6 Phil. 600

[G.R. No. 1935. November 06, 1906]

CLARA ALFONSO BUENAVENTURA, PETITIONER AND APPELLEE, VS. THE COMMANDING GENERAL OF THE DIVISION OF THE PHILIPPINES, RESPONDENT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

Judgment having been rendered in this case by the two judges of the Court of Land Registration, S. del Rosario and D. R, Williams, there was no motion for a new trial, and by a bill of exceptions and agreement between the parties that there was no issue of fact between them, there was presented directly to this court the opposition of the commanding general of the Division of the Philippines to the petition of Clara Alfonso Buenaventura that she be declared the owner of a parcel of land, with the building thereon, situated on Corregidor Island, Calles Churruca and Colon No. 2, municipality of San Jose, with an area of 172.82 square meters.

The following facts are admitted by the contestant and stated in the judgment: (1). "That the petitioner has been in possession of this land for more than thirty years, as shown by testimony at the trial, of herself and witnesses, and by the *expediente posesorio* recorded in the Registry o£ Property of Cavite on December 21, 1901." (2) That "in spite of the ownership which she sets up, the petitioner, on the 15th of January, 1903, executed against her will a contract of lease in favor of the commanding general of the Division of the Philippines of this land, after a protest made on the 4th of said month in the municipal building of Corregidor Island and presented on the 8th to the Civil Governor of the Islands." (Bill of exceptions, p. 2.)

The basis of the opposition is as follows: That all the land of Corregidor Island was declared a military reservation by the President of the United States in the executive order of April 16, 1902, and that all land declared by the President of the United States to be a military

reservation is not subject to the legislative action of the Philippine Commission, nor to the effect of the laws of said Commission, nor as a consequence is it within the jurisdiction of any class of courts in the Philippine Islands; it being assumed that all military reservations are expressly excluded from the control granted to the Philippine Commission by the act of Congress of July 1,1902, section 12.

The trial court sets out as the principal basis of its decision in favor of the petitioner the following, literally quoted: "Sectioii 6 of Act No. 627 of the Civil Commission of these Islands enacted February 9 of last year (1903) provides, that lands not exceeding 16 hectares, as is the case herein, lying within military reservations, may be acquired by ordinary ^prescription of ten years, even though they may be considered public lands for failure to perfect their reduction to private ownership by 'composicion' with the Government in due time, in accordance with the legislation then in force concerning appropriation of Government lands." (Bill of exceptions, p. 2.)

But the contestant insists that "the aforesaid act of Congress nullifies all those parts of the acts of the Philippine Civil Commission Numbered 627, 496 enacted on the 6th of November, 1.902, and 809 enacted on the 27th of July, 1903, that grant title's of ownership of land lying on Corregidor Island to all those who had not titles perfected prior to April 11, 1902, or which were declared or confirmed in a private party subsequent to this date by the honorable court in pursuance of the legislation of the Philippine Civil Commission." (Bill of exceptions, p. 3.)

The assignment of errors is limited to the following points: That the trial court erred in holding:

> "1. That a possession of thirty years authorizes the registration of an absolute title in favor of the petitioner.
>
> "2. That ordinary possession for ten years authorizes the registration of a complete and sufficient title in favor of the petitioner.
>
> "3. That the '*informacion posesoria*' recorded in the Registry of Property of Cavite on December 21, 1901, authorizes the registration of title in favor of the petitioner." It is very evident that the trial court did not err in any of these three respects; it did not take into consideration only a possession for ten years or for thirty years, nor only the '*expediente de information posesoria*' for the

> adjudication of the land and the certification of the title of ownership. It took into consideration that the applicant is a native of the Philippine Islands, that the land is not greater than 16 hectares in area, and the possession for more than ten years on the 13th of August, 1898, and has taken into account:

First. Section 14 of the aforesaid act of Congress of July 1, 1902, which in its second part reads as follows:

> "The Philippine Commission is authorized to issue patents without compensation to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight."

