

ENRIQUE P. BRIAS Y ROXAS, PETITIONER, VS. JOHN S. HORD ET AL., RESPONDENTS.

G.R. No. 8387. February 05, 1913

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PER CURIAM:

The present is an original action in this court for the writ of mandamus. The questions presented are best shown by the pleadings, pro and con, presented by the respective parties.

The complaint alleges:

"I. That petitioner and respondents are now and at all times hereinafter mentioned have been residents of the city of Manila, Philippine Islands.

"II. That the respondent, John S. Hord, is now and at all of the times hereinafter mentioned has been the duly elected, qualified, and acting president of the Bank of the Philippine Islands, a banking corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, and that the remaining respondents above named are, and have been, duly elected, qualified, and acting members of the board of directors of said corporation.

"III. That heretofore, to wit, on the 13th day of February, 1912, at a regular meeting of the shareholders of the said Bank of the Philippine Islands, your petitioner was duly elected as a member of the board of directors of said corporation, and ever since said date your petitioner, having been and being duly qualified for said office, has been, and now is, in the continued possession and exercise of the same and has duly acted as a member of said board of directors save and except as hereinafter set forth.

"IV. That thereafter, to wit, on or about the 19th day of February, 1912, at a regular meeting of the board of directors of the said Bank of the Philippine Islands, your petitioner was duly elected and appointed as a member of the committee of credits of said board of directors.

"V. That the powers, duties, and functions of the board of directors of said corporation are fixed and defined by the by-laws thereof, and are as follows :

"1. To inspect the issuance and transfer of certificates of stock and to establish regulations therefor;

"2. To determine from time to time the number and amount of currency bills which shall be issued and placed in circulation in accordance with the provisions of Act No. 1170;

"3. To fix the rate of interest for loans and discounts;

"4. To form confidential lists of firms and companies to whom they consider that discounts can be granted, fixing the amount of credit granted to each one;

"5. To appoint agents and correspondents and designate the places where they should be established;

"6. To authorize the establishment of branch banks at the places which suit the public convenience and the bank in accordance with Article IV of the statutes;

"7. To ratify, if found necessary, the transactions between the bank and the Government and the other current transactions;

"8. To watch the strict fulfillment in all of the offices of the bank of the by-laws, regulations, orders, and resolutions in force;

"9. To examine and to take into consideration at each regular meeting the transactions of the employees of the bank and the operations thereof;

"10. To elect the secretary and the cashier of the bank;

"11. To appoint, at the suggestion of the managers of the bank, the bookkeepers and subordinate employees of the bank and its branches;

"12. To discharge or suspend the employees of the bank; with or without the recommendation of the managers;

"13. To prepare the annual report relative to the transactions of the bank, which should be read at the general shareholders' meeting;

"14. To examine and revise the accounts presented by the managers and to approve the general balance;

"15. To declare, semiannually, in accordance with said balance and the condition of the voluntary reserve fund, the dividend to be distributed to the shareholders;

"16. To examine and to consider the proposals made by the shareholders at the general meeting for the welfare of the bank, and to present them with its report at the succeeding general meeting;

"17. To make at said general meeting, upon its own initiative, all of the proposals deemed necessary for the welfare of the bank.

"VI. That heretofore, to wit, on or about the 15th day of August, 1912, your petitioner, acting as a member of the board of directors of said corporation and of the committee of credits thereof, made application to the respondent John S. Hord, as president of said corporation, for authority and opportunity to examine and inspect the books of account of said corporation then and there in the possession and under the immediate control of said respondent, John S. Hord. That thereupon the said authority and opportunity were refused and denied to your petitioner by said respondent, and, although repeatedly requested so to do, the said respondent and the remaining respondents hereinabove named failed, omitted, and refused, at all times since said last named date, to permit your petitioner to examine or inspect the books of account of said corporation or any part thereof.

