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80 Phil. 227; *Sta. Ana vs. Maliwat*, 24 SCRA 1018 [1968]). As the evidence of the private respondents failed to prove that they had fully paid (much less "overpaid") their obligations to FNCB, the trial court and the Court of Appeals erred in dismissing FNCB's counter-claim for the recovery of the same.

WHEREFORE, the petition for review is granted. The decision of the Court of Appeals in CA-G.R. CV No. 12027 is hereby annulled and set aside. The Court hereby declares the transaction between the petitioner and private respondents to be a loan with chattel mortgage on the machinery and equipment subject of the Leasing Schedules dated April 30, 1974 and Promissory Note dated May 30, 1976 (Exhs. 21 to 24); orders the private respondents to pay within thirty (30) days after entry of final judgment in this case the sum of ₱1,046,606.58 due the petitioner (per Writ of Execution dated January 4, 1979, Exh. 2) with 14% interest per annum from January 4, 1979 until fully paid; in default of such payment, the petitioner-mortgagee, Investors Finance Corporation (or FNCB Finance), may foreclose its chattel mortgage on the private respondents' machinery and equipment to satisfy the mortgage debt. Costs against the private respondents.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and *Medialdea, JJ.*, concur.

FIRST DIVISION

[G.R. No. 91478. February 7, 1991]

ROSITA PEÑA, *petitioner, vs.* **THE COURT OF APPEALS, SPOUSES RISING T. YAP and CATALINA YAP, PAMPANGA BUS CO., INC., JESUS DOMINGO, JOAQUIN BRIONES, SALVADOR BERNARDEZ, MARCELINO ENRIQUEZ and EDGARDO A. ZABAT,** *respondents.*

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SYLLABUS

1. **MERCANTILE LAW; CORPORATION LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION, HOW DETERMINED.**— In *Philex Mining Corporation vs. Reyes*, this Court held that it is the fact of relationship between the parties that determines the proper and exclusive jurisdiction of the SEC to hear and decide intra-corporate disputes; that unless the controversy has arisen between and among stockholders of the corporation, or between the stockholders and the officers of the corporation, then the case is not within the jurisdiction of the SEC. Where the issue involves a party who is neither a stockholder or officer of the corporation, the same is not within the jurisdiction of the SEC. In *Union Glass & Container Corporation vs. Securities and Exchange Commission*, this Court defined the relationships which are covered within "intra-corporate disputes" under Presidential Decree No. 902-A, as amended, as follows: "Otherwise stated, in order that the SEC can take cognizance of a case, the controversy must pertain to any of the following relationships; (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners or associates themselves."

2. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; ACTION FOR NULLITY OF CONTRACT, WHEN FILED BY A PERSON NOT A PARTY TO THE CONTRACT.**— The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are in effect, written, into the charter. In this sense they become part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.

3. **MERCANTILE LAW; PRIVATE CORPORATIONS; BY-LAWS; DEFINED.**— In *Teves vs. People's Homesite and Housing Corporation*, this Court held: "We note however, in reading the complaint that the plaintiff is seeking the declaration of the nullity of the deed of sale, not as a party in the deed, or because she is obliged principally or subsidiarily under the

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deed, but because she has an interest that is affected by the deed. *This Court has held that a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention.* Indeed, in the case now before Us, the complaint alleges facts which show that plaintiff suffered detriment as a result of the deed of sale entered into by and between defendant PHHC and defendant Melisenda L. Santos. We believe that the plaintiff should be given a chance to present evidence to establish that she suffered detriment and that she is entitled to relief."

4. **ID.; ID.; ID.; QUORUM; EXPLAINED.**— Under Section 25 of the Corporation Code of the Philippines, the articles of incorporation or by-laws of the corporation may fix a greater number than the majority of the number of board members to constitute the quorum necessary for the valid transaction of business. Any number less than the number provided in the articles or by-laws therein cannot constitute a quorum and any act therein would not bind the corporation; all that the attending directors could do is to adjourn.

