

**FRANCISCO YATCO, AS GUARDIAN OF MARIA JACOB A CRUZ.
PLAINTIFF AND APPELLEE, VS. EL HOGAR FILIPINO, DEFENDANT
AND APPELLANT.**

G.R. No. 45694. April 27, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

It is alleged in the complaint that plaintiff Francisco Yatco, as guardian of Maria Jacoba Cruz, subscribed to sixty paid-up shares of the defendant El Hogar Filipino at P200 each or for the total sum of P12,000, and was accordingly issued Stock Certificate No. 459, Series C-50 of the defendant corporation. Plaintiff gave twelve months' notice to the defendant on December 6, 1933 for the surrender of the stock in the name of Maria Jacoba Cruz and the refund of its value in the sum of P12,000 together with the fixed dividend of 6 per cent per annum in accordance with the terms of her stock certificate. The defendant, corporation, however, suspended the payment of dividends in April, 1934, and has not only failed to return to the plaintiff the sum of P12,000 as stipulated but has likewise refusal to pay the dividends due thereon since April, 1934. In the meantime, Maria Jacoba Cruz died, and plaintiff filed an amended complaint in his capacity as administrator of the estate of the deceased, alleging substantially the same facts as those averred in his original complaint. It is prayed that the defendant corporation be required to pay the plaintiff the sum of P12,000, the principal invested by Maria Jacoba Cruz in sixty paid-up shares of the defendant corporation at P200 each, together with the fixed dividends due said shares at 6 per cent per annum from April, 1934 to December 6, 1934, and the legal interest on the capital from December 6, 1934 until the said amount is fully paid.

The defendant filed a general denial and, by way of special defenses, alleged that at the time plaintiff subscribed to sixty paid-up shares of the defendant she accepted as part of her contract the by-laws of said corporation and agreed that its provisions, more particularly articles 9, 10, 20 and 27 to 31 thereof, were to govern the relations between plaintiff and defendant notwithstanding any provision to the contrary appearing on the certificate of stock issued to her; that in accordance with the by-laws aforementioned, the refund of paid-up shares may be made upon the expiration of the period of notice therein provided, in the strict order in which applications for withdrawal are filed and exclusively with the funds set aside for the purpose which is one-third of the net monthly profits; that the funds set aside for the payment of withdrawals were not, up to the filing of the complaint, sufficient to pay all applications for withdrawal ahead of plaintiff's, and as a matter of fact defendant corporation has not realized any net profits since April, 1934 up to June 30, 1936, which could be distributed as dividends among the holders of paid-up shares; that the defendant is no debtor of, nor has it received any loan from, the plaintiff and its only obligation to her was to refund the value-of-the paid-up shares in accordance with the conditions appearing in its by-laws; and that plaintiff is in estoppel to question defendant's right to subject her paid-up shares to articles 9, 10, 20, 27 to 31, 35 and 36 of its by-laws, because (1) it was the understanding at the time plaintiff subscribed to the paid-up shares that they could only be recovered pursuant to the provisions governing withdrawals; (2) that the plaintiff knew that the procedure followed by the defendant was to approve

withdrawals of paid-up shares as hereinabove stated; and (3) that the plaintiff acknowledged the existence and the applicability to her paid-up shares of the defendant's by-laws when, with her knowledge and consent, there was annotated on the back of her certificate the fact that her paid-up shares would be refunded in accordance with articles 27 to 31 of said by-laws.

The case was submitted to the lower court upon the following stipulation of facts:

"Comparecen las partes, por medio de sus respectivos abogados, y al Honorable Juzgado respetuosamente exponen que convienen en los siguientes hechos:

"1. Que la finada Maria Jacoba Cruz era viuda, mayor de edad y residente en Manila y se halla representada en este asunto por el administrador de su testamentaria, el Sr. Francisco Yatco, debidamente nombrado por este Juzgado, y que la demandada es una sociedad mutua de construccion y prestamos debidamente organizada y constituida con arreglo a la Ley de Corporaciones de Filipinas, con oficina principal en Manila;

