

TORIBIA USON, PLAINTIFF AND APPELLEE, VS. VICENTE DIOSOMITO ET AL., DEFENDANTS, VICENTE DIOSOMITO, EMETEEIO BARCELON, H. P. L. JOLLYE AND NORTH ELECTRIC COMPANY, INC., APPELLANTS.

G.R. No. 42135. June 17, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a decision of the Court of First Instance of Cavite involving the ownership of seventy-five shares of stock in the North Electric Company, Inc. The plaintiff-appellee claims to be the owner of these shares by virtue of a purchase at a sheriff's sale for the sum of P2,617.18.)

It appears that Toribia Uson had filed a civil action for debt in the Court of First Instance of Cavite, No. 2525, against Vicente Diosomito and that upon institution of said action an attachment was duly issued and levied upon the property of the defendant Diosomito, including seventy-five shares of the North Electric Co., Inc., which stood in his name on the books of the company when the attachment was levied on January 18, 1932. Subsequently, on June 23, 1932, in said civil case No. 2525, Toribia Uson obtained judgment against the defendant Diosomito for the sum of P2,300 with interest and costs. To satisfy said judgment, the sheriff sold said shares at public auction in accordance with law on March 20, 1933. The plaintiff Toribia Uson was the highest bidder and said shares were adjudicated to her. (See Exhibit K.) In the present action, H. P. L. Jollye claims to be the owner of said 75 shares of the North Electric Co., Inc., and presents a certificate of stock issued to him by the company on February 13, 1933.

There is no dispute that the defendant Vicente Diosomito was the original owner of said shares of stock, having a par value of P7,500, and that on February 3, 1931, he sold said shares to Emeterio Barcelon and delivered to the latter the corresponding certificates Nos. 2 and 19. But Barcelon did not present these certificates to the corporation for registration until the 16th of September, 1932, when they were cancelled and a new certificate, No. 29, was issued in favor of Barcelon, who transferred the same to the defendant H. P. L. Jollye to whom a new certificate No. 25 was issued on February 13, 1933.

It will be seen, therefore, that the transfer of said shares by Vicente Diosomito, the judgment debtor in suit No. 2525, to Barcelon was not registered and noted on the books of the corporation until September 16, 1932, which was some nine months after the attachment had been levied on said shares in civil case No. 2525 as above stated.

Thus arises in this case one of the most vexing questions in the law of corporations, namely, whether a bona fide transfer of the shares of a corporation, not registered or noted on the books of the corporation, is valid as against a subsequent lawful attachment of said shares, regardless of whether the attaching creditor had actual notice of said transfer or not. This is the first case in which this question has been squarely presented to us for decision. The case of *Uy Piaoco vs. McMicking* (10 Phil., 286), decided in 1908, arose before the Philippine Corporation Law, Act No. 1459, took effect (April 1, 1906). The cases of *Fua Cun vs. Summers* and *China Banking Corporation*, 44

Phil., 705 [1923] and *Fleischer vs. Botica Nolasco Co.*, 47 Phil., 583 [1925] are not in point.

Section 35 of the Corporation Law is as follows:

"Sec. 35. The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or the vice-president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.

"No shares of stock against which the corporation holds any unpaid claim shall be transferable on the books of the corporation."

The sentence of the foregoing section immediately applicable in the present case is as follows:

"No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred."

The appellants cite decisions from a number of states of the American Union which hold that an unregistered transfer is valid as against the lien of a subsequent attachment sued out by a creditor of the assignor, whether such creditor has notice of the transfer or not. These decisions are founded upon the theory that the attachment reaches only such title or interest as the defendant may have in the property at the time of the levy; and if all title and interest had previously passed by assignment from the debtor to a third person, the attaching creditor obtains nothing: by the levy; that the owner of shares of stock has the common law right to dispose of the same as personal property. But, with the exception of California, to which reference will be made later, none of the decisions cited by the appellants construed statutes identical with ours. Much of the confusion which is to be found in the decisions has arisen because the courts have failed to note the differences in the various statutes of the American Union on the question considered here. For an illuminating discussion of this confusion the following authorities may be consulted:

Fletcher, *Cyclopedia of the Law of Private Corporations* (1932), vol. 12, pages 358-389.