"VII. That heretofore, to wit, on or about the 24th day of October, 1912, the respondents hereinabove named wrongfully and illegally pretending a resignation on the part of your petitioner from the offices hereinabove mentioned and referred to, and wrongfully and illegally conspiring to remove your petitioner therefrom, have declared the said offices so possessed and exercised by your petitioner to be vacant by reason of said pretended resignation and wrongfully and illegally have excluded, and are excluding, your petitioner from the exercise and enjoyment of any and all of the functions, powers, and attributes of said offices and have deprived and are depriving your petitioner of the means of performing the duties thereof.

"VIII. That heretofore, to wit, on the 24th day of October, 1912, and at various other times which your petitioner is unable to specify, the above-named respondents, without notice of any kind unto your petitioner, and without the knowledge of the latter, who had theretofore made specific application in writing for notice of the time and place of said intended meeting, assembled in meeting and wrongfully and illegally terming and styling said meeting a regular meeting of the board of directors' of the said corporation, the above-named respondents proceeded to perform the functions and discharge the duties of the board of directors of said corporation in regular meeting assembled, and to cause the minutes of said proceedings of respondents so assembled as aforesaid to be entered upon the minutes of the proceedings of the board of directors of said

corporation in regular meeting assembled.

"IX. That your petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law.

"Wherefore, your petitioner respectfully prays judgment granting a peremptory order against the respondents, and each of them, commanding said respondents, immediately after the receipt of such order:

"(1) To offer, extend and afford unto your petitioner, at any and all reasonable times during the usual business hours of said corporation, the means, opportunity, and facilities for examining and inspecting, fully and freely, the books of account, documents, and papers of said Bank of the Philippine Islands;

"(2) To fully and freely admit your petitioner into the use, exercise, and enjoyment of the offices of director of the said corporation, and member of the committee of credits of the board of directors thereof;

"(3) To cancel, annul, and strike from the minutes of the board of directors of said corporation all proceedings had by said respondents on the 24th day of October, 1912, as alleged proceedings of the board of directors of said corporation, and all proceedings so had by said respondents at any and all other times; and

"(4) To do and perform all other acts which this honorable court may deem necessary to be done in order to fully protect the rights of your petitioner.

"And petitioner further prays that respondents be condemned to pay unto petitioner his costs of suit, and for such other and further relief as may be just and equitable in the premises."

The foregoing complaint was duly sworn to by the petitioner.

All of the respondents, except Mariano Lim Jap, presented the following answer:

"Now come all the defendants in the foregoing case, except Mariano Lim Jap, and in answer to the plaintiff's petition represent to the court:

"1. They admit the facts alleged in Paragraph I.

"2. They admit the facts alleged in Paragraph II.

"3. They admit that the plaintiff was elected, as is alleged in Paragraph III of the petition, but that later he resigned from his position, as hereinafter appears, ceasing to belong to the board of directors of said bank.

"4. They admit that the plaintiff was appointed, not elected, by the president of said bank a member of the committee of credits.

"5. They admit the facts set forth in Paragraph V.

"6. They deny the facts alleged in Paragraph VI, for these are not true.

"7. They deny the facts set forth in Paragraph VII and state that on the occasion referred to the plaintiff resigned and finally separated himself from his position as member of the board of directors of said bank.

"8. They deny the facts set forth in Paragraph VIII, in so far as they are relevant, and state that after the plaintiff's separation from his office as member of the board of directors the members thereof continued to hold ordinary sessions and, as their duty was, to transact the business of said bank devolving upon said board in the usual arid customary manner."

The respondent, Mariano Lim Jap, answered as follows:

"Now comes the defendant Mariano Lim Jap, in the foregoing case, and in answer to the plaintiff's petition represents to the court:

"1. He admits the facts alleged in Paragraph I.

"2. He admits the facts alleged in Paragraph II.

"3. He admits that the plaintiff was elected, as is alleged in Paragraph II of the petition, but that later he resigned from his position, as hereinafter appears, ceasing to belong to the board of directors of said bank.

