

SERAFIN UY PIAOCO, PLAINTIFF AND APPELLANT, VS. JOSE MCMICKING, SHERIFF OF THE CITY OF MANILA, ANTONIO R. BAYAN JU, YAP QUI CHIN, AND KHY PACK, DEFENDANTS AND APPELLEES.

G.R. No. 4237. March 05, 1908

Ponente: CARSON, J.

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CARSON, J.:

Each of the defendants Antonio U. Bayan Ju, Yap Qui Chin, and Khy Pack, in the course of certain proceedings instituted by them against one Uy Chiain Liong, procured the issuance of orders for the attachment of his property. In pursuance of these orders, attachments were levied by the defendant Jose McMicking, sheriff of the city of Ma-nila, on or about the 20th, 28th, and 29th of January, 1907, on certain certificates of stock of the "Yuen Sheng Exchange, Trading and Loan Company, of Manila," alleged to be the property of Uy Chiain Liong, and which were found in the possession of the manager of that company, held by him as security for a certain debt due the company by Uy Chiam Liong.

The plaintiff alleges that he is the owner of the stock thus attached, having purchased it of Uy Chiam Liong on the 17th of March, 1900, and prays that the attachments be dissolved and that the stock be restored to its legitimate owner.

An examination of the pleadings and the evidence of record discloses :

First. That in a notarial document, dated January 17, 1906, purporting to be a contract of purchase and sale, the said Uy Chiam Liong made use of the following language:

"Whereof, the said debtors [referring to himself and another] sell and transfer to the said creditor [referring to the plaintiff in this action] the following property: 400 shares of stock in the 'Yuen Sheng Company of Manila,' valued at P100 each. Said shares are in the name of Uy Chiam Liong, who has paid the said company for them the sum of P50 per share, and the said Uy Chiam Liong has borrowed of the said company the sum of P10,000 and has pledged the said shares in favor of the said company in order to secure the payment of the said loan; therefore, it is hereby agreed that the actual value of said shares is P9,000."

Second. That the shares of stock mentioned in the foregoing citation from the notarial document are the identical shares of stock, the subject-matter of this litigation.

Third. That the certificates evidencing these shares of stock, under the charter or by-laws of the said company, were transferable only by indorsement and the issue of new scrip to the purchaser by the company upon the surrender of the duly indorsed certificate of the vendor.

Fourth. That the certificates of stock not being in the immediate possession and control of the vendor at the time of said alleged sale, no indorsement thereof was made in accordance with the by-laws of the company, nor is there any evidence in the record that the company was notified of the alleged sale.

Fifth. That aside from the relation of the fact, as set out in the above citation of the notarial document of January

17, 1906, there is no- evidence of record as to whether, at the time of the alleged sale, the certificates of stock were held by the agent of the company, as therein stated.

Sixth. That on or about the 26th, 28th, and 29th of January, 1907, the defendant sheriff, at the instance of his codefendants, attached the certificates of stock in question,

in the hands of the agent of the bank, who at that time held them as security for a loan from the bank, for an amount equal to the amount for which it appears from the notarial document they had been pledged at the time of the execution of that instrument.

Seventh. That some time during the month of April, 1900, a note was executed evidencing the amount of the indebtedness of Uy Chiam Liong to the company, and that neither this note nor any part thereof has been paid.

The trial court appears to have been of opinion that the recital in the notarial document, dated January 17, 1906, of the existence of a loan to the original owner of the stock for which the certificates had been hypothecated, taken together with the proof that a note evidencing the said indebtedness was executed in the month of April following, casts doubt upon the good faith and genuineness of the transaction set out in the notarial document, and even upon the date of the execution of the notarial document itself. We do not think that the evidence justifies this conclusion. The evidence as to the execution of the note in April, 1906, while uncontradicted, is unsatisfactory, and there is nothing in the record showing the circumstances under which the note was executed. But, assuming as we do that the execution of this note was sufficiently proven, there does not appear to be anything inconsistent in the fact that a debt existed in January, 1906, secured by the pledge of the certificates of stock in question, and in the fact that a note was afterwards executed evidencing that debt. The note may have been the renewal of a former note, or it may have been given on account of the indebtedness existing theretofore but not evidenced by a formal written instrument. In any event, we do not deem the testimony in support of the execution of this note, or even absolute proof of its execution, as sufficient in any way to cast a cloud upon the genuineness of the notarial document in question, or of the transactions evidenced thereby.