Second. Section 6 of Act No. 627 of the Philippine Commission, approved February 9, 1903, is as follows: "The provisions of sections thirty-eight, thirty-nine, forty, forty-one, and forty-two of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,' are hereby made applicable to all lands not more than sixteen hectares in extent within the limits of any military reservation, notwithstanding such lands would be public lands were it not for titles acquired in the manner stated in said sections thirty-eight, thirty-nine, forty, forty-one, and forty-two." In short, land of not more than 16 hectares in area within a military reservation may hereafter be acquired by ten years' prescription, although because of its character as public land it could not heretofore have been acquired by prescriptive title.

This court has nothing to decide concerning the objections raised to such a decision of the Court of Land Registration in accordance throughout with the provisions of law, but the contention of the contestant is that Act No. 627 of the Philippine Commission, upon which the court has based its decision, is contrary to section 12 of the act of Congress.

It will be well to quote this and the following sections referring to public lands:

> "SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or

other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this act.

"SEC. 13. That the Government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: *Provided*, That a single homestead entry shall not exceed sixteen hectares in extent.

"SEC. 14. That the Government "of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized, to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight."

There appears to us to be great weight in the argument contained in the following paragraphs from the brief herein filed by W. H. Lawrence, as *amicus curie*.

"Considering the question from another point of view, we reach the same conclusion. Let us suppose, for the sake of argument, that at the time when the act of Congress of July 1, 1902, was passed, the land subject of the present action

had not been converted from public domain to private property, and let it be admitted hypothetically that section 6 of Act No. 627 and paragraph 6 of section 54 of Act No. 926 should be interpreted, not as rules of evidence but as general grants of public lands. As such grants they are valid and authorized by Congress. This will clearly appear from a careful examination of sections 12, 13, and 14 of the Philippine Bill. Section 12 excepts from the general grant of pubjic lands to the Government of the Islands all those which the President may reserve for military purposes. Section 13 provides for the alienation of such public agricultural lands as are unoccupied and to which private parties have not acquired partial or imperfect rights. Section 14 authorizes the Government of the Philippine Islands to perfect the titles of such persons as have complied partially with the requirements for the grant of public lands, and the titles of those natives whose mere possession antedates the 13th day of August, 1898.

"It is to be noted that in section 13 Congress prohibits the alienation of purely public lands within military reservations, using the phrase 'in accordance with the provisions and limitations of this act while in section 14, which authorizes the completion of inchoate titles, there is no mention of limitations or exceptions whatever.

"The evident intention of Congress was to recognize three classes of lands in these Islands: (1) Lands of private ownership; (2) lands of purely public character; and (3) lands occupied or claimed, with some semblance of equity, by private parties, but in respect to which there exists no known grant from the Government. It was the purpose of Congress to reserve a portion from the second class for military purposes, and to convey the rest to the Government of £he Philippine Islands for the benefit of the people of the Islands. With respect to the third class, Congress directed that patents should be issued to the occupants who were established thereon or to persons who had acquired equities therein, and that the ownership of such occupants and equitable owners of said lands should be confirmed. Section 54 of Act No. 926 and section 6 of Act No. 627 were intended to advance and carry out this purpose, and in ratifying Act No. 926, Congress, as well as the President, confirmed this intention and the means adopted for carrying it into effect.

"To assert that Congress had the intention of authorizing the confirmation of inchoate titles in the native residents of Bulacan and to refuse a like privilege to

> the residents of Corregidor Island is to suppose unjust, illogical, unnatural, and very unequal legislation, and to doubt the beneficent purposes of the American nation toward the Filipino people. Some of the military reservations were established before the Philippine bill was passed, some have been chosen since that date, and it is probable that others will be selected hereafter. Is it possible that Congress could have intended to destroy the possessory and equitable rights of occupants within the limits of the old reservations and t6 confirm such rights in favor of those who live on reservations established subsequent to the date on which the law of public lands went into force? Can we attribute to Congress the intention of extending their favor .to some Filipinos and of refusing it to others in like conditions, determining the selection by chance or in accordance with geographical limitations?"

As a matter of fact, within the limits of a military reservation already established or to be established hereafter, there may be found land of private ownership, with a perfect and complete title, or land which has not yet passed to private ownership, but which is in the possession of a private party, or to which the private party has an initial, imperfect, and incomplete title.