"4. He admits that the plaintiff was appointed, not elected, by the president of said bank a member of the committee of credits.

"5. He admits the facts alleged in Paragraph V.

"6. With reference to the other allegations of the petition, the defendant was absent when the events set forth in said allegations occurred.

"7. That he subscribes to the allegations contained in Paragraphs VII and VIII of the answer of his codefendants, for he believes them to be true according to trustworthy reports he possesses."

Upon the issues thus formed, proof was presented by both parties.

From a reading of the evidence adduced, it is made clear that the question presented is whether or not the petitioner resigned as a member of the board of directors of the respondent bank on the 26th of September, 1912. If the petitioner did, in fact, resign as a member of said board, then the respondents had a right to deny to him the rights and privileges which he demanded. If, on the other hand, he did not resign, then the respondents have illegally denied and deprived him of the rights and privileges to which he was legally entitled as a member of said board, and he has, therefore, a right to the extraordinary remedy of mandamus to be restored to his legal rights as a member of said board.

The petitioner obtained his right to act as a member of the board of directors of said bank from the stockholders thereof, at their annual meeting. There is nothing in the record which would justify said board of directors in depriving the petitioner of the rights and privileges belonging or pertaining to the membership of such board, unless and until he should have voluntarily relinquished such rights and privileges, or until his tenure of office should have expired. We have then the question squarely presented—Did the petitioner resign as is claimed by the respondents? Did the petitioner voluntarily surrender the rights conferred upon him by the stockholders? It is not disputed that a resignation per verba is just as effective and binding as a resignation per scripta. It is claimed by the respondents that the petitioner did, on the 126th of September, 1912, resign, voluntarily, unequivocally, and absolutely, as a member of said board of directors. Proof upon that question was offered pro and con. It becomes necessary, therefore, to examine the proof upon that question.

It may be observed that the proof can not be read without creating the impression that there existed among certain members of the board at said meeting more or less feeling towards the petitioner on account of the fact that he was insisting upon making an investigation into certain credits of the bank. It appears that at the meeting of the board of the 26th of September, 1912, a renewal of the discussion relating to such credits took place and that personal feeling ran high. Certain members of the board did not hesitate to make remarks which seemed to reflect upon the personal honor of others. It was at this time and under these conditions, when some members of the board were apparently much excited, when it is alleged that the respondent unequivocally resigned his position.

It appears from the record that the minutes of the proceedings of the meeting of the 26th of September, 1912, such as were kept by the secretary, were destroyed; that two or three meetings of the board or of certain members of the board were held afterwards, for the purpose of preparing other minutes of said meeting, and that the minutes of said meeting were finally prepared nearly a month (Oct. 24, 1912) after the facts which they relate actually took

place. At none of these subsequent meetings at which said minutes were prepared was the petitioner present, and, so far as the record shows, he had no notice thereof. The minutes thus prepared were presented as proof at the hearing of the cause, for the purpose of showing that the petitioner had resigned.

The minutes of the transactions of a board such as the present, prepared by its secretary or some person named or appointed for the purpose of keeping a record of the proceedings, are generally accepted, once approved by the board, as prima facie evidence of what actually took place during that meeting. This is true upon the theory that the secretary is, for the time being, the hand of the board. In the present case the minutes were not prepared by the secretary. His minutes had been destroyed. The minutes presented in evidence were prepared by the board itself, or by certain members of the same, and then, too, in the absence of the petitioner. It is also a fact that said minutes were prepared after the president of the board had received a letter from the petitioner, dated September 28, 1912, two days after the alleged resignation was made, in which he (the petitioner) expressly indicated that he did not intend to resign from his position as a member of such board.