"2. Que el 12 de mayo de 1933, Maria Jacoba Cruz, por medio de su apoderado debidamente nombrado y facultado, Sr. Francisco Yatco, suscribio y presento a la demandada la solicitud de suscripcion cuya copia se une a, y se hace parte integrante de, esta estipulacion de hechos como Exhibit A. Por dicho motivo, y despues de haberse pagado por ella a la demandada la cantidad de P12,000, esta expidio a su nombre el Certificado de Acciones No. 459, Serie C-50, por 60 acciones liberadas de un valor par de P200 cada una, el original de cuyo certificado se une a, y se hace parte integrante de, esta estipulacion de hechos como Exhibito B;

"3. Que el 6 de marzo de 1934, Maria Jacoba Cruz, por medio de su tutor debidamente nombrado y facultado, Sr. Francisco Yatco, presents, en relacion con las 60 acciones liberadas mencionadas en el parrafo anterior, la correspondiente solicitud de retiro cuyo original se une a, y se hace parte integrante de, esta estipulacion de hechos como Exhibito C, hecho que se consigno al dorso del certificado de acciones Exhibito B en la forma siguiente:

"Queda anotado en los libros de la Sociedad el aviso dado para" cobrar el dia 6 de diciembre de 1934, el importe de estas acciones, con arreglo a los articulos 27 al 31 de los Estatutos.

" 'Manila, 6 de marzo de 1934.

"El Hogar Filipino

"(Fdo.) F. Ruiz Jimenez

" 'Por Gerente'

"4. Que desde el mes de abril de 1934 hasta el trimestre que caduco el 30 de junio de 1936, la demandada no ha pajado dividendos sobre las acciones liberadas representadas por el certificado Exhibito B;

"5. Que hasta la fecha, el valor de retiro de las 60 acciones liberadas representadas por el Exhibito B, no ha sido pagado a Maria Jacoba Cruz;

"6. Que el librito impreso marcado Exhibito D que se une a, y se hace parte integrante de, esta estipulacion de hechos, es un ejemplar de los estatutos de la demandada en vigor desde su ultima enmienda en 2 de febrero de 1930 hasta la presente fecha;

"7. Que existen actualmente pendientes de pago las siguientes cantidades que representan el valor de retiro de acciones liberadas, ordinarias, especiales y de inversion, cuyos avisos y solicitudes de retiro expiraron antes del 6 de diciembre de 1934:

75 Acc. Liberadas de 12 meses de aviso.....

P15,000.00

644 Acc. Liberadas de 9 meses de aviso.....	
128,800.00	
5 Acc. Liberadas de 6 meses de aviso.....	
P1,000.00	
15,788 Acc. Especiales, Ordinarias y de Inversion.....	
1,660,774.31	
Total	
1,805,574.51	

"Las partes se reservan el derecho de presentar pruebas adicionales para explicar o suplementar los hechos arriba estipulados."

Judgment was rendered by the lower court in favor of the plaintiff, ordering the defendant El Hogar Filipino to pay the plaintiff the sum of P12,000 with interest thereon at 6 per cent per annum from April, 1934 until paid, together with the costs of the action.

Defendant has appealed to this court assigning the following errors:

"I. The lower court erred in holding that the reduction of 10 per cent made by appellant in the value of its assets is necessarily of an arbitrary and subjective character and not based on actual facts.

"II. The lower court erred in holding that such reduction made by appellant in the value of its assets is only temporary and should not have affected the paid-up shares.

"III. The lower court, in requiring appellant to pay 6 per cent interest (dividend) on P12,000, the par value of sixty paid up shares, from April, 1934, until paid, erred in declaring that there were net profits for the years 1934, 1935 and 1936 and in taking for granted that there were net profits of such amounts sufficient to entitle appellee to the payment of the 6 per cent fixed dividend in full.

"IV. The lower court erred in holding that appellee could at once and at all events withdraw the sum invested in paid-up shares after the expiration of the notice for retirement, notwithstanding the lack of funds available for the purpose under the provisions of both the Corporation Law and the By-Laws of the appellant.

"V. The lower court erred in rendering judgment in favor of appellee and in denying appellant's motion for new trial."

We do not deem it necessary to consider all these errors serially for the reason that in our opinion the resolution of this case hinges on the determination of what constitutes the contract between the plaintiff-appellee and the defendant-appellant with reference to the sixty paid-up shares issued by the latter in consideration of the P12,000 paid to it by the former. Certificate of Stock No. 459, series C-50, issued in favor of the plaintiff covering the sixty paid-up shares in question, contains on its reverse side the following commitments on the part of the defendant-appellant:

"Estas acciones devengaran un dividendo de seis por ciento (6%) anual desde la fecha de su emision nueva hasta la del retiro, que sera pagadero por mensualidades naturales venridas.