5. **ID.; ID.; SALE OR OTHER DISPOSITION OF CORPORATE ASSETS; REQUIREMENT.**— Under Section 30 of the then applicable Corporation Law, only persons who own at least one (1) share in their own right may qualify to be directors of a corporation. Further, under Section 28 ½ of the said law, the sale or disposition of all and/or substantially all properties of the corporation requires, in addition to a proper board resolution, the affirmative votes of the stockholders holding at least two-thirds (2/3) of the voting power in the corporation in a meeting duly called for that purpose. No doubt, the questioned resolution was not confirmed at a subsequent stockholders meeting duly called for the purpose by the affirmative votes of the stockholders holding at least two-thirds (2/3) of the voting power in the corporation. The same requirement is found in Section 40 of the present Corporation Code.

6. **CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; WHEN VALID.**— Under Article 725 of the Civil Code, in order to be valid, x x x a donation must be made in a public document and the acceptance must be made in the

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same or in a separate instrument. In the latter case, the donor shall be notified of the acceptance in an authentic form and such step must be noted in both instruments. Non-compliance with this requirement renders the donation null and void. Since undeniably the deed of assignment dated March 8, 1975 in question, shows that there was no acceptance of the donation in the same and in a separate document, the said deed of assignment is thus void *ab initio* and of no force and effect.

APPEARANCES OF COUNSEL

Cesar L. Villanueva for petitioner.
Martin N. Roque for private respondents.

D E C I S I O N

GANCAYCO, *J.*:

The validity of the redemption of a foreclosed real property is the center of this controversy.

The facts as found by the respondent court are not disputed.

"A reading of the records shows that [Pampanga Bus Co.] PAMBUSCO, original owners of the lots in question under TCT Nos. 4314, 4315 and 4316, mortgaged the same to the Development Bank of the Philippines (DBP) on January 3, 1962 in consideration of the amount of ₱935,000.00. This mortgage was foreclosed. In the foreclosure sale under Act No. 3135 held on October 25, 1974, the said properties were awarded to Rosita Peña as highest bidder. A certificate of sale was issued in her favor by the Senior Deputy Sheriff of Pampanga, Edgardo A. Zabat, upon payment of the sum of ₱128,000.00 to the Office of the Provincial Sheriff (Exh. 23). The certificate of sale was registered on October 29, 1974 (Exh. G).

"On November 19, 1974, the board of directors of PAMBUSCO, through three (3) out of its five (5) directors, resolved to assign its right of redemption over the aforesaid lots and authorized one of its members, Atty. Joaquin Briones, 'to execute and sign a Deed of Assignment for and in behalf of PAMBUSCO in favor of any interested party x x x' (Exh. 24). Consequently, on March 18, 1975, Briones executed a Deed of Assignment of PAMBUSCO's redemption right

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over the subject lots in favor of Marcelino Enriquez (Exh. 25). The latter then redeemed the said properties and a certificate of redemption dated August 15, 1975 was issued in his favor by Sheriff Zabat upon payment of the sum of one hundred forty thousand, four hundred seventy four pesos (₱140,474.00) to the Office of the Provincial Sheriff of Pampanga (Exh. 26).

"A day after the aforesaid certificate was issued, Enriquez executed a deed of absolute sale of the subject properties in favor of plaintiffs-appellants, the spouses Rising T. Yap and Catalina Lugue, for the sum of ₱140,000.00 (Exh. F).

"On August 18, 1975, a levy on attachment in favor of Capitol Allied Trading was entered as an additional encumbrance on TCT Nos. 4314, 4315 and 4316 and a Notice of a pending *consulta* was also annotated on the same titles concerning the Allied Trading case entitled *Dante Gutierrez, et al. vs. PAMBUSCO* (Civil Case No. 4310) in which the registrability of the aforesaid lots in the name of the spouses Yap was sought to be resolved (Exh. 20-F). The certificate of sale issued by the Sheriff in favor of defendant Peña, the resolution of the PAMBUSCO's board of directors assigning its redemption rights to any interested party, the deed of assignment PAMBUSCO executed in favor of Marcelino B. Enriquez, the certificate of redemption issued by the Sheriff in favor of Enriquez as well as the deed of absolute sale of the subject lots executed by Enriquez in favor of the plaintiffs-appellants were all annotated on the same certificates of title likewise on August 18, 1975. Also, on the same date, the Office of the Provincial Sheriff of San Fernando, Pampanga informed defendant-appellee by registered mail 'that the properties under TCT Nos. 4314, 4315 and 4316 x x x were all redeemed by Mr. Marcelino B. Enriquez on August 15, 1975 x x x'; and that she may now get her money at the Sheriff's Office (Exhs. J and J-1).

