

Notes and Comments

Corporation Law—Effect of Unrecorded Transfers of Shares

Of importance not only to the members of the legal profession but also to the layman is the effect of unrecorded transfers of shares. To be sure the pronouncements of our Supreme Court have been consistent on this point but the vagueries that has hang over the pertinent provision of the Corporation Law continues to persist. This inquiry aims to give the effects of transfers of shares made without the corresponding transfers registered in the books of the corporation.

A stock corporation is one whose capital stock is divided into shares, having authority to distribute to the shareholders dividends out of the surplus profits on the basis of the number of shares held.¹ These shares are evidenced by certificates signed by the president or vice-president, countersigned by the secretary or clerk, with the seal of the corporation affixed thereon and issued in accordance with its by-laws.²

Shares of stock are personal property and may be transferred by delivery of the certificate indorsed by the owner, his attorney-in-fact or any other person legally authorized to make the transfer. The share-holder has full liberty to dispose of them subject only to the general provisions of law. Of this tenor is the decision of the Supreme Court that a provision in the by-laws of a corporation giving the company the preferential right to buy the shares of stock of a retiring stockholder is an undue restriction of the owner's right to alienate his share and hence, null and void.³

The pertinent provision of the Corporation Law provides, "No transfer, however, shall be valid except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate and the number of shares transferred".⁴

As between the parties, therefore, the mere delivery and indorsement of the certificate transfers the ownership over the shares of

¹ Sec. 3, Act 1459

² Sec. 2 Act 1459

³ *Fleischer v. Botica Nolasco*, 47 Phil. 583.

⁴ Sec. 35, Act 1459

stock. The transferee becomes the owner as against the transferor and all person standing in the shoes of the transferor—his executor or administrator⁵ or his heirs⁶ or one to whom he subsequently makes an assignment for the benefit of his creditors or an assignee in bankruptcy or insolvency proceedings.⁷ The title that passes to the transferee has been termed by some courts the legal title, by others the equitable title. As such transferee he is entitled to the benefits and becomes subject to the burdens of ownership.⁸

In so far as the corporate entity is concerned an unrecorded transfer does not relieve the transferor from liability for calls and assessments for the unpaid portion of the subscription price of the shares or for any statutory liability on fully paid shares.⁹ It is only through the books of the corporation that the officers may know who are its stockholders—a knowledge essential in conducting election of officers, in convening meetings and for other corporate purposes.¹⁰ The law gives the corporation further protection by providing that no shares of stock against which the corporation holds any unpaid claims shall be transferable on the books of the corporation.¹¹

The Supreme Court of the Philippines in one case had occasion to apply this provision of the Corporation Law which treats of the transfers of stock. The issue before the court was whether a bona fide transfer of the shares of a corporation, not registered or noted on the books of the corporation is valid as against a subsequent attachment regardless of whether or not the attaching creditor had actual notice. The court answering the question in the negative, quoted Justice Orton in the case of *In re Murphy*, 8 N.W. 419, to wit: "We think the true meaning of the language is, and the obvious intention of the legislature in using it was that all transfers of shares should be entered, as here required in the books of the corporation. And it is equally clear to us that all transfers of shares not so entered are invalid as to attaching or execution creditors of the assignor, as well as to the corporation and to subsequent purchasers in good faith, and, indeed, as to all persons interested, except the parties to such transfers. *All transfers not so entered on the books of the corporation are absolutely void* (italics ours), not because they are without notice or fraudulent in law or fact, but because they are made so void by

⁵ *Shires v. Allen*, 107 Pac. 1072.

⁶ *Condit v. Galveston City Co.*, 186 S.W. 395.

⁷ *Blouin v. Liquidators of Hart and Herbert*, 30 La. Ann. 714; *Sibley v. Quinsigamond National Bank*, 133 Mass. 515; *Dickenson v. Central National Bank*, 129 Mass. 279.

⁸ *Ballantine, Corporation Law*, Sec. 329.

⁹ *People's Home Savings Bank v. Stadtmuller*, 150 Cal. 106, 88 Pac. 280; *In re Estate of Shaffer*, 154 Pa. Super. 654; 12 *Fletcher*, Sec. 5503.

¹⁰ *Fleischer v. Botica Nolasco*, 47 Phil. 583; *Merchant Nat. Bank v. Wehrmann*, 202 U.S. 295; *Griesen v. Landen*, 102 Fed. 584.

¹¹ Sec. 35, 2nd par., Act 1459.

statute."¹² Thus, with one stroke our court ruled that such unrecorded transfers are void except as between the parties.