"El poseedor de estas acciones tiene derecho al reembolso de su importe, a la par, previo aviso con doce meses de anticipacion. Dicho aviso tendra efecto mediante la presentacion y anotacion del resguardo en las oficinas de la Sociedad, la que, por endoso firmado por el Gerente, hara constar la fecha del vencimiento. Vencido el

plazo del retiro, su importe quedara a la dissosicion del poseedor, dejando de devencar dividendo desde dicha fecha."

This undertaking of the defendant is in accordance with the provisions of section 174 of the Corporation Law governing the issuance and withdrawal of paid-up shares of building and loan associations, and is reiterated in articles 20 and 29 of defendant-appellant's by-laws. Section 174 of Act No. 1459 as amended by Act No. 3610, reads as follows:

"The capital stock of such association shall be paid in by the stockholders in regular, equal, periodical payments, known as dues, at such times and in such amounts as shall be provided in the by-laws of the association. The dues on each share of stock subscribed for by a stockholder shall continue to be paid by the stockholder to the association until the share has been duly withdrawn, cancelled, or forfeited or until the share has reached its matured value; that is to say, when the dues paid on each share and the net earnings thereof in accordance with the by-laws, shall amount to the matured value of the share, but such association may issue and sell paid-up stock for cash and also investment stock to be paid in installments, and may pay to the holders of such paid-up stock out of the net profits such rates of dividends as may be fixed from time to time by the board of directors of the association, which shall be expressed in the stock certificates and shall not participate further in the profits or accretions of the association. Paid-up stock issued after the date when this Act shall become effective shall not be entitled to vote. The dividends payable upon such paid-up stock shall not be accumulative in the sense of being a charge upon the future earnings of the association should the earnings of the association not be sufficient in any particular year to meet the dividend requirements in connection with such stock in that year. Either paid-up or investment stock may be surrendered by the holder any time upon the giving of such notice as the association may fix not to exceed one year and upon such surrender the holder will be entitled to receive only the amount of principal invested together with the earned dividend fixed by the board of directors and expressed, in the case of paid-up stock, in the stock certificates. The capital stock shall consist of the proceeds of such paid-up and investment stock and such accumulated dues together with the earnings and profits of the association, and shall in no case exceed twenty million pesos." (Italics ours.)

Articles 20 and 29 of the by-laws of the defendant-appellant corporation provide respectively as follows:

"ART. 20. Las acciones liberadas se emiten mediante el pago de su total importe de P200 en el momento de la suscripcion y devengaran el dividendo fiio no acumulativo que senale el Directorio y que estara expresado en el titulo correspondiente y no tendran mas participacion en las utilidades o acrecentamiento de la Asociacion.

"Art. 29. Los tenedores de acciones liberadas pueden solicitar el retiro de las mismas en cualquier tiempo y previo el aviso que determine el Directorio en la fecha de la emision—que no podra exceder de un a no—v tendran derecho a recibir el importe del capital invertido juntamente con los dividendos devengados y que no hayan sido pagados en la fecha del retiro."

It is true that when plaintiff-appellee gave notice of the surrender of Stock Certificate No. 459, series C-50, in the name of Maria Jacoba Cruz, there was inscribed by the defendant-appellant on the back thereof the following: "Queda anotado en los libros de la Sociedad el aviso dado para cobrar el dia 6 de diciembre de 1934, el importe de estas acciones, con arreglo a los articulos 27 al 31 de los Estatutos." But of the five articles specified in the annotation made by the defendant-appellant on the reverse side of Stock Certificate No. 459, series C-50, only article 29 which we have just quoted is applicable to paid-up shares. The other articles refer to special, ordinary and investment shares. Under article 29 holders of paid-up shares may ask for the refund of their shares at any time and upon the expiration of the period of notice determined by the board of directors of the defendant-appellant corporation, not to exceed one year in accordance with section 174 of the Corporation Law, they have the right to receive the capital they have invested together with dividends earned and which have not

yet been paid at the time of withdrawal.

