

A.R. HAGER, PETITIONER, VS. ALBERT J. BRYAN, RESPONDENT.

G.R. No. 6230. March 21, 1911

Ponente: CARSON, J.

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CARSON, J.:

This is an original action brought in this court under section 515 of the Code of Civil Procedure to secure a writ of mandamus against the respondent, to compel him, as secretary of the Visayan Electric Company, to transfer upon the books of the company certain shares of stock mentioned in the petition.

The original petition and a statement of the facts sufficiently definite for the purposes of this decision will be found in the decision of this court filed January 18, 1911,[1] sustaining a demurrer to the original petition on the ground that it did not state facts constituting a cause of action.

The petitioner now submits an amended petition wherein he definitely and specifically alleges in addition to the allegations of the original petition, "that the Visayan Electric Company holds no unpaid claims against the shares of stock the subject of this action, and that said petitioner, A. R. Eager, is not indebted in any manner to said Visayan Electric Company." To this amended petition respondent demurs, on the ground that as amended it still does not state facts which constitute a cause of action.

We are all agreed that, if the petitioner were himself the registered owner of the stock which he seeks to have transferred to Mr. Levering, to whom he alleges he agreed to sell it on February 25, 1910, he would be entitled to his remedy by mandamus upon his amended petition, and that under all the circumstances of this case the mandamus would issue from this court. So far as the petitioner is concerned, the amended petition clearly, definitely and specifically alleges facts which, if true, squarely meet and refute the contention that a mandamus should not issue to compel the secretary of the company to transfer the stock because of the possibility of the existence of unpaid claims against it, a possibility which, as pointed out in the former opinion, might impose upon the secretary a duty to refuse to make such transfer under the provisions of section 35 of "The Corporation Law." (Act No. 1459.)

Were the petitioner the registered owner of the stock, we think that the additional allegations contained in the amended petition, taken together with the allegations in the original petition, would undoubtedly take his case out of the class of "ordinary cases" in which Judge Sanborn, in his article on Mandamus in the Cyclopaedia of Law and Procedure (26 Cyc, 347), says mandamus, by the weight of authority, will not lie; because as it appears and is clearly alleged in the amended petition, first, an ordinary action against the corporation, for damages would in this case be wholly inadequate; second, an action of the nature of a suit in equity to secure a decree ordering the transfer would also be inadequate, in view of the delay involved in the trial and possible appeal of such action, which under the allegations of the amended petition would defeat the principal purpose for which this action is brought, that is to say, to secure to the purchaser the right to vote this stock at the regular and special meetings of the stockholders; and third, because we think that the statute if not expressly, at least impliedly, imposes the duty upon a corporation, organized under Act No. 1459, and the officer in charge of the books of such corporation, to provide for the entry and noting upon the books of the corporation of lawful transfers of stock when the entry of

such transfer is lawfully demanded.

Section 52 of Act No. 1459 is as follows:

"Business corporations must also keep a book to be known as the 'Stock and transfer book,' in which must be kept a record of all stock, the names of the stockholders or members alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be open to the inspection of any director, stockholder, or member of the corporation at reasonable hours."

Without inserting the numerous citations with which Judge Sanborn supports the text, we quote at length from his observations on the "Transfer of shares" contained in his article on Mandamus (26 Cyc, 347), believing, as we do, that as appears from his discussion of the doctrine, we are supported by both reason and authority in our ruling in this regard:

"g. Transfer of shares. - By the weight of authority mandamus will not lie in ordinary cases to compel a corporation or its officers to transfer stock on its books and issue new certificates to the transferee, since the right is a purely private one, and there is generally an adequate remedy by an action against the corporation for damages or by a suit in equity to secure a decree ordering the transfer. Some courts, however, have held that mandamus will lie, as the remedy by action for refusal to permit a transfer is too doubtful and uncertain in its character to supersede the specific and speedier remedy by mandamus. The writ will lie if it is authorized by statute or, it seems, if the duty to register transfers is expressly imposed by statute, or if there are special circumstances in any case rendering the remedy by action for damages inadequate. Mandamus will lie, where the right is clear, to compel a transfer of stock to the purchaser of the same at a judiciarsale, as required by statute. In no case will the writ be granted if the title to the stock is disputed and the right to the relief asked for is not clear, or where the relator's claim rests on a mere equitable right, or equitable issues are involved."