At the meeting of the said board of directors on the 26th of September, 1912, according to the minutes, there were fourteen members present. At that meeting, the petitioner, during a heated discussion between himself and other members, arose and left the room, giving certain reasons for his action. The respondents claim that at that time the petitioner resigned as a member. The petitioner says that he did not resign. If the petitioner did resign at that time and it was so understood by the members of the board, it would seem that the members would be able to agree upon the words used by the petitioner in so resigning. We will examine the proof, for the purpose of ascertaining whether or not a preponderance of the same shows that the petitioner did, in fact, resign at the time he left the said meeting, or whether or not he simply withdrew from said meeting in disgust. No rule or requirement has been called to our attention making it necessary for him to remain at any meeting of the board longer than his own pleasure might dictate.

With reference to what actually took place at the meeting of the board in question, the minutes ought to give us some light. Referring to the minutes (Exhibit 1), we find that the minutes record the following. The minutes say that the petitioner "Mr. Brias then arose from his seat and in a violent tone and a rather disconcerted attitude addressed the board, saying that he could not decently continue to belong to a corporation whose president denied him the quality of honesty and one of whose members styled him an obstructionist; and that therefore he withdrew from it and ceased to attend its meetings."

In this quotation from the minutes, it will appear that an attempt was made to quote exactly what the petitioner said at the time he left the meeting of the board. It would be difficult, if that statement was all the information which we had, to conclude that the defendant intended to resign as a member of said board. Accepting the minutes as a true statement of what occurred, they simply show that the petitioner "could not continue to belong to a corporation" etc., "and therefore he withdrew from it and ceased to attend its meetings."

It will be noted that no words are here attributed to the petitioner which indicate that he then and there absolutely and unequivocally resigned. The most that can be said is that he "ceased to attend its meetings." No words are attributed to him, even by said minutes, which show conclusively that the petitioner did then and there resign.

From an examination of the proof adduced during the trial of the cause, we find that the members of the board of directors who declared as witnesses do not agree exactly with said minutes as to just what was said and done by the petitioner at the time he arose and left the meeting on the 26th of September, 1912.

Referring to the declarations of the witnesses, we find that the petitioner gives the following explanation of what took place at said meeting, with reference to the question here presented, which in many important ways differs from the facts as recorded in the minutes:

"Q. Did you attend the meeting of September 26?—A. Yes, sir; and it was there that the report of the committee was read.

"Q. Did you remain in the meeting of the board until its conclusion that day?—A. Until its conclusion, no.

"Q. State briefly your reason for not remaining there until its conclusion.—A. Because in discussing the matter of the P20,000 that had been paid to Mr. Javellana I asked the president, up to the point of obtaining from him a confession that in fact the P20,000 had been paid to Mr. Javellana for warehouse expenses, adding that it was an injustice that had been done that gentleman. Then I made plain that my objection to approving his action with regard to the sugar when report was made thereof after the close of the meeting of August 15 was, therefore, well founded, for the directors approved it over my objection, and as Mr. Moreta had just said that I was an obstructionist, I wished to demonstrate that I was aware of cause for objecting; and I said that I knew that Mr. Javellana had been paid P20,000 so that he would desist from suing the bank for the illegal sale of his sugar. I had a letter that Mr. Javellana had addressed to the firm of Brias Hermanos, a commercial letter, thanking it for the sale of its shares in the bank and giving his opinion of the sale, and saying that the treatment he had received from the bank had been bad, for he had lost over P100,000 and that the P20,000 were secured by a deal, it thus being that after he had been a patron of the bank for fifteen years it had treated him in such a bad way; discussing heatedly the matter of Mr. Javellana, the president, through spite or whatever it was, insulted me; he told me that he had previously proffered other insulting remarks to me, that he prided himself on his frankness and that I was not at all frank and that there are men who pass for being honest who are not so and that I was one of them. Indignant, and not knowing what to do, I thought the most, prudent thing was to take the door instead of a chair or some other object, and I said that I was withdrawing from the meeting because I could not submit to being insulted. I withdrew, the president called to me and said: 'I understand that you are tendering your resignation.' And I replied: 'I shall tender my resignation.' Then I left, but first I called the secretary's attention to the fact that I wished it recorded in the minutes that my withdrawal from that meeting was due to the fact that Mr. Moreta had said that I was an obstructionist, and that the president had addressed a discourteous remark to me, that is, that I am not an honest man, and that I could not remain in a meeting where I was insulted."