"On September 8, 1975, Peña wrote the Sheriff notifying him that the redemption was not valid as it was made under a void deed of assignment. She then requested the recall of the said redemption and a restraint on any registration or transaction regarding the lots in question (Exh. 27).

"On Sept. 10, 1975, the CFI Branch III, Pampanga in the aforementioned Civil Case No. 4310, entitled *Dante Gutierrez, et al. vs. PAMBUSCO, et al.*, ordered the Register of Deeds of Pampanga x x x to desist from registering or noting in his registry of property

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x x x any of the following documents under contract, until further orders:

'(a) Deed of Assignment dated March 18, 1975 executed by the defendant Pampanga Bus Company in virtue of a resolution of its Board of Directors in favor of defendant Marcelino Enriquez;

'(b) A Certificate of Redemption issued by defendant Deputy Sheriff Edgardo Zabat in favor of defendant Marcelino Enriquez dated August 15, 1975;

'(c) Deed of Sale dated August 16, 1975 executed by defendant Marcelino Enriquez in favor of defendant Rising Yap.' (Original Record, p. 244)

On November 17, 1975, the Land Registration Commission opined under LRC Resolution No. 1029 that 'the levy on attachment in favor of Capitol Allied Trading (represented by Dante Gutierrez) should be carried over on the new title that would be issued in the name of Rising Yap in the event that he is able to present the owner's duplicates of the certificates of title herein involved' (Exh. G).

Meanwhile, defendant Peña, through counsel, wrote the Sheriff asking for the execution of a deed of final sale in her favor on the ground that 'the one (1) year period of redemption has long elapsed without any valid redemption having been exercised'; hence she 'will now refuse to receive the redemption money x x x' (Exh. 28).

On Dec. 30, 1977, plaintiff Yap wrote defendant Peña asking payment of back rentals in the amount of ₱42,750.00 'for the use and occupancy of the land and house located at Sta. Lucia, San Fernando, Pampanga,' and informing her of an increase in monthly rental to ₱2,000; otherwise, to vacate the premises or face an eviction *cum* collection suit (Exh. D).

In the meantime, the subject lots, formerly under TCT Nos. 4314, 4315 and 4316 were registered on June 16, 1978 in the name of the spouses Yap under TCT Nos. 148983-R, 148984-R and 148985-R, with an annotation of a levy on attachment in favor of Capitol Allied Trading. The LRC Resolution No. 1029 allowing the conditioned registration of the subject lots in the name of the spouses Yap was also annotated on TCT No. 4315 on June 16, 1978 and the notice of a pending *consulta* noted thereon on August 18, 1975 was cancelled on the same date.

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No Trial on the merits was held concerning Civil Case No. 4310. In an order dated February 17, 1983, the case was dismissed without prejudice.

Despite the foregoing, defendant-appellee Peña remained in possession of the lots in question; hence, the spouses Yap were prompted to file the instant case."[1]

The antecedents of the present petition are as follows:

"Plaintiffs-appellants, the spouses Rising T. Yap and Catalina Lugue, are the registered owners of the lots in question under Transfer Certificate of Title (TCT) Nos. 148983-R, 148984-R, 148985-R. In the complaint filed on December 15, 1978, appellants sought to recover possession over the subject lands from defendants Rosita Peña and Washington Distillery on the ground that being registered owners, they have to enforce their right to possession against defendants who have been allegedly in unlawful possession thereof since October 1974 'when the previous owners assigned (their) right to collect rentals x x x in favor of plaintiffs' (Record, p. 5). The amount claimed as damages is pegged on the total amount of unpaid rentals from October 1974 (as taken from the allegations in the complaint) up to December 1978 at a monthly rate of ₱1,500.00 'and the further sum of ₱2,000.00 a month from January 1979 until the defendants finally vacate the x x x premises in question; with interest at the legal rate' (Record, p. 6).

"In their answer, defendants Rosita Peña and Washington Distillery denied the material allegations of the complaint and by way of an affirmative and special defense asserted that Peña is now the legitimate owner of the subject lands for having purchased the same in a foreclosure proceeding instituted by the DBP x x x against PAMBUSCO x x x and no valid redemption having been effected within the period provided by law. It was contended that plaintiffs could not have acquired ownership over the subject properties under a deed of absolute sale executed in their favor by one Marcelino B. Enriquez who likewise could not have become [the] owner of the properties in question by redeeming the same on August 18, 1975 (Exh. 26) under an alleged[ly] void deed of assignment executed in his favor on March 18, 1975 by the original owners of the land in question, the PAMBUSCO. The defense was that since the deed of

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[1] Pages 38 to 40, *Rollo*.

