44 Phil. 705

[G.R. No. 19441. March 27, 1923]

FUA CUN (ALIAS TUA CUN), PLAINTIFF AND APPELLEE, VS. RICARDO SUMMERS, IN HIS CAPACITY AS SHERIFF EX-OFICIO OF THE CITY OF MANILA, AND THE CHINA BANKING CORPORATION, DEFENDANTS AND APPELLANTS.

D E C I S I O N

OSTRAND, J.:

It appears from the evidence that on August 26, 1920, one Chua Soco subscribed for five hundred shares of stock of the defendant Banking Corporation at a par value of P100 per share, paying the sum of P25,000, one-half of the subscription price, in cash, for which a receipt was issued in the following terms:

> "This is to certify, That Chua Soco, a subscriber for five hundred shares of the capital stock of the *China Banking Corporation* at its par value of P100 per share, has paid into the Treasury of the Corporation, on account of said subscription and in accordance with its terms, the sum of twenty-five thousand pesos (P25,000), Philippine currency.
>
> "Upon receipt of the balance of said subscription in accordance with the terms of the calls of the Board of Directors, and surrender of this certificate, duly executed certificates for said five hundred shares of stock will be issued to the order of the subscriber.
>
> "It is expressly understood that the total number of shares specified in this receipt is subject to sale by the *China Banking Corporation* for the payment of any unpaid subscriptions, should the subscriber fail to pay the whole or any part of the balance of his subscription upon 30 days' notice issued therefor by the Board of Directors.

"Witness our official signatures at Manila, P. I., this 25th day of August, 1920.

(Sgd.) "MERWIN WEBSTER
"*Cashier*
(Sgd.) "DEE C. CHUAN
"*President*"

On May 18, 1921, Chua Soco executed a promissory note in favor of the plaintiff Fua Cun for the sum of P25,000 payable in ninety days and drawing interest at the rate of 1 per cent per month, securing the note with a chattel mortgage on the shares of stock subscribed for by Chua Soco, who also endorsed the receipt above mentioned and delivered it to the mortgagee. The plaintiff thereupon took the receipt to the manager of the defendant Bank and informed him of the transaction with Chua Soco, but was told to await action upon the matter by the Board of Directors.

In the meantime Chua Soco appears to have become indebted to the China Banking Corporation in the sum of P37,731.68 for dishonored acceptances of commercial paper and in an action brought against him to recover this amount, Chua Soco's interest in the five hundred shares subscribed for was attached and the receipt seized by the sheriff. The attachment was levied after the defendant bank had received notice of the fact that the receipt had been endorsed over to the plaintiff.

Fua Cun thereupon brought the present action maintaining that by virtue of the payment of the one-half of the subscription price of five hundred shares Chua Soco in effect became the owner of two hundred and fifty shares and praying that his, the plaintiff's, lien on said shares, by virtue of the chattel mortgage, be declared to hold priority over the claim of the defendant Banking Corporation; that the defendants be ordered to deliver the receipt in question to him; and that he be awarded the sum of P5,000 in damages for wrongful attachment.

The trial court rendered judgment in favor of the plaintiff declaring that Chua Soco, through the payment of the P25,000, acquired the right to two hundred and fifty shares fully paid up, upon which shares the plaintiff holds a lien superior to that of the defendant Banking Corporation and ordering that the

receipt be returned to said plaintiff. From this judgment the defendants appeal.

Though the court below erred in holding that Chua Soco, by paying one-half of the subscription price of five hundred shares, in effect became the owner of two hundred and fifty shares, the judgment appealed from is in the main correct.

The claim of the defendant Banking Corporation upon which it brought the action in which the writ of attachment was issued, was for the non-payment of drafts accepted by Chua Soco and had no direct connection with the shares of stock in question. At common law a corporation has no lien upon the shares of stockholders for any indebtedness to the corporation (Jones on Liens, 3d ed., sec. 375) and our attention has not been called to any statute creating such lien here. On the contrary, section 120 of the Corporation Act provides that "no bank organized under this Act shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, or, in default thereof, a receiver may be appointed to close up the business of the bank in accordance with law."