Our statutory law requires registration and draws no distinction between permanent and temporary transfers. However, our court ruled in one case¹³ that only absolute and permanent conveyances of ownership over shares of stock need be entered and noted on the Corporate Books and inasmuch as a chattel mortgage is not a complete and absolute alienation of ownership of the shares of stock, its entry and notation upon the books of the corporation is not a requisite for its validity. The attitude of the court in making this distinction can be explained by its desire to harmonize the provisions of the ~~Chattel~~ Mortgage Law (Act 1508) with Section 35 of the Corporation Law (Act No. 1459).

The corporation law of the Philippines is patterned after the corporation laws of the states of the United States. In the United States there is a considerable conflict of authorities as to the effect of an unregistered transfer as against a subsequent attaching or execution creditor of the transferor.¹⁴ The prevailing weight of authority is to the effect that an unregistered transferee will prevail as against a subsequent attaching or execution creditor of the transferor whether said creditor had notice of the transfer before the levy or not, unless the transfer is in fraud of the creditors of the transferor.¹⁵ This requirement of recording in the books of the corporation the transfer of shares is intended more for the protection of the corporation and its creditors.¹⁶ The books of the corporation are open to the inspection of any director, member or stockholder of the corporation during reasonable hours.¹⁷ Such right may be exercised either by the stockholder himself or his proper representative or attorney. The corporation cannot deny the exercise of this right to the stockholder,¹⁸ much less limit it by providing in its by-laws that the right of inspection be made only during a certain period of time.¹⁹ The law does not give the creditors of the stockholder the right to inspect the books of the corporation. Thus the purpose of requiring registration of transfers of shares for the protection of creditors of the stockholder is rendered nugatory by denying the right of inspection to them.²⁰

¹² Uson v. Diocemito, 61 Phil. 535, 540.

¹³ Monserrat v. Ceron, 58 Phil. 469; Chua Guan v. Samahang Magsasaka, Inc., 62 Phil. 472.

¹⁴ Bailey v. Pierce, 123 Kan. 359.

¹⁵ Ballentine, p. 755.

¹⁶ 7 R.C.L. 268; Mapleton Bank v. Standrod, 67 L.R.A. 656; State Banking and Trust Co. v. Taylor, 29 L.R.A. (N.S.) 523; Everett v. Farmers' and M. Bank, 82 Neb. 195.

¹⁷ Sec. 51, Act No. 1459.

¹⁸ Philpotts v. Phil. Mfg. Co., 40 Phil. 471.

¹⁹ Parde v. Hercules Lumber Co., 47 Phil. 964.

²⁰ Stowe v. Harvey, 241 U.S. 199; Continental Nat. Bank v. Eliot Nat. Bank, 7 Fed.

Under the Land Registration Law actual knowledge of a person who acquired real property of the existence of previous interest over the same property, the latter being unregistered, can claim no valid interest on the property since he is deemed to have acted in bad faith. His knowledge of the prior unregistered interest serves the purpose of registration and he cannot claim that he was not duly informed thereof.²¹ It is difficult to conceive why the corporation law could be harsher or stricter than the Land Registration Law. The purpose of registration in both is to give notice of the existence of a right. The inconsistency becomes more apparent when one realizes that the transfers of shares of stock by reason of their very nature and their position in commerce and business are intended to be effected with more facility. How can one claim to have acted in good faith when he has actual knowledge of a previous conveyance of the shares which he now claims he has purchased?

As a general rule in an attachment or execution creditor obtains a lien only upon the title or interest of his debtor at the time. It is also equally true that an attaching or execution creditor has to rely on the corporate books to ascertain the property rights of his debtor. But does not actual knowledge of a prior alienation by his debtor fulfill the purpose for which a registration of the transfer is required. The rights of an innocent purchaser for value is as entitled to the protection of the laws as the creditors of an apparent owner of the shares of stock.

It is therefore submitted that unregistered transfers of shares should prevail over subsequent attaching or execution creditors who have notice of such prior transfer.²² The record of stock transfers on the books is required for the purpose of notice to the corporation and is for its benefit.²³ Any person having notice of such transfer stands in no better position than if the transfer were properly entered in the corporate books.²⁴ It would amount to a legal sanction of bad faith of the attacking or execution creditor if he is to be preferred to a prior transferee when the former has notice of the transaction and it was not made in fraud of creditors. Public policy condemns bad faith. Neither does it permit anyone to profit by one's bad faith. Equity and justice demand that as between an unregistered transferee of shares of stock and a subsequent attaching or execution creditor of the owner, the latter having acted in bad faith—the former should be preferred.

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²¹ *Winkleman v. Veluz*, 43 Phil. 604.

²² *Fua Cun v. Summers*, 44 Phil. 765.