There are two cases. In the first case, if within the limits of a military reservation there is land of private ownership with a perfect and complete title, the contestant himself recognizes that it can not be comprised in the reservation, for in his brief he says that the laws of the Philippine Commission are ineffectual to confer titles of ownership of land situated on Corregidor Island "upon those who had not *absolute* titles prior to the 11th day of April, 1902;" from which it may be inferred that such laws would not be ineffectual if the titles were *absolute*, and consequently that the Philippine Commission is competent to enact laws providing that when a military reservation is announced, an owner of land comprised therein may object to its being included. For this purpose, it is provided in Act No. 627 that the Governor-General give due notice of the reservation to the judge of the Court of Land Registration, advising him that all lands, buildings, and rights in real property of private parties included within the described boundaries (of the reservation) must immediately be brought within the law of registration of property and be registered as such law provides (sec. 2). And in section 1 it is provided that such lands "as are not declared public lands shall be registered in accordance with said law." This is the first application of the control or administration which the Congress of the United States has granted to the Government of the .Philippine Islands.

The treaty of Paris not only safeguarded the right of ownership, but also such rights as pertain in accordance with law to the peaceful possessor of property of all kinds, and Congress in the said law, in the second paragraph of section 14, authorized the Philippine Commission—and this is the second case—to convert possession into ownership, or, in other words, "to issue patents without compensation to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth day of August, eighteen hundred and ninety-eight." Public land "before and on the thirteenth day of August, eighteen hundred and ninety-eight," was public land before the treaty of Paris and before any military reservation, and yet possession of this public land on or before the 13th of August, 1898, was sufficient so that after the act of Congress it might be converted into private property and excluded from any reservation which might be established.

If for the sole reason of being now found within the limits of a military reservation, land is free from the control and disposition of the Insular Government, we are unable to understand how the Insular Government or the Philippine Commission can carry into force the provisions of the act of Congress contained in the three sections above quoted.

With like effect as possession existing on or before the 13th of August, 1898, Congress has taken into consideration the applications for titles to public lands presented before the change of sovereignty and which were then pending award or "*composicion*" or issuance of patent, such applications, being prior to the treaty of Paris and before the possibility of any reservation, and being considered by Congress an initial right or an imperfect title, in accordance with section 14 of the act of Congress, might be perfected and converted into an effective right and a perfect title of ownership. It is not only those public lands which remain after deducting the assignments for military reservations or for other purposes which fall within the control or administration of the Insular Government. Even such public lands as are found within the limits of a reservation, military or otherwise, if on or before the 13th day of August they were in possession of a native and did not exceed 16 hectares in area, fall or remain under the control and administration of the Insular Government, in order that the Philippine Commission may, in accordance with the law of Congress, exclude them from such reservation and issue with respect to them free patents or certificates of ownership.

Therefore, the final exception of section 12, "except as provided in this act," is not the same exception contained in the foregoing text of the section, "except such as shall be designated for military reservations," etc., but refers to the exceptions or limitations contained in the

other sections of the act relative to public lands.

In addition to the right of ownership and the right of possession and other rights in real property of private character safeguarded by the treaty of Paris, Congres&has placed at the disposition and under the control of the Insular Government of the Philippines, to be converted into a right of private ownership, the actual visible possession on or before the 13th of August, 1898, and the right to a title or title unperfected at the time of the change of sovereignty, this possession and right existing prior to the treaty of Paris, by virtue of the act of Congress, established as private the public lands conveyed by Spain to the United States in said treaty. Thus it is that the action and the powers of the Government and of the Commission embrace all the public lands in the Philippine Islands, so that by means of laws and orders there may be carried out the intention of Congress that from the public lands which are to constitute reservations, military or otherwise, as well as from the rest which are to be at the free disposition and administration of the Insular Government, there may be segregated those parts of the public lands to which there is proven either a right of possession or an application for title prior to the change of sovereignty.

We therefore affirm in all respects the judgment appealed from. So ordered.

Torres, Mapa, and *Johnson, JJ.,* concur.