Referring to the declaration of Mr. Hord, president of the board, we find that he, among other things, declared during the trial of the cause as follows, in which he attempts to relate the language used by the petitioner when he left the room on the occasion when it is alleged he resigned:

"Q. And when Mr. Brias arose did you call to him to deny the remark attributed to you?—A. He had stopped. He had said that he resigned. That I had insulted him: what I had just said.

"Q. In what words did he say that he resigned?—A. I resign. I withdraw. No; I can't tell exactly the words, but two or three times in that meeting he wished to resign; we advised him not to do so and he agreed to remain on the committee of credits."

Mr. Felix Roxas, another member of the board, after relating more or less of what actually occurred at the meeting, also attempts to state exactly what the petitioner said at the time he left the meeting of the board, relating to the question before us:

"Q. With what words did he resign?—A. He said that he was leaving there because he had not been treated right, something of that kind. I don't remember his words exactly, but he intimated that he would appeal to the general meeting and that he was leaving. He insistently manifested his desire to withdraw and quit the position."

Mr. Phil. C. Whitaker, another member of the board, attempts to explain just what happened and just what was said by the petitioner at the time he left the meeting of the board. Mr. Whitaker said:

"A. Mr. Moreta tried to pacify him. He appealed to him and told him not to take that action, but Mr. Brias

insisted and arose saying that he resigned. Thereupon Mr. Barrera called to him, when he was going away, or rather when he was descending the stairs from the platform and called his attention to the fact that he had been appointed or designated to appear before the committee to investigate doubtful accounts, or what he alleged were doubtful, and he said that there was no need because he was going to resign. Thereupon Mr. Hord called to him and asked him if he would tender his resignation in writing, and Mr. Brias said yes, that in the morning he would send it in writing and he left the room.

"Q. Did he say that he was going to resign or that he had resigned ?

"Mr. Cohn. I object to the question for it tends to impugn the witness's own testimony.

"A. He said that he was resigning."

Mr. Emilio Moreta, another member of the board, attempts to state exactly what occurred at the time it is alleged the petitioner resigned. Mr. Moreta said:

"Q. And after that was he addressed by the president?—A. Yes.

"Q. Did Mr. Hord ask if he would tender his resignation in writing?—A. That was after what was said by Mr. Barrera, who called to him saying: 'How can you withdraw, when you have just agreed with us to form part of the investigating committee?' These were Mr. Barrera's words, approximately.

"Q. What did Mr. Brias reply?—A. I don't remember, but he insisted; the president addressed other words to him and Mr. Brias left the meeting."

The declarations of the other members of the board of directors are much to the same effect as those which we have quoted above.

Comparing the alleged statement of the petitioner, as given by the different members of the board, in which his resignation was couched, with his alleged statement as found in the minutes (Exhibit 1), we find that there is a marked and irreconcilable conflict. Some of the witnesses for the respondents say that the petitioner said that "he was resigning;" others that "he was. going to resign;" while the minutes (Exhibit 1) say that the petitioner said "he could not continue to belong to a corporation" etc., "and that therefore he withdrew from it and ceased to attend its meetings."

It will be noted that the minutes fail to put into the mouth of the petitioner the words "he was resigning" or the phrase "he was going to resign." It is quite evident that in preparing the minutes it was intended by those preparing them to make them show just what the petitioner did and said. This fact is indicated not only by the fact that they expressly assume to state what the petitioner said, but also by the fact that they relate in detail things which are not ordinarily included in minutes. It is very unusual to find in the minutes of an association or corporation a detailed statement of what was said and done by members in a passionate discussion of certain questions. The result of such discussions is generally considered sufficient for the minutes.