American and English Annotated Cases, vol. 21, pages 1391-1407.

American Law Review, vol. 35, pages 238-251. 55 Cent. L. J., 243-251.

The statutes on this point may be put roughly in three groups: First, those that provide, in substance, that no transfer of shares is valid for any purpose unless registered on the books of the corporation. This rule apparently once prevailed in Colorado and the District of Columbia both of which have since amended it by statute. Second, that group which, like our own Act No. 1459, holds to the rule that no transfer shall be valid except as between the parties until the transfer is duly registered. This group, according to the best information available here, includes or has included the States of Arizona, California, the Territory of Hawaii, Idaho, Iowa, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Washington, Wisconsin. The third group which includes the remaining jurisdictions follows the rule and the doctrine invoked by the appellants in this case, which, by amendment of the statutes, is becoming the prevailing rule in the United States.

The decision of the Supreme Court of California in the case of *National Bank of the Pacific vs. Western Pacific Railway Company* (157 Cal., 573 [1910] ; 108 Pac, 676), sitting in division of three, construed section 324 of the Civil Code of California which is identical with section 35, supra, of the Philippine Corporation Law. The court stressed the provision that the shares of stock in a corporation are personal property and may be transferred by

endorsement and delivery of the certificate. The opinion also endeavors to distinguish the prior decisions of *Weston vs. Bear River and Auburn Water and Mining Co.* (5 Cal., 186); *Strout vs. Natoma Water and Mining Company* (9 Cal., 78), and *Naglee vs. Pacific Wharf Company* (20 Cal., 529), which are frequently cited in other jurisdictions as sustaining the theory of the superiority of the attachment lien over the unregistered stock transfer. (See *Lyndonville National Bank vs. Folsom*, 7 N. M., 611 [1894]; 38 Pac, 253.) The California decision leaves us unconvinced that the statutes which fall in the second group above mentioned should be given the same effect as the statutes in the third group without any necessity for legislative amendment.

We prefer to adopt the line followed by the Supreme Courts of Massachusetts and of Wisconsin. (See *Clews vs. Friedman*, 182 Mass., 555[^] 66 N. E., 201, and *In re Murphy*, 51 Wis., 519; 8 N. W., 419.)

In the latter case the court had under consideration a statute identical with our own section 35, *supra*, and the court said:

"We think the true meaning of the language is, and the obvious intention of the legislature in using it was, that all transfers of shares should be entered, as here required, on the books of the corporation. And it is equally clear to us that all transfers of shares not so entered are invalid as to attaching or execution creditors of the assignors, as well as to the corporation and to subsequent purchasers in good faith, and, indeed, as to all persons interested, except the parties to such transfers. All transfers not so entered on the books of the corporation are absolutely void; not because they are without notice or fraudulent in law or fact. but because they are made so void by statute."

Some of the states, including Wisconsin, which had heW to the rather strict but judicial interpretation of the statutory language here in question have amended the statute so as to fall in line with the more liberal and rational doctrine of the third group referred to above. This court still adheres to the principle that its function is *jus dicere* non *jus dare*. To us the language of the legislature is plain to the effect that the right of the owner of the shares of stock of a Philippine corporation to transfer the same by delivery of the certificate, whether it be regarded as statutory or common law right, is limited and restricted by the express provision that "no transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation." Therefore, the transfer of the 75 shares in the North Electric Company, Inc., made by the defendant Diosomito to the defendant Barcelon was not valid as to the plaintiff-appellee, Toribia Uson, on January 18, 1932, the date on which she obtained her attachment lien on said shares of stock which still stood in the name of Diosomito on the books of the corporation.

We have considered the remaining assignments of error of the appellants and finding no merit in them it results that the judgment must be affirmed with costs against the appellants.

Malcolm and Diaz, JJ., concur.

CONCURRING

HULL, J.:

I agree that the foregoing opinion is sound in reason and upon authority. But I think attention should be called to the case of *Land vs. Yangco* (52 Phil., 563, 567); which involved a Torrens title and the Land Registration Law, Act No. 496. The provisions of section 50 of Act No. 496 seem to me analogous to those of section 35 of the Corporation Law, and consistency would indicate that the judgments in the two cases should be similar.

Goddard, J.;

I agree with Justice Hull.

Judgment affirmed.

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