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assignment executed by PAMBUSCO in favor of Enriquez was void *ab initio* for being an *ultra vires* act of its board of directors and, for being without any valuable consideration, it could not have had any legal effect; hence, all the acts which flowed from it and all the rights and obligations which derived from the aforesaid void deed are likewise void and without any legal effect.

"Further it was alleged in the same Answer that plaintiffs are buyers in bad faith because they have caused the titles of the subject properties with the Register of Deeds to be issued in their names despite an order from the then CFI, Br. III, Pampanga in Civil Case No. 4310, entitled *Dante Gutierrez, et al. vs. Pampanga Bus Company, Inc., et al.*, to desist from registering or noting in his registry of property x x x any of the above-mentioned documents under contest, until further orders. (Record, p. 11).

"For its part, defendant Washington Distillery stated that it has never occupied the subject lots; hence they should not have been impleaded in the complaint.

"The defendants, therefore, prayed that the complaint be dismissed; that the deed of assignment executed in favor of Marcelino Enriquez, the certificate of redemption issued by the Provincial Sheriff also in favor of Marcelino Enriquez, and the deed of sale of these parcels of land executed by Marcelino Enriquez in favor of the plaintiffs herein be all declared null and void; and further, that TCT Nos. 148983-R, 148984-R and 148985-R, covering these parcels issued in the plaintiff's name be cancelled and, in lieu thereof, corresponding certificates of title over these same parcels be issued in the name of defendant Rosita Peña.

"Thereafter, the defendants with prior leave of court filed a third-party complaint against third-party defendants PAMBUSCO, Jesus Domingo, Joaquin Briones, Salvador Bernardez (as members of the Board of Directors of PAMBUSCO), Marcelino Enriquez, and Deputy Sheriff Edgardo Zabat of Pampanga. All these third-party defendants, however, were declared as in default for failure to file their answer, except Edgardo Zabat who did file his answer but failed to appear at the pre-trial.

"After trial, a decision was rendered by the court in favor of the defendants-appellees, to wit:

> "WHEREFORE, and in view of all the foregoing, judgment is hereby rendered dismissing the complaint filed by the plaintiffs against the defendants and declaring as null and void the following:

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'(a) The resolution of the Board of Directors of PAMBUSCO approved on November 19, 1974 assigning the PAMBUSCO's right of redemption concerning the parcels involved herein;

'(b) The deed of assignment dated March 18, 1975 executed in favor of Marcelino Enriquez pursuant to the resolution referred to in the preceding paragraph;

'(c) The certificate of redemption dated August 15, 1975 issued by Deputy Sheriff Edgardo Zabat in favor of Marcelino Enriquez concerning these parcels;

'(d) The deed of absolute sale dated August 15, 1975 executed by Marcelino Enriquez in favor of the plaintiffs concerning the same parcels; and

'(e) TCT Nos. 148983-R, 148984-R and 148985-R of the Register of Deeds of Pampanga in the name of the plaintiffs also covering these parcels.

'Third-party defendant Edgardo Zabat, in his capacity as Deputy Sheriff of Pampanga is directed to execute in favor of defendant Rosita Peña the corresponding certificate of final sale involving the parcels bought by her in the auction sale of October 25, 1974 for which a certificate of sale had been issued to her.

'Finally, the third-party defendants herein except Deputy Sheriff Edgardo Zabat are hereby ordered to pay the defendants/third-party plaintiffs, jointly and severally, the amount of ₱10,000.00 as attorney's fees plus costs.'"[2]

Thus, an appeal from said judgment of the trial court was interposed by private respondents to the Court of Appeals wherein in due course a decision was rendered on June 20, 1989, the dispositive part of which reads as follows:

"WHEREFORE, premises considered, the judgment of the trial court on appeal is REVERSED. Defendant-appellee Peña is hereby ordered to vacate the lands in question and pay the plaintiffs-appellants the accrued rentals from October, 1974 in the amount of ₱1,500.00 per month up to December, 1978 and the amount of ₱2,000.00 per

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[2] Pages 35 to 38, *Rollo*.