Defendant-appellant contends that articles 30, 35 and 36 of its by-laws govern the withdrawal of its paid-up shares. Said articles provide as follows:

"Art. 30. El pago de las acciones que deseen retirarse, asi como el de las vencidas y caducadas, se hara en el orden de la presentacion de las solicitudes respectivas y en la forma y con los fondos destinados a este objeto, de acuerdo con lo establecido en los articulos 25 y siguientes de estos Estatutos.

"Art. 35. Los fondos que reciba la Sociedad se aplicaran: al pago de las obligaciones sociales, al pago del valor vencido de las acciones, al de los accionistas que se retiren y a todas las demas operaciones que se establecen en los presentes Estatutos. "Art. 36. Una vez satisfechas las obligaciones mensuales, los ingresos de la Corporacion se aplicaran por terceras partes: al pago de las acciones vencidas, al de las solicitudes de retiro y al de las operaciones autorizadas en los presentes Estatutos."

The contention of the plaintiff-appellee that article 30 of the defendant-appellant's by-laws applies only to the payment of matured shares and retired subscription stock, and not to paid-up shares, we find to be well taken. In the first place, article 30 as amplified by article 36 follows the provisions of sections 180 and 187 of the Corporation Law relating to the payment of matured shares and retired subscription stock, which sections provide as follows:

"Sec. 180. When the stock shall have reached its matured value, payment of dues thereon shall cease and holders of such matured shares shall be paid out of the funds of the association the matured value of their shares with interest thereon at the rate determined in the by-laws, from the time the board of directors shall declare such shares to have matured until payment is made. The order of payment of matured shares shall be determined by the by-laws and at no time shall more than one-third of the receipts of the association be applied to the payment of the matured shares without the consent of the board of directors: Provided, however, That if shares pledged to the association as security for loans shall mature before the loan is repaid the matured value may be credited to the loan. The withdrawal value of pledged shares shall not be returned to a shareholder unless such value is applied in liquidation of the loan which the shares secure. (*Italics ours.*)

"Sec. 187. Stockholders may surrender their shares and withdraw from the association after paying twelve monthly installments of dues upon giving sixty days' notice in writing to the board of directors, and the withdrawal value of such shares shall be the total sum of the dues paid thereon plus not less than ninety per centum of all dividends earned by such shares up to the end of the last preceding fiscal period plus such interest for the time elapsed since the end of that period as shall be allowed by the board of directors. Stockholders who have not paid twelve monthly installments of dues may, after giving sixty days' notice in writing to the board of directors, surrender their shares and withdraw from the association, and the withdrawal value of such shares shall be the total sum of the dues paid thereon plus such dividend or interest as may be allowed by the board of directors. In no event, however, shall more than one-third of the total receipts of the association be paid in any one month to retire such shares. Payment for such surrendered shares shall be made in the order in which notices of withdrawal have been received by the board of directors: Provided, That should the business of the association during the period such withdrawing member has been a stockholder show a loss in excess of the reserve available for meeting such loss, the withdrawal value of stock shall be charged With its proportion of such loss: And provided, finally, That any fines or charges lawfully chargeable against such stock may be deducted before making payment to the stockholder. Except in cases of voluntary or forced liquidation of a building and loan association or forfeiture as provided by section one hundred and seventy-nine of this Act, the board of directors of such association shall not have power to force the surrender and withdrawal of unmatured stock." (*Italics ours.*)

It stands to reason that articles 30 and 36 of defendant-appellant's by-laws are intended merely to supplement sections 180 and 187 of the Corporation Law relative to the withdrawal of matured and retired ordinary

subscription stock in much the same way as article 29 of the same by-laws is but an elaboration of section 174 of the Corporation Law concerning the surrender and refund of paid-up stock. in the second place, to make article 30 applicable to paid-up shares would contravene not only article 29 of defendant-appellant's by-laws but also section 174 of the Corporation Law. Article 30 qualifies the payment of retired or matured shares according to the order of the filing of the applications therefor and limits the funds available for such payment to one-third of the net monthly profits at any given time. It would be inconsistent to include paid-up shares within the operation of article 30 aforementioned in view of the specific mandate of article 29 of defendant-appellant's by-laws and section 174 of the Corporation Law to the effect that paid-up shares may be surrendered by the holder at any time and the value thereof refunded upon the expiration of the period of notice fixed by the association. The general provisions of article 30 of defendant-appellant's by-laws, therefore, can not govern the withdrawal of paid-up shares for which specific provision is made in article 29 of the same by-laws in accordance with section 174 of the Corporation Law, it being an elementary rule of construction that when a general and particular provision are inconsistent, the latter is paramount to the former, so that a particular intent will control a general one that is inconsistent with it. (Sec. 288, Code of Civil Procedure.) Upon the other hand, a written contract should be interpreted, in case of doubt, against the party who has drawn the contract. (H. E. Heacock & Co. vs. Macondray & Co., 42 Phil., 205.)

