arose under a provision of the Foraker Act, a law analogous to our Philippine Bill. It appears that the registrar had refused to register two deeds in favor of the *Compañia Azucarera* on the ground that the land thereby conveyed was in excess of the area permitted by law to the company. The Porto Rican court reversed the ruling of the registrar and ordered the registration of the deeds, saying:

"Thus it may be seen that a corporation limited by the law or by its charter has until the State acts every power and capacity that any other individual capable of acquiring lands, possesses. The corporation may exercise every act of ownership over such lands; it may sue in ejectment or unlawful detainer and it may demand specific performance. It has an absolute title against all the world except the State after a proper proceeding is begun in a court of law. * * * The Attorney General is the exclusive officer in whom is confided the right to initiate proceedings for escheat or attack the right of a corporation to hold land."

Having shown that the plaintiffs in this case have no right of action against the Benguet Company for the infraction of law supposed to have been committed, we forego any discussion of the further question whether a *sociedad anonima* created under Spanish law, such as the Benguet Company, is a corporation within the meaning of the prohibitory provision already so many times mentioned. That important question should, in our opinion, be left until it is raised in an action brought by the Government.

The judgment which is the subject of this appeal will therefore be affirmed, and it is so ordered, with costs against the appellants.

Avanceña, C. J., Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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