It appears, however, from the original as well as the amended petition, that this petitioner is not the registered owner of the stock which he seeks to have transferred, and except in so far as he alleges that he is the owner of the stock and that it was "indorsed" to him on February 5 by the Bryan-Landon Company, in whose name it is registered on the books of the Visayan Electric Company, there is no allegation that the petitioner holds any power of attorney from the Bryan-Landon Company authorizing him to make demand on the secretary of the Visayan Electric Company to make the transfer which petitioner seeks to have made through the medium of the mandamus of this court.

Without discussing or deciding the respective rights of the parties which might be properly asserted in an ordinary action or an action in the nature of an equitable suit, we are all agreed that in a case such as that at bar, a mandamus should not issue to compel the secretary of a corporation to make a transfer of the stock on the books of the company, unless it affirmatively appears that he has failed or refused so to do, upon the demand either of the person in whose name the stock is registered, or of some person holding a power of attorney for that purpose from the registered owner of the stock. There is no allegation in the petition that the petitioner or anyone else holds a power of attorney from the Bryan-Landon Company authorizing a demand for the transfer of the stock, or that the Bryan-Landon Company has ever itself made such demand upon the Visayan Electric Company, and in the absence of such allegation we are not able to say that there was such a clear indisputable duty, such a clear legal obligation upon the respondent, as to justify the issuance of the writ to compel him to perform it.

Under the provisions of our statute touching the transfer of stock (secs. 35 and 36 of Act No. 1459), the mere indorsement of stock certificates does not in itself give to the indorsee such a right to have a transfer of the shares of stock on the books of the company as will entitle him to the writ of mandamus to compel the company and its

officers to make such transfer at his demand, because, under such circumstances the duty, the legal obligation, is not so clear and indisputable as to justify the issuance of the writ. As a general rule and especially under the above-cited statute, as between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are, so that a mere indorsee of a stock certificate, claiming to be the owner, will not necessarily be recognized as such by the corporation and its officers, in the absence of express instructions of the registered owner to make such transfer to the indorsee, or a power of attorney authorizing such transfer.

The usual practice in the United States in effecting transfers by indorsement and delivery of certificate with power of attorney in blank is thus stated in 10 Cyc, 594, 595: "The usual share certificate contains on its back a printed assignment or indorsement and also a power of attorney in blank, like the following: 'For value received I hereby assign the within named shares to....., and appoint my attorney to make the transfer on the books of the company.' This is signed by the person to whom the shares are issued. In this manner, by the usages of business, of which the courts take judicial notice, the certificate may be passed from hand to hand indefinitely by the person to whom the certificate is issued simply signing this indorsement and delivering the certificate with the blanks unfilled to his assignee. When it reaches the hands of some one who desires to assume the legal rights of a shareholder, so as to be entitled to vote at corporate elections and to receive dividends, he fills up the blanks by inserting his own name as transferee, just as the holder of a promissory note indorsed in blank is entitled by the law merchant to insert any name he pleases above the indorsement as the payee, He also inserts in the second blank the name of the attorney in fact whom he wishes to make the transfer for him on the books of the corporation. This person is usually the secretary or some other officer of the company, although he may insert the name of whomsoever he pleases. The attorney so appointed does exactly what the original shareholder would have done had he gone to the company's office to make the transfer of the shares to his vendee. He makes an entry on the book kept by the company for that purpose, usually the stock ledger, to the effect that the shares have been transferred to the new purchaser. Then the certificate is surrendered, as hereafter indicated, and a new certificate is issued to the transferee."

It may be that some such method as this was adopted in making the transfer in the case at bar, and that this is what is meant by the allegation of the petition that the stock certificates were "indorsed" to the petitioner, but the point having been raised, and there being no express allegation to this effect in the petition, we think the demurrer must be sustained and the petition dismissed with costs, unless within ten days from the receipt of notice of this decision petitioner files an amended complaint.

It may be proper to add, in conclusion, that the specific point on which the demurrer to the amended petition is sustained was not directly brought to the attention of the court in the discussion of the demurrer on the original petition, and for this reason, apparently, was not discussed in the former opinion, that demurrer being sustained on a different ground.

Mapa, Moreland, and Trent, JJ., concur.

Arellano, C. J., concurs in the result.

[1] Not Reported.

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