Defendant-appellant emphasizes the principle of equality and mutuality which defendant-appellant claims should prevail among the stockholders of building and loan associations. As between the holders of paid-up shares, on the one hand, and the ordinary shareholders, on the other, we do not find any affirmance of this principle in the Corporation Law. On the contrary, in the case of paid-up shares, the holders therefore are not entitled to vote; neither are such shares entitled to participate in the profits or accretions of the association after the dividends fixed by the directors and expressed in the stock certificate have been paid. The holders of ordinary subscription stock should not be heard to complain, therefore, if the Corporation Law grants the holders of paid-up shares some sort of preference with reference to the surrender and payment of their stock.

As a matter of fact the authorities hold that the issuance of paid-up shares is merely a borrowing of money on the part of building and loan associations.

"The holder of a certificate of preferred stock entitling him to dividends at a fixed rate, without further participation in any dividends or profits on the common stock and without power to vote at stockholders' meeting, which stock is to be retired by the association at a fixed date with right to retire the same at any time after two years from its date on giving notice thereof, is a mere creditor, and not a stockholder in the association." *Savannah Real Estate Loan & Bldg. Co. vs. Silverberg* [1899], 108 Ga., 281; 33 S. E., 908.)

"The issuing and sale by such an association of 'fully-paid-stock, to the holders of which fixed dividends, payable semiannually, are guaranteed, they having no further interest in profits, is a mere borrowing of money by the association, and the same does not contravene the principle of mutuality pertaining to the proper transaction of the business of the association upon the building and loan plan." (*Cottingham vs. Equitable Bldg & Loan Asso.* [1912], 114 Ga., 940; 41 S. E., 72, followed without discussion in *Cottingham vs. Equitable Bldg. & Loan Asso.* [1902], 114 Ga., 944; 41 S. E., 74.)

"Where such an association issues what is known as 'coupon stock which bears interest at 6 per cent per annum, payable semi-annually, and upon which the holder of such stock pays to the association its full face value, with the privilege, after 90 days' notice, of receiving back the money thus paid for the stock, and with a like privilege on the part of the association of calling in the stock and refunding the money paid therefor, it is simply a borrowing of money by the association. Such association has power to borrow money to further the ends of its incorporation, unless prohibited from so doing by its charter." (*Cook vs. Equitable Building Loan Association*

[1898], 30 S. E., pp. 911, 912.)

"The holder of full-paid and unassessable preferred shares under an agreement by the association to pay legal interest for twelve years, at which time the face value is to become payable unless previously paid, is entitled to recover such face value at the end of the twelve years regardless of any loss which may fall on other stockholders as the transaction is in effect a loan, as where the other stockholders." (Wallis vs. Eagle Sav. & L. Co. [1917], 180 App. Div., 719; 168 N. Y. S., 513.) (Italics ours.)

The issuance of paid-up shares enables building and loan associations to raise funds available for loan to its members and the restriction of the participation of such shares on the profits of the association to a fixed dividend assures the association a reasonable margin of profit in the transaction which, redounds to the benefit of ordinary shareholders. For that matter, the holders of paid-up shares are preferred stockholders in the sense that they are given preference over ordinary shareholders in the payment of their stock, which is nothing less than the collection of money they have loaned to the association for the benefit of ordinary stockholders.

"Holders of paid-up shares at a fixed rate of interest are entitled, on the winding up of the society, to be paid in preference to unadvanced members, under a rule giving the directors power to issue such shares. (Re Guardian Permanent Ben. Bldg. Soc. [1882], L. R. 23 Ch. Div. [Eng.] 440-C. A. [affirmed in Murray vs. Scott (1884), L. R. 9 App. Cas., 519-N. L.]