DISSENTING

CARSON, J.:

I dissent.

This is an application for adjudication and registration of a certain tract of land and improvements thereon, under the provisions of Act No. 496, known as “The Land Registration Act.”

There is no dispute as to’the facts, and the decision of the Court of Land Registration is reported directly to this court under the provisions of section 14 of Act No. 496.

The following are the pertinent facts as found by the trial court, and under the provisions of section 14 of Act No. 496 are the facts of the case as submitted to this court for its consideration: (1) That the applicant had been in possession of the land in question for more

that thirty years prior to the institution of these proceedings, as shown by the testimony of herself and her witnesses, and by the possessory proceedings (*expediente posesorio*) recorded in the Registry of Property in Cavite on December 21, 1901; (2) that this land is situated on the Island of Corregidor and is less that 16 hectares in extent; (3) that the entire Island of Corregidor was set apart and reserved for military purposes by the President of the United States under an order dated the 11th day of April, 1902; (4) that the land in question before being reduced to possession by the applicant or her predecessors in interest was public agricultural land.

It is contended that the title to the land in question should be adjudicated and registered in favor of the applicant as against the Government of the United States by virtue of—

(1) Possession for thirty years, that being the period prescribed by Spanish law for the acquirement of prescriptive title to real estate;

(2) Presumed grant;

(3) Registry of applicant's possessory proceedings in the Registry of Property for the Province of Cavite on December 21,1901;

(4) The provisions of section 6 of Act No. 627 of the Philippine Commission;

(5) The provisions of subsection 6, section 54 of Act No. 926 of the Philippine Commission; and

(6) The provisions of the treaty of Paris.

I am of opinion that the judgment of the lower court can not be sustained on any of these grounds and that title to the land in question has never vested in the applicant.

(1) and (2): The invalidity of the applicant's claim of title based upon either the first or second grounds, appears to be conclusively settled by the as yet unpublished decision of this court in the case of Mateo Cariño *vs*. The Insular Government,[1] No. 2746, rendered December 6, 1906, as will appear from the following citations:

> "The petitioner presented no documentary evidence of title, except a possessory information obtained in 1901. By the provisions of the Mortgage Law under which this possessory information was obtained (art. 394) it produced only those

effects which the laws give to mere possession.

"The petitioner not having shown any title from the Government, and the land being agricultural, the case is governed by the decisions of this court in the cases of Valenton *vs*. Murciano[1] (2 Off. Gaz., 434), Cansino *vs*. Valdez[2] (4 Off. Gaz,, 488), and Tiglao *vs*. The Insular Government[3] (4 Off. Gaz., 747). In these cases it was held that mere possession of land such as that in controversy in this case would not give the possessor any title thereto as against the Government. In other words, that the statute of limitations did not run against the Government. In other words, that the statute of limitations did not run against the State in reference to its agricultural lands.

"The petitioner, however, insists that although the statute of limitations as such did not run against the Government of Spain in the Philippine Islands, yet a grant is to be conclusively presumed from immemorial use and occupation. To say that the presumption of a grant is a presumption of law is, in our opinion, simply to say that it amounts to a statute of limitations; and for a court to hold that the statute of limitations does not run against the Government as to its public agricultural lands, and at the same time to hold that if a person has been in possession of such lands for thirty years it is conclusively presumed that the Government had given him a deed therefor, would be to make two rulings directly inconsistent with each other.

* * * * * * *

"The petitioner relies upon the case of The United States *vs*. Chaves (159 U. S., 452) and the case of The United States *vs*. Chaves (175 U. S., 509). In the case of Uaye *vs*. The United States (175 U. S., 248) the court said at page 261:

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" 'But this presumption is subject to the limitation that where title is claimed from a deed which is shown to be void, it will be presumed that there was an independent grant (Smith *vs*. Highbee, 12 Vt., 113),,or where surrounding circumstances are inconsistent with the theory of a grant. (Townsend *vs*. Downer, 32 Vt., 183.)