²³ *Bridgewater Iron Co. v. Lissberger*, 116 U.S. 8; *White Rivers Savings Bank v. Capitol Savings Bank*, 77 Vt. 123.

²⁴ *Dennistown v. Davis*, 229 N.W. 353.

Philippine Decisional Rules on Habeas Corpus

To what habeas corpus extends:

Under section 1, Rule 102 of the Rules of Court, the writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto unless otherwise provided by law. Broadly speaking only deprivation of any fundamental or constitutional right, lack of jurisdiction of the court to impose the sentence or excessive penalty afford ground for relief by habeas corpus (Santiago vs. Director of Prisons, L 1083, January 30, 1947, 44 OG 1231; Harden vs. Director of Prisons, L-2349 October 22, 1948;

Purpose of the writ:

The purpose of the writ of habeas corpus is to set a person free. Upon his release, the writ is purposeless. If the detainees have been the victim of illegal arrest or detention, they can have recourse to criminal action in the proper courts. (Lino vs. Fugoso, L-1159, January 30, 1947, 43 O. G. 1214:)

Habeas corpus will not lie to correct errors of law or fact. When a court has jurisdiction of the offense charged, its judgment, order, or decree is not subject to collateral attack by habeas corpus. The writ of habeas corpus cannot be made to perform the function of a writ of error even if the judgment was erroneous, provided it is within the jurisdiction of the court. (Santiago vs. Director of Prisons, L-1083, January 30, 1947, 44 OG 1231;) Hence an alleged error in counting for the purpose of habitual delinquency a conviction for illegal possession of counterfeit bills, cannot be corrected by habeas corpus for it was rather an error of judgment and not an undue exercise of judicial power which vitiates and nullifies the proceedings. And an alleged error in finding the petitioner a habitual delinquent because the information did not contain any allegation to that effect, is a mere defect of procedure and cannot be corrected in habeas corpus proceedings. (Fortuno vs. Director of Prisons, L-1782, February 2, 1948, 45 OG 3365;)

Neither could the writ of habeas corpus be used in lieu of mandamus. As the Supreme Court has ruled in Talabon vs. Provincial Warden of Iloilo, L-1153, 44 OG 4322, the case against the petitioner having already been tried and judgment rendered against him, the

petitioner can no longer invoke his right to a speedy trial as a ground for his discharge on habeas corpus, inasmuch as such right is waived if not exercised in due time. If the trial of the criminal case is unreasonably delayed, the remedy for obtaining his release in order to avoid his detention for an unreasonable period of time is habeas corpus, inasmuch as the defendant's detention has become illegal. After trial has terminated the delay of the court to render the sentence does not make the detention illegal because the defendant may mandamus and compel the court which unreasonably delays rendering the decision, to do so, and for that reason, the defendant is not granted the constitutional right to a speedy judgment.

When habeas corpus lies:

When there is nothing to show that the petitioner has been tried and sentenced to law, there is no legal basis for detention and the writ of habeas corpus will lie. Such was the ruling of the Court in a case where it does not appear that the prisoner has been sentenced by any tribunal duly established by a competent authority during the enemy occupation. (*Reyes vs. Director of Prisons*, L-410, April 25, 1946, 43 OG 106;) Similarly, where a naturalized Filipino citizen has been deprived of his personal liberty without any legal cause or authority, the writ of habeas corpus will issue to restore him to his freedom. For it appearing that no sentence has ever been rendered by a competent military tribunal or court of justice, the petitioner's confinement in said case is null and void ab initio. (*Matsura Sr. vs. Director of Prisons*, L-1181, February 28, 1947, 44 OG 2199;)

And when no evidence is presented to show that the petitioner is in custody under a warrant of commitment in pursuance of law, as mentioned in sections 13 and 14 of Rule 102, it is evident that the petitioner would be entitled to be forthwith discharged from confinement in accordance with section 15 of the same rule. (*Camasura vs. Provost Marshall, MPC Davao*, L-874, March 13, 1947, 44 OG 2237;)

When habeas corpus will not lie:

The writ of habeas corpus may not be issued where the petitioner is restrained of his liberty by virtue of a judgment or order of a court whose jurisdiction is unquestioned. Such is true especially in a case where the petitioner has been in prison for two and a half years after conviction by the Court of First Instance and pending his appeal to the Supreme Court. (*Velasquez vs. Director of Prisons*, L-1208, January 30, 1947, 44 OG 1237;) so that where the petitioner has not completed service of the total penalty for several commitments for evasion of service of sentence, habeas corpus will not lie. The penalty for evasion of sentence cannot be affected by an absolute pardon remitting the

unserved penalty for the crime of murder, because the petitioner was convicted for evasion of service of sentence before the pardon and while he was serving said sentence for murder which was still in force. (Alvarez vs. Director of Prisons, L-1809 January 23, 1948, 45 OG 2881;)