Section 35 of the United States National Banking Act of 1864 contains a similar provision and it has been held in various decisions of the United States Supreme Court that a bank organized under that Act can have no lien on its own stock for the indebtedness of the stockholders even when the by-laws provide that the shares shall be transferable only on the books of the corporation and that no such transfer shall be made if the holder of the shares is indebted to the corporation. (Jones on Liens, 3d ed., sec. 384; First National Bank of South Bend *vs*. Lanier and Handy, 11 Wall., 369; Bullard *vs*. National Eagle Bank, 18 Wall., 589; First National Bank of Xenia *vs*. Stewart and McMillan, 107 U. S., 676.) The reasons for this doctrine are obvious; if banking corporations were given a lien on their own stock for the indebtedness of the stockholders, the prohibition against granting loans or discounts upon the security of the stock would become largely ineffective.

Turning now to the rights of the plaintiff in the stock in question, it is

argued that the interest held by Chua Soco was merely an equity which could not be made the subject of a chattel mortgage. Though the courts have uniformly held that chattel mortgages on shares of stock and other choses in action are valid as between the parties, there is still much to be said in favor of the defendants' contention that the chattel mortgage here in question would not prevail over liens of third parties without notice; an equity in shares of stock is of such an intangible character that it is somewhat difficult to see how it can be treated as a chattel and mortgaged in such a manner that the recording of the mortgage will furnish constructive notice to third parties. As said by the court in the case of Spalding *vs*. Paine's Adm'r. (81 Ky., 416), in regard to a chattel mortgage of shares of stock:

> "These certificates of stock are in the pockets of the owner, and go with him where he may happen to locate, as choses in action, or evidence of his right, without any means on the part of those with whom he proposes to deal on the faith of such a security of ascertaining whether or not this stock is in pledge or mortgaged to others. He finds the name of the owner on the books of the company as a subscriber of paid-up stock, amounting to 180 shares, with the certificates in his possession, pays for these certificates their full value, and has the transfer to him made on the books of the company, thereby obtaining a perfect title. What other inquiry is he to make, so as to make his investment certain and secure? Where is he to look, in order to ascertain whether or not this stock has been mortgaged? The chief office of the company may be at one place to-day and at another tomorrow. The owner may have no fixed or permanent
> abode, and with his notes in one pocket and his certificates of stock in the other—the one evidencing the extent of his interest in the stock of the corporation, the other his right to money owing him by his debtor, we are asked to say that the mortgage is effectual as to the one and inoperative as to the other."

But a determination of this question is not essential in the present case. There can be no doubt that an equity in shares of stock may be assigned and that the assignment is valid as between the parties and as to persons to whom notice is brought home. Such an assignment exists here, though it was made for the

purpose of securing a debt. The endorsement to the plaintiff of the receipt above mentioned reads:

> "For value received, I assign all my rights in these shares in favor of Mr. Tua Cun.
>
> "Manila, P. I., May 18, 1921.
>
> (Sgd.) "CHUA SOCO"

This endorsement was accompanied by the delivery of the receipt to the plaintiff and further strengthened by the execution of the chattel mortgage, which mortgage, at least, operated as a conditional equitable assignment.

As against the rights of the plaintiff the defendant bank had, as we have seen, no lien unless by virtue of the attachment. But the attachment was levied after the bank had received notice of the assignment of Chua Soco's interests to the plaintiff and was therefore subject to the rights of the latter. It follows that as against these rights the defendant bank holds no lien whatever.

As we have already stated, the court erred in holding the plaintiff as the owner of two hundred and fifty shares of stock; "the plaintiff's rights consist in an equity in five hundred shares and upon payment of the unpaid portion of the subscription price he becomes entitled to the issuance of certificate for said five hundred shares in his favor."

The judgment appealed from is modified accordingly, and in all other respects it is affirmed, with the costs against the appellant Banking Corporation. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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