[3] Page 52, *Rollo*.

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month thereafter, until appellee finally vacate (sic) the premises; with interest at the legal rate."

"SO ORDERED."[3]

A motion for reconsideration filed by the appellee was denied in a resolution dated December 27, 1989.

Hence, this petition for review on *certiorari* of said decision and resolution of the appellate court predicated on the following assigned errors:

"First Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT HAD NO JURISDICTION TO RULE ON THE VALIDITY OF THE QUESTIONED RESOLUTION AND TRANSFERS.

Second Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS NO LEGAL STANDING TO ASSAIL THE VALIDITY OF THE QUESTIONED RESOLUTION AND THE SERIES OF SUCCEEDING TRANSACTIONS LEADING TO THE REGISTRATION OF THE SUBJECT PROPERTIES IN FAVOR OF THE RESPONDENTS YAP.

Third Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE RESOLUTION OF RESPONDENT PAMBUSCO, ADOPTED ON 19 NOVEMBER 1974, ASSIGNING ITS RIGHT OF REDEMPTION IS NOT VOID OR AT THE VERY LEAST LEGALLY DEFECTIVE.

Fourth Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF ASSIGNMENT, DATED 8 MARCH 1975, IN FAVOR OF RESPONDENT ENRIQUEZ IS NOT VOID OR AT THE VERY LEAST VOIDABLE OR RESCISSIBLE.

Fifth Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE QUESTIONED DEED OF ASSIGNMENT, DATED 8 MARCH 1975, WAS VOID *AB INITIO* FOR FAILING TO

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COMPLY WITH THE FORMALITIES MANDATORILY REQUIRED UNDER THE LAW FOR DONATIONS.

Sixth Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS YAP ARE PURCHASERS IN GOOD FAITH AND IN FURTHER HOLDING THAT IT WAS TOO LATE FOR PETITIONER TO INTERPOSE THE ISSUE THAT RESPONDENTS YAP WERE PURCHASERS IN BAD FAITH.

Seventh Assignment of Error

THE RESPONDENT COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE TRIAL COURT."[4]

The petition is impressed with merit.

First, the preliminary issues.

The respondent court ruled that the trial court has no jurisdiction to annul the board resolution as the matter falls within the jurisdiction of the Securities and Exchange Commission (SEC) and that petitioner did not have the proper standing to have the same declared null and void.

In *Philex Mining Corporation vs. Reyes*,[5] this Court held that it is the fact of relationship between the parties that determines the proper and exclusive jurisdiction of the SEC to hear and decide intra-corporate disputes; that unless the controversy has arisen between and among stockholders of the corporation, or between the stockholders and the officers of the corporation, then the case is not within the jurisdiction of the SEC. Where the issue involves a party who is neither a stockholder or officer of the corporation, the same is not within the jurisdiction of the SEC.

In *Union Glass & Container Corporation vs. Securities and Exchange Commission*,[6] this Court defined the relationships

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[4] Pages 12 to 13, *Rollo*.

[5] 118 SCRA 602 (1982).

[6] 126 SCRA 31, 38 (1983).

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which are covered within "intra-corporate disputes" under Presidential Decree No. 902-A, as amended, as follows:

"Otherwise stated, in order that the SEC can take cognizance of a case, the controversy must pertain to any of the following relationships; (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners or associates themselves."

In this case, neither petitioner nor respondents Yap spouses are stockholders or officers of PAMBUSCO. Consequently, the issue of the validity of the series of transactions resulting in the subject properties being registered in the names of respondents Yap may be resolved only by the regular courts.

Respondent court held that petitioner being a stranger to the questioned resolution and series of succeeding transactions has no legal standing to question their validity.

In *Teves vs. People's Homesite and Housing Corporation*,[7] this Court held:

"We note however, in reading the complaint that the plaintiff is seeking the declaration of the nullity of the deed of sale, not as a party in the deed, or because she is obliged principally or subsidiarily under the deed, but because she has an interest that is affected by the deed. *This Court has held that a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention.* Indeed, in the case now before Us, the complaint alleges facts which show that plaintiff suffered detriment as a result of the deed of sale entered into by and between defendant PHHC and defendant Melisenda L. Santos. We believe that the plaintiff should be given a chance to present evidence to establish that she suffered detriment and that she is entitled to relief." (Italics supplied.)