In the irreconcilable conflict between what the said minutes make the petitioner say and what the members say he said, we find an important fact, to wit: that the members are not clear in their understanding of just exactly what the petitioner said with reference to the alleged resignation. That some of the members did not, at that moment, fully understand or believe that the petitioner had resigned is supported by the facts:

(a) That the president then and there "asked him if he would send in writing the resignation he had just tendered verbally;" and

(b) That a member of the board, Mr. Enrique Barrera, at the time the petitioner was leaving the meeting of the board, asked him if he desired to continue to take part in the meetings of the committee on credits.

If the petitioner had resigned, at the time and in the manner alleged, then he had forfeited his right to act in any relation with the board. His resignation per verba was sufficient. No formal acceptance of his resignation was necessary; neither was it necessary to make an entry thereof in the minutes of the board. While this is true, it must, however, appear that he positively and affirmatively: stated or indicated that it was his intention to resign then and there. If there was the slightest condition attached to his statement relating to his resignation, then, it was not a resignation. A mere statement by a member that he withdraws from a meeting or that he will have nothing more to do with the office is not sufficient upon which to predicate an absolute resignation.

That members of boards become momentarily disgusted with the method of procedure of their associates and withdraw, is not an infrequent occurrence. For the associates to take advantage of this common weakness of men and distort the momentary action into a meaning really not intended or justified by actual and positive words, would be to do great and irrevocable injustice to their fellows.

In addition to what has been said above, which throws some doubt upon just what the petitioner said and did relating to his alleged resignation, we have his own statement. The petitioner states what took place at the meeting substantially as the respondents do, except as to the exact word or phrase used in relation to his alleged resignation. The petitioner says that he said, "I shall tender my resignation." This statement is not altogether in conflict with what Mr. Whitaker says the petitioner said and is in entire harmony with what Mr. Hord and Mr. Barrera believed at the time, if their respective questions presented at that time correctly indicate what each had in mind.

In addition to the above positive statement by the petitioner himself, we have the fact that one full day after said meeting, he wrote a letter to the president of the board, in which he signs himself as still a member and in which he says that he had not resigned. No one knows better than the petitioner himself what was in his mind and what he said at the time he withdrew from said meeting. To conclude that his testimony given at the trial of the present cause and his letter of September 28, 1912, are not in accord with the real facts, as he believed they were, would be to attribute to the petitioner a quality of mind which we believe even the respondents would not maintain. Men are liable to err, and innocently. All men are liable to have misunderstandings. In the heat of passion men are liable to make, momentarily, their wishes the mother of their thoughts. Under such circumstances men are liable to have things done which their passions desire to have done. We must remember that accurate weights are ascertained after the beam of the scales has become quiet and not during the time that it is quivering with the suddenness of the weight placed upon it. We fully believe that the conflict between the members of the board and the petitioner with reference to just what was done and the real intention of the petitioner grows out of the differences which existed at that time and not out of any intention, to do any person a wrong. A man may be ever so honest and yet be absolutely wrong in his understanding of certain facts. In practically every civil action each of the parties thinks and honestly believes that he is right. That fact, however, does not prevent it being shown and demonstrated that one or the other is absolutely mistaken. For that purpose, among other things, dispassionate courts are established.

For all of the foregoing reasons and after a careful examination of the proof, we are forced to the conclusion that the record fails to show that the petitioner did resign his position as a member of the board of directors of the respondent bank. We therefore find that he is entitled to exercise all of the rights, privileges, and emoluments belonging and pertaining to a member of said board.

Therefore the prayer of the petitioner is hereby granted and it is hereby ordered and decreed that the extraordinary writ of mandamus be issued, directing the respondents and requiring them and each of them, to fully and freely admit the petitioner into the use, exercise, and enjoyment of the office of the board of directors of said corporation and as a member of the committee on credits of the board of directors thereof; and to enjoy and to freely exercise

all of the rights and privileges belonging and pertaining to each of the members of the board of directors of the respondent bank, which are granted to them under the laws of the Philippine Islands and the regulations of said bank.

It is so ordered, with costs against the respondents.

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

Moreland, J., dissents.

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