"Holders of full-paid or investment stock who pay a lump sum for it when purchased and are entitled to be paid a fixed sum at a fixed time at a fixed rate of interest, instead of paying installments for an uncertain period until the stock matures, and who are expressly excluded from participation in the profits of the association and have no voice in its management, and so no responsibility, direct or indirect, for its failure, are, in legal effect, creditors though called stockholders, and are entitled to share pro rata with other creditors where the assets are insufficient to pay creditors in full." (Re National Bldg. Loan & Provident Asso. [1919], 12 Del. Ch. 93; 107 A. 453.)

"The holder of a so-called certificate of capital stock, containing a promise to pay interest at a specified rate, and waiving the right to demand redemption of the certificate in less than one year, issued under a by-law authorizing the issuance of such certificates 'only for cash paid in', bearing interest at not more than a specified rate, to be redeemable at the time therein fixed by the payment of the amount thereof, with interest in the same manner as capital stock' and without any right to participate in the profits other than to the extent of the interest stipulated for, such certificates being issued for any amount paid in, however great or small, and no membership fee being charged for them, is a creditor entitled to preference over stockholders on the insolvency of the association." (State ex rel. Gray vs. Phoenix Loan Asso. [1900], 86 Mo. App., 391.)

"A depositor who serves notice of withdrawal of his deposit in a company which has a deposit branch in which it pays interest on deposit is an ordinary creditor, and not a member of the society, where his money was merely deposited and did not entitle him to any share of the profits." (Re Progressive Invest. & Bldg. Soc. [1884], 54 L. T. N. S. [Eng.], 45.)

"The holder of a certificate of stock reciting that such holder is entitled to interest on the amount paid at a specified rate per cent, and that such certificate may be surrendered by the holder or called in by the association at any time, when the holder shall receive the full amount paid, together with interest, is entitled as against other stockholders to treat it as a promise in writing to pay the amount thereof, with interest, and to hold as securing therefor a mortgage assigned to her at the time of giving her the stock certificate." (Guild vs. Baker [1904], 68 N. J. Eq. 61; 59 A., 299.)

Defendant-appellant argues, with vehemence that if the decision of the lower court is affirmed the holders of its

paid-up shares will seize the opportunity and will lose no time in withdrawing their shares and the dividends due thereon. This is no argument. And, even assuming such eventuality defendant-appellant's suggestion loses force if we consider that holders of paid-up shares surrendering their stock are not entitled to immediate payment but must wait until the expiration of the period of notice prescribed in the by-laws of the association, not exceeding one year according to, section 174 of the Corporation Law, and which is either nine or twelve months in the instant case. Moreover, paid-up shares do not constitute the major part of the capital stock of building and loan associations. As a matter of fact, the essential characteristic of building and loan associations is that they require or allow their stockholders to pay their stock in regular, equal and periodical installments and thereafter refund to said stockholders their accumulated savings and profits upon the surrender of their stock. Section 171 of the Corporation Law as amended defines just what corporations should be regarded as building and loan associations in this wise:

"All corporations whose capital stock is required or is permitted to be paid in by the stockholders in regular, equal, periodical payments and whose purpose is to accumulate the savings of its stockholders, to repay to said stockholders their accumulated savings and profits upon surrender of their stock, to encourage industry, frugality, and home building among its stockholders, and to loan its funds and funds borrowed for the purpose to stockholders on the security of unencumbered real estate and the pledge of shares of capital stock owned by the stockholders as collateral security, shall be known as building and loan associations, and the words 'mutual building and loan association' shall form part of the name of every such association. * * *"

The defense of the defendant-appellant that it has suffered losses is immaterial to the issue as to whether defendant-appellant should pay plaintiff-appellee the withdrawal value of her paid-up shares upon the expiration of the period of notice provided in its by-laws as a condition precedent to the withdrawal of paid-up stock. The fact that the defendant-appellant may have really suffered losses may affect its ability to pay, but it does not in any way diminish its liability or detract from the right of the plaintiff-appellee to demand payment, of the value of her surrendered paid-up stock. This, to our mind, is crystal-clear. Pursuant to the terms of Stock Certificate No. 459, series C-50, for sixty paid-up shares at P200 each, issued to plaintiff-appellee, she gave notice on March 6, 1934 for the surrender of her stock and on the same date defendant-appellant annotated on the back of her certificate said notice for payment on December 6, 1934. Plaintiff-appellee has fulfilled all the conditions required of her not only by the terms of her stock certificate but likewise by the applicable provisions of defendant-appellant's by-laws and of the Corporation Law for the surrender of her stock and we hold that plaintiff-appellee is entitled as of right to demand payment of the value of her stock in the sum of P12,000 on December 6, 1934.