[7] 23 SCRA 1141, 1147 (1968).

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(Italics supplied.)

There can be no question in this case that the questioned resolution and series of transactions resulting in the registration of the properties in the name of respondent Yap spouses adversely affected the rights of petitioner to the said properties. Consequently, petitioner has the legal standing to question the validity of said resolution and transactions.

As to the question of validity of the board resolution of respondent PAMBUSCO adopted on November 19, 1974, Section 4, Article III of the amended by-laws of respondent PAMBUSCO, provides as follows:

"Sec. 4. Notices of regular and special meetings of the Board of Directors shall be mailed to each Director not less than five days before any such meeting, and notices of special meeting shall state the purpose or purposes thereof. Notices of regular meetings shall be sent by the Secretary and notices of special meetings by the President or Directors issuing the call. No failure or irregularity of notice of meeting shall invalidate any regular meeting or proceeding thereat; Provided a quorum of the Board is present, nor of any special meeting; *Provided at least four Directors are present.*" (Italics supplied.)[8]

The trial court in finding the resolution void held as follows:

"On the other hand, this Court finds merit in the position taken by the defendants that the questioned resolution should be declared invalid it having been approved in a meeting attended by only 3 of the 5 members of the Board of Directors of PAMBUSCO which attendance is short of the number required by the By-Laws of the corporation. x x x.

"In the meeting of November 19, 1974 when the questioned resolution was approved, the three members of the Board of Directors of PAMBUSCO who were present were Jesus Domingo, Joaquin Briones, and Salvador Bernardez. The remaining 2 others, namely: Judge Pio Marcos and Alfredo Mamuyac were both absent therefrom.

[8] Exhibit "4-A".

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"As it becomes clear that the resolution approved on November 19, 1974 is null and void it having been approved by only 3 of the members of the Board of Directors who were the only ones present at the said meeting, the deed of assignment subsequently executed in favor of Marcelino Enriquez pursuant to this resolution also becomes null and void. x x x"[9]

However, the respondent court overturning said legal conclusions of the trial court made the following disquisition:

"It should be noted that the provision in Section 4, Article III of PAMBUSCO's amended by-laws would apply only in case of a failure to notify the members of the board of directors on the holding of a special meeting, x x x.

In the instant case, however, there was no proof whatsoever, either by way of documentary or testimonial evidence, that there was such a failure or irregularity of notice as to make the aforecited provision apply. There was not even such an allegation in the Answer that should have necessitated a proof thereof. The fact alone that only three (3) out of five (5) members of the board of directors attended the subject special meeting, was not enough to declare the aforesaid proceeding void *ab initio*, much less the board resolution borne out of it, when there was no proof of irregularity nor failure of notice and when the defense made in the Answer did not touch upon the said failure of attendance. Therefore, the judgment declaring the nullity of the subject board resolution must be set aside for lack of proof:

"Moreover, there is no categorical declaration in the by-laws that a failure to comply with the attendance requirement in a special meeting should make all the acts of the board therein null and void *ab initio*. A cursory reading of the subject provision, as aforequoted, would show that its framers only intended to make voidable a board meeting held without the necessary compliance with the attendance requirement in the by-laws. Just the use of the word 'invalidate' already denotes a legal imputation of validity to the questioned board meeting absent its invalidation in the proceedings prescribed by the corporation's by-laws and/or the general incorporation law. More significantly, it should be noted that even if the subject special meeting is itself declared void, it does not follow that the acts of the board therein are *ipso facto* void and without any legal effect. Without the declaration of nullity of

[9] Pages 92 to 93, *Rollo*.

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the subject board proceedings, its validity should be maintained and the acts borne out of it should be presumed valid. Considering that the subject special board meeting has not been declared void in a proper proceeding, nor even in the trial by the court below, there is no reason why the acts of the board in the said special meeting should be treated as void *ab initio*. x x x."[10]

The Court disagrees.

The by-laws of a corporation are its own private laws which substantially have the same effect as the laws of the corporation. They are in effect, written, into the charter. In this sense they become part of the fundamental law of the corporation with which the corporation and its directors and officers must comply.[11]

Apparently, only three (3) out of five (5) members of the board of directors of respondent PAMBUSCO convened on November 19, 1974 by virtue of a prior notice of a special meeting. There was no quorum to validly transact business since, under Section 4 of the amended by-laws hereinabove reproduced, at least four (4) members must be present to constitute a quorum in a special meeting of the board of directors of respondent PAMBUSCO.