And a petitioner for habeas corpus will not lie when the prisoner is being held under process issued by a competent court in pursuance of a lawful, subsisting judgment. The mere loss or destruction of the record does not invalidate the judgment or authorize the prisoner's release. The prisoner's remedy lies in having the record of his case reconstituted; and should reconstitution or a new trial turn out to be impracticable, then that will be the time when appropriate action may be taken to do justice within the law to the prisoner. (Gomez vs. Director of Prisons, L-879, October 2, 1946, 43 OG 4104;)

It has also been held that the failure to deliver any person to the judicial authorities within six hours, while subject to criminal prosecution under article 125 of the Revised Penal Code does not affect the legality of his confinement under a subsisting process issued by a competent court. (Gunabe vs. Director of Prisons, L-1231, January 30, 1947, 44 OG 1244)

And in treason cases, it has been held that where the petitioners are confined by virtue of a charge of treason and they failed to avail themselves of the opportunity to be released on bail, the writ of habeas corpus will not be granted even if their detention prior to the filing of the said charges were without any legal authority. (Matsura, Sr. vs. Director of Prisons, L-1181, February 28, 1947, 44 OG 2199)

A series of cases have shown that where the question of release is academic, the writ of habeas corpus will not lie. Thus where the petitioner's release has been ordered by the Supreme Court in another habeas corpus proceedings, another petition for habeas must be dismissed. (Camasura vs. Provost Marshal, MPC Davao, L-1164, March 13, 1947, 44 OG 2245;) And where the petitioner has already been discharged, the petition is already academic and will accordingly be dismissed. (Restaucio vs. Cornista, L-1995 October 7, 1948;) What can be discussed in the habeas corpus proceedings:

In the habeas corpus proceedings, the only issue is whether the petitioner is entitled to be released. Hence, mere defects of procedure cannot be touched upon in the petition, though it may have the effect in voiding the decision. Correction of procedure can be done only in an appeal or in action for certiorari wherein the trial court is made respondent and is amenable to the orders of the Supreme Court. (Domingo vs. Director of Prisons, L-1229, February 28, 1947, 44 OG 2201;)

A petition for habeas corpus to secure the discharge of one restrained of his liberty by virtue of a judgment is a collateral attack upon the said judgment; and the writ lies only when the judgment attached is absolutely void because the court that rendered it has no jurisdiction; and it does not lie where it is merely voidable by reason of errors or omissions, irregularities, or defects in the judgment. (Talabon vs. Provincial Warden of Iloilo, L-1153 June 30, 1947, 44 OG 4326;)

And whether the petitioners were entitled to amnesty is a question that should be ventilated in the trial court or before the Guerilla Amnesty Commission created pursuant to a proclamation dated September 7, 1946 issued by the President of the Republic of the Philippines. It is not a proper question in habeas corpus petitions. (Gunabe vs. Director of Prisons, L-1231 January 30, 1947, 44 OG 1244;)

How habeas corpus petitions are to be disposed:

Cases of habeas corpus are by their very nature, if remedy is to be effective and there is an earnest desire to avoid a failure of justice, should be disposed without any delay. (Perfecto, J. concurring in Lino vs. Fugoso, L-1159, 43 OG 1214;) The rules of Court contain several provision to guarantee the speedy disposition of habeas corpus proceedings, which are in their nature concerned with a person's liberty, a right so cherished under our constitutional setup.

Retrospect:

The attempt to coordinate the rulings in habeas corpus after the liberation will not be complete if the doctrines thus evolved could not be stated in a nutshell. That will be now attempted.

Habeas corpus has for its objective the testing of the legality of a person's confinement. (Carmona vs. Aldanese, 54 Phil., 896; Tan Ping vs. Collector of Customs, 60 Phil., 542; In re Dick, 38 Phil., 41;) It may be utilized too to test the legality of the proposed expulsion of persons, strangers though they may be in this land. (Lao vs. Fabre, L-1673, October 22, 1948)

But habeas corpus can be utilized only for that purpose and for no other. Other objectives cannot be attained by means of this writ nor even where there was illegal confinement, when the same no longer exists at the time of the petition. And with such a nature, its grant must be immediate, consistent with the purpose of the proceeding and the constitutional guaranty of liberty. With that test in mind, any probable question on habeas corpus can be answered, and with the assurance that cases and precedents can be found to support the conclusion and that the law and the constitution can be an ample source of authority.

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