The only question for consideration, therefore, is whether the ownership and title to the stock in question (subject, of course, to the lien mentioned in the deed of sale) passed from the original owner to the plaintiff in this action by virtue of the contract of purchase and sale evidenced by the notarial document, despite the fact that the certificates of stock were not indorsed over to the purchaser and new certificates issued to him in accordance with the provisions of the charter or by-laws of the company. If it did, subsequent attachments levied thereon in actions instituted against the original owner were clearly improperly levied and should be dissolved,

Similar questions have been discussed at length in many of the courts of last resort in the United States, and we think the better doctrine is well stated in the case of "New York and New Haven K. R Co, vs. Schuyler (34 N. Y., 79) :

"Where the stock of a corporation is, by the terms of its charter or by-laws, transferable only on its books, the purchaser who receives a certificate, with power of attorney, gets the entire title, legal and equitable, as between himself and his seller, with all the rights the latter possessed; but as between himself and the corporation he acquires only an equitable title, which they are bound to recognize and permit to be ripened into a legal title, when he presents himself, before any effective transfer on the books has been made, to do the acts required by the charter or by-laws in order to make a transfer. Until those acts be done he is not a stockholder, and has no claim to act as such, but possesses, as between himself and the corporation, by virtue of the certificate and power, the right to make himself, or whomsoever he chooses, a stockholder by the prescribed transfer. The stock not having passed by the delivery of the certificate and power of attorney, the legal title remains in the seller so far as affects the company and subsequent bona fide purchasers who take by transfer duly made on the books . The non-production and surrender of the certificate at the time of the transfer is not

fatal to the title of the transferee. It is only essential to the safety of the corporation, "

So in *Martin Lund et al vs. Wheaton Roller Mill Company* (50 Minn., 36) it was held that—

"A sale and transfer of corporate stock, although not entered on the books of the corporation, is effectual as between the parties, and takes precedence of a subsequent attachment in behalf of a creditor of the vendor."

And in the case of *Smith vs. Crescent City Live-Stock Landing and Slaughter-House Company* (30 La. An. Rep., 1378) it was held that—

"The bona fide sale of the stock of an incorporated company, coupled with a power of attorney to the vendee to transfer it on the books of the company, is made complete by the delivery to the vendee of the certificate of stock. It is not necessary to the perfection of the sale, and the consequent protection of the stock from the seizure of the vendor's creditors, that notice of the sale should be served on the corporation, or that an actual transfer of the stock should have been made on its books."

See also' 129 Mass., 435;[1] 74 Mo., 77.[2]

Statutory provisions and by-laws of companies or corporations which require transfers of stock to be recorded on the books of such companies or corporations regulate merely the respective rights of the corporation and the individual stockholder. No one can claim to be a stock-holder, and to exercise the rights of a member of such company or corporation, in virtue of a sale to him, until the corporation has taken cognizance of the sale, and, by transfer on its books, has substituted the purchaser for the vendor; for whether one has acquired the rights of a member of a company or corporation is a question to be determined by the laws of the company or corporation, promulgated in conformity with statutory regulations. But the question whether a purchaser has acquired a good and perfect title to any property or thing, tangible or intangible, is a question solely to be determined by the provisions of general law touching the sale and transfer of such objects.

An immense amount of wealth is invested in stocks of the increasing number of companies and corporations which have come into existence in response to the demands of modern business methods, and, unless required so to do by express and explicit statutory provision, we would be loath to interpret regulations, apparently intended merely to provide for the general management and administration of companies or corporations, so as to limit or restrict the right of individual members in disposing or hypothecating their certificates of stock, evidencing their individual interests in such companies or corporations; for—

"Although neither in form or character negotiable paper, they (certificates of stock) approximate to it as nearly as practicable. They have become the basis of commercial transactions in all the large cities of the country, and are sold in open market the same as other securities." (*Lanier's Case*, 11 Wallace, 377.)

Certificates of stock afford a convenient and valuable basis of credit, and they are sold and pledged to a large amount daily at all great commercial centers, but their usefulness would be largely curtailed if it were necessary to record every transaction in such stocks in the office of the company, or to have new certificates issued before transfer of ownership therein could take effect.

Our attention has not been directed to any existing law which prohibits the transfer of ownership in stocks by delivery of the certificates, and under the provisions of article 1462 of the Civil Code a formal contract of purchase and sale set out in a notarial document, as in the case under consideration, is equivalent to the actual delivery of the certificates themselves.

Articles 162 and 163 of the Commercial Code provide for the registration of stock and recording of transfers thereof in certain cases. But, as has been said, such statutory provisions merely regulate the respective rights of the corporation and the individual stockholder, and viewed aright, such statutory provisions as well as charter

regulations and by-laws of companies or corporations prescribing certain formalities in the transfer of stock, instead of limiting and restricting the right of the individual stockholder to transfer his interest freely to another, really serve to make such transfers practicable and secure, by giving the purchaser to understand that so long as the certificates of stock have not been surrendered, the company or corporation holds such stock for the benefit of and subject to the claim of him who holds the certificates.

We are of opinion therefore that all the right, title, and interest of Uy Chiam Liong in and to the stock in question vested in the plaintiff on the 17th day of January, 1906, the date of the contract of purchase and sale evidenced by the notarial document. Hence subsequent attachments levied on this stock at the instance of creditors of Uy Chiam Liong are invalid and should be dissolved.

The judgment of the trial court should therefore be reversed without costs to either party, and the present status of the attachment proceedings under review not being quite clear from the record brought here on appeal, this judgment of reversal will be entered in ten days, and twenty days thereafter the record will be returned to the trial court, where judgment will be entered in accordance with the principles laid down herein and the proper orders issued to protect the rights of the parties. So ordered.

Arellano, C. J.. Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

[1] Boston Music Hall Association vs. Cory et al.

[2] Merchants National Bank vs. Richards.

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