Under Section 25 of the Corporation Code of the Philippines, the articles of incorporation or by-laws of the corporation may fix a greater number than the majority of the number of board members to constitute the quorum necessary for the valid transaction of business. Any number less than the number provided in the articles or by-laws therein cannot constitute a quorum and any act therein would not bind the corporation; all that the attending directors could do is to adjourn.[12]

Moreover, the records show that respondent PAMBUSCO ceased to operate as of November 15, 1949 as evidenced by a

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[10] Pages 44 to 45, *Rollo*.

[11] 8 Fletcher *Cyclopedia of the Law of Private Corporations*, Perm, Ed., pages 750 to 751.

[12] Citing Ballantine, page 130.

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letter of the SEC to said corporation dated April 17, 1980.[13] Being a dormant corporation for several years, it was highly irregular, if not anomalous, for a group of three (3) individuals representing themselves to be the directors of respondent PAMBUSCO to pass a resolution disposing of the only remaining asset of the corporation in favor of a former corporate officer.

As a matter of fact, the three (3) alleged directors who attended the special meeting on November 19, 1974 were not listed as directors of respondent PAMBUSCO in the latest general information sheet of respondent PAMBUSCO filed with the SEC dated 18 March 1951.[14] Similarly, the latest list of stockholders of respondent PAMBUSCO on file with the SEC does not show that the said alleged directors were among the stockholders of respondent PAMBUSCO.[15]

Under Section 30 of the then applicable Corporation Law, only persons who own at least one (1) share in their own right may qualify to be directors of a corporation. Further, under Section 28 ½ of the said law, the sale or disposition of all and/or substantially all properties of the corporation requires, in addition to a proper board resolution, the affirmative votes of the stockholders holding at least two-thirds (2/3) of the voting power in the corporation in a meeting duly called for that purpose. No doubt, the questioned resolution was not confirmed at a subsequent stockholders meeting duly called for the purpose by the affirmative votes of the stockholders holding at least two-thirds (2/3) of the voting power in the corporation. The same requirement is found in Section 40 of the present Corporation Code.

It is also undisputed that at the time of the passage of the questioned resolution, respondent PAMBUSCO was insolvent and its only remaining asset was its right of redemption over the subject properties. Since the disposition of said redemption right of respondent PAMBUSCO by virtue of the questioned

[13] Exhibit 19.

[14] Exhibit 7.

[15] Exhibit 8.

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resolution was not approved by the required number of stockholders under the law, the said resolution, as well as the subsequent assignment executed on March 8, 1975 assigning to respondent Enriquez the said right of redemption, should be struck down as null and void.

Respondent court, in upholding the questioned deed of assignment, which appears to be without any consideration at all, held that the consideration thereof is the liberality of the respondent PAMBUSCO in favor of its former corporate officer, respondent Enriquez, for services rendered. Assuming this to be so, then as correctly argued by petitioner, it is not just an ordinary deed of assignment, but is in fact a donation. Under Article 725 of the Civil Code, in order to be valid, such a donation must be made in a public document and the acceptance must be made in the same or in a separate instrument. In the latter case, the donor shall be notified of the acceptance in an authentic form and such step must be noted in both instruments.[16]

Non-compliance with this requirement renders the donation null and void.[17] Since undeniably the deed of assignment dated March 8, 1975 in question,[18] shows that there was no acceptance of the donation in the same and in a separate document, the said deed of assignment is thus void *ab initio* and of no force and effect.

WHEREFORE, the petition is GRANTED. The questioned decision of the respondent Court of Appeals dated June 20, 1989 and its resolution dated December 27, 1989 are hereby REVERSED AND SET ASIDE and another judgment is hereby rendered AFFIRMING *in toto* the decision of the trial court.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and *Medialdea, JJ.*, concur.

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[16] Article 749, Civil Code.

[17] *Uzon vs. Del Rosario, et al.*, L-4963, January 28, 1953, 92 Phil. 530; *Aldaba vs. Court of Appeals*, 27 SCRA 263 (1969).

[18] Exhibit 25.