With respect to the dividends due on plaintiff-appellee's paid-up shares, it is true that her stock certificate provides that her shares will earn an annual dividend of 6 per cent from the date of issue up to the time of their withdrawal. Article 20 of the defendant-appellant's by-laws, however, which plaintiff-appellee signed before her shares of stock were issued in her name, provides that said dividends although fixed are not accumulative, following the mandate of section 174 of the Corporation Law that "the dividends payable upon such paid-up stock shall not be accumulative in the sense of being a charge upon the future earnings of the association should the earnings of the association not be sufficient in any particular, year to meet the dividend requirements in connection with such stock in that year," thereby implying that said dividends are to be paid from the net earnings of the association if there are any. As a matter of fact section 174 of the Corporation Law makes express provision to the effect that the dividends of paid-up shares are to be paid out of the net profits according to such rate as may be fixed by the board of directors and expressed in the stock certificate.

The trial judge characterized the alleged losses suffered by the defendant-appellant as simply a paper loss and not an actual loss, being a more or less arbitrary act on the part of the defendant-appellant, considering that according

to its books the defendant-appellant had a net profit of P393,114.78 in 1934 and P366,467.48 in 1935, or a total net profit of P759,583.26 for the two years during which it suspended the payment of dividends on paid-up shares under the pretext that it had not realized any net profits available for distribution among its shareholders. We feel that we are not justified in reversing this finding of the trial court.

Defendant-appellant contends that it possesses the discretion to write off its books a reasonable amount for the depreciation on its assets for the purpose of determining its real profits in accordance with article 74 of its by-laws (Government of the Philippine Islands vs. El Hogar Filipino, 50 Phil., 399). Granted, but such power cannot be abused to the detriment or prejudice of the holders of paid-up shares, the dividends of which are not accumulative in the sense of being a charge on the future earnings of the association should the earnings of the association not be sufficient to meet the dividend requirements in any given stock. As the trial judge aptly observed the estimated depreciation of the properties of the defendant-appellant was by its nature only temporary as the value of said properties may return to its original value or even exceed that amount without affording the holders of paid-up shares any chance to recoup the losses they may have suffered consisting in deprivation of dividends on account of the subjective depreciation of the properties of the association.

We are of the opinion that the burden of proof to show the reasonableness of the depreciation written off by the defendant-appellant rests upon the defendant-appellant rather than that the burden of proving the unreasonableness of the depreciation claimed by it rests upon the plaintiff-appellee. It is sufficient for the plaintiff-appellee to show, as it did show, that according to the books of the defendant-appellant it realized a net profit of P759,583.26 during the years 1934 and 1935; that as late as February 13 and March 2, 1934, the defendant-appellant had been advertising in the press that its paid-up shares "pay 5% annually dividends being sent to your home each month"; and that at least with respect to its properties in the City of Manila, the defendant-appellant has not petitioned the reduction of their assessed value in 1932 and 1933. It was incumbent upon the defendant-appellant who seeks to avoid the payment of the advertised dividends on its paid-up stock to show that the depreciation suddenly claimed by it in 1934 is reasonable and constitutes a real and tangible loss to the association.

No evidence having been presented to prove the reasonableness of the artificial depreciation claimed by the defendant-appellant, and no showing having been made by the defendant-appellant to the effect that its net earnings from April, 1934 to June, 1936 are not sufficient over the 6 percent fixed dividend on paid-up shares stipulated in the stock certificate issued in the name of the plaintiff-appellee as provided in article 20 of its by-laws and section 174 of the Corporation Law, we hold that the defendant-appellant is liable to pay the plaintiff-appellee the surrendered value of her sixty paid-up shares at P200 each or for the total sum of P12,000, with 6 per cent per annum thereon from April, 1934 until paid. The judgment of the lower court is accordingly affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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