" 'The substance of the doctrine is that lapse of time may be treated as helping

out the presumption of a grant, but where a void grant is shown it affords no presumption that another valid grant was made. Nor does such presumption arise if the surrounding circumstances are incompatible with the existence of a grant. In the case under consideration we can not find any evidence which justifies us in believing that a legal grant can have been made, and under those circumstances we can not consider possession since the date of the treaty as dispensing with the requirements that the title, if not perfect at that time, was one which the claimant would have had a lawful right to make perfect, had the territory not been acquired by the United States.'

* * * * * * *

"But in any event, and whatever the law may be elsewhere, it seems clear that this doctrine of presumptive grant can not apply to the Philippines in view of the Spanish legislation for the Indies. From time to time there were promulgated laws which required the persons in possession of public lands to exhibit their titles or grants thereto. If these titles or grants were found to be good, they were confirmed, but if they were not, or. if the persons had no titles or grants at all, they were evicted from the land. For example, in law 14, title 12, book 4, Compilation of the Laws of the Indies, it is stated:

" 'We therefore order and command that all viceroys and presidents of pretorial courts designate, at such times as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive rights, shall be protected, and all the rest shall be restored to us to be disposed of at our will.'

"In the royal cedula of October 15,1754, it was provided 'that any and all persons who, since the year 1700, and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not the same shall be cultivated or tenanted, may, either in person or through their attorneys or representatives, appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. Said subdelegates will designate as the period within which such documents must be presented a term sufficient in length and proportionate to the distance the interested party may have to travel

for the purpose of making the presentation. Subdelegates will at the time warn the parties interested that in case of their failure to present their title deeds within the term design nated, without a just and valid reason therefor, they will be deprived of and evicted from their lands, and they will be granted to others.'

"In the regulations of June 25,1880, it was provided as follows:

"'ART. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in it, reassert the ownership of the State over the lands, and will, after fixing the value thereof, proceed to sell at public auction that part of the same which, either because it may have been reduced to cultivation or is not located within the forest zone, is not deemed advisable to preserve as the State forest reservations.'

"In the royal decree of the 13th of February, 1894, published in the Official Gazette of Manila on the 17th of April, 1894, it is provided in article 4 as follows:

" 'ART. 4. The absolute title to all agricultural land which may have been capable of composition (*compocision*) with the State under the royal decree of the 25th, of June, 1880, in any case where such composition has not been petitioned for at the date upon which this decree shall be promulgated in the Gazette of Manila, will be understood as having reverted to the State. In no manner or time will any claim prevail which might be formulated for such lands by those who may have been in position for composition without having undertaken to do so prior to the date indicated.'

"In view of these provisions of the law, it seems to us impossible to say that as to the public agricultural lands in the Philippines there existed a conclusive presumption after a lapse of thirty or any other number of years that the Government of Spain had granted to the possessor thereof a legal title thereto."

(3): That the issuance and registry of a possessory information in 1901 gave to the applicant no new or additional right in the land in question and did not vest title in her will be manifest from a consideration of the nature and effect of these proceedings and the

provisions of the Mortgage Law touching this subject-matter. “Possessory informations” are granted in ex pwrte proceedings before a justice of the peace or other local official of like category, without notice except as to adjacent land holders,, and are always granted “without prejudice to third persons ;” their registry serves only as notice of the fact that such proceedings were ha4, and “prejudices or favors third persons only with regard to the effects which the laws attribute to possession.” In the case of Pablo B. Trinidad *vs*. Lucas Ricafort et al.[1] (5 Off. Gaz., 196), this court made use of the following language:

> “The defendant, Antonio Boncan, on the 11th of November, 1904, bought from the defendant, Lucas Ricafort, one of the tracts of land described in the complaint for the sum of 1,300 pesos, there being recorded in the deed the right of the vendor to purchase the property within two years from the said date, and the defendant, Boncan, claims that when he bought this piece of property the possessory information therein referred to had been inscribed in the Registry of Property in the name of Lucas Ricafort, his vendor, and that in making the purchase he relied upon such information. We have seen that at the time Lucas Ricafort was not, in fact, the owner of all the property conveyed by him to the defendant, Boncan, and the question is? What effect had the inscription of the possessory information in his name upon the rights of the other heirs of Doroteo Ricafort?
