

RAFAEL ENRIQUEZ, PLAINTIFF AND APPELLANT, VS FRANCISCO ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4827. December 29, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff, as administrator of the estate of Don Antonio Enriquez, deceased, brought this action in the Court of First Instance of the city of Manila against his brother, Francisco Enriquez, and the Hongkong & Shanghai Banking Corporation, alleging that Don Antonio Enriquez, at the time of his death, was the owner of three shares of the capital stock of the defendant banking corporation which stood in the name of F. de P. Enriquez, a deceased brother of Don Antonio Enriquez. The prayer of the complaint was that the bank be compelled to issue a new certificate of stock to the plaintiff as administrator aforesaid, and that it be declared that the defendant Francisco Enriquez had no interest whatever in the said stock.

In the court below the bank demurred to the complaint, the demurrer was sustained, plaintiff declined to amend, and a final judgment was entered dismissing the action as to the bank. From this judgment the plaintiff has appealed.

The case was tried in the court below between the plaintiff and the defendant Francisco Enriquez and judgment was entered in favor of the plaintiff to the effect that as against Francisco Enriquez he was the owner of the stock in question. From this judgment Francisco Enriquez has appealed.

1. The court sustained the demurrer of the bank on the ground, apparently, that the courts of the Philippine Islands had no authority to regulate the interior affairs of a foreign corporation, as for example, to compel such a corporation to issue stock. Whether our courts have or have not such authority need not be determined in this case for there is no allegation in the complaint that the bank is a foreign corporation. The only allegation in reference thereto is the following:

"That the defendant 'Hongkong and Shanghai Banking Corporation' is an anonymous partnership duly authorized to transact business in the Philippine Islands,"

The use of the phrase *sociedad anonima*, peculiar to the Spanish commercial law, would rather indicate that it was a domestic corporation, but without relying upon this detail, we hold that it is not to be inferred from this complaint that the defendant is a foreign corporation. That fact, if it is a fact, can be set up by the defendant in its answer and the question argued in the briefs can then be determined. The order sustaining the demurrer must, therefore, be reversed.

2. As to the appeal of the defendant Francisco Enriquez, it appears that Francisco de Paula Enriquez, the brother of Antonio Enriquez, died in 1878. At the time of his death he was the owner of twenty-six shares of stock in the defendant bank. Don Antonio Enriquez was the administrator who settled his estate. As such administrator he sold twenty of these shares. All the other property belonging to the estate was apparently sold by Antonio Enriquez

and the entire estate converted into money and divided by him among the four heirs, one of whom was himself. Why these six shares were not sold with the other property of the estate does not appear, nor is the evidence at all convincing that these six shares now belong to the estate of Antonio Enriquez and not to the estate of Francisco de Paula Enriquez.

That question is, however, not important in this case as it relates not to the six shares but to three other and different shares. After the death of Francisco de Paula Enriquez, and some time in 1883, the bank made a new issue of stock. Under the terms of this issue the owner of the six shares above mentioned had the first right to buy three more shares. It is important here to note that the three additional shares were not given to the owner of the former shares. He was given simply the right to buy them before they were offered for sale elsewhere. At the time of the new issue Francisco de Paula Enriquez was dead. The money required to be paid for the new stock was actually paid by the defendant Francisco Enriquez. At that time his father was in Spain, He was here acting as his father's attorney in fact. His father had prior to that time sold all of the property belonging to the estate of Francisco de Paula Enriquez except the six shares above mentioned. It is very evident that the three shares belonged to the person whose money paid for them and the question in the case is whose money did Francisco Enriquez use when he paid for this stock? He testified that it was his own money. It is not important to consider now whether that testimony is true or not. If it be untrue, it would not prove that Francisco Enriquez was the owner of the stock, but neither would it prove that the plaintiff was the owner of the stock. His testimony that the money was his can not be twisted into a statement that it was not his and can not be made to prove that it belonged to any other particular person, as for example, the plaintiff. There is no other evidence in the case which shows to whom this money belonged. There is no evidence in the case to show that it belonged to the estate of Don Antonio Enriquez. The plaintiff can not recover without proof of that fact.

The stock having been issued by the bank after the death of Francisco de Paula Enriquez in his name, the presumption, if there be any presumption, would apparently be that the stock belonged to his estate and not to the estate of Antonio Enriquez. Just how the six shares above referred to and these three shares have passed out of the estate of Francisco de Paula Enriquez is not at all clear from the evidence if the testimony of Francisco Enriquez as to the three shares is rejected.

Instead of entering a final judgment here in favor of Francisco Enriquez, we think that justice requires that a new trial be ordered at which the parties will have an opportunity to present additional evidence relating to the ownership of the money with which the stock was bought.

The order of the court below sustaining the demurrer presented by the defendant bank to the complaint is reversed. The judgment of that court dismissing the action as to the defendant bank is also reversed. The judgment of that court in favor of the plaintiff and against the defendant Francisco Enriquez is reversed. The case is remanded to the court below with instructions to overrule the demurrer of the defendant bank, allowing it to answer within a time to be fixed by the court, and with the further instruction to order a new trial of the issues between the plaintiff and the defendant Francisco Enriquez. No costs will be allowed to either party in this court. So ordered.

Arellano, C.J., Torres and Johnson, JJ., concur.

Mapa, Carson, and Tracey, JJ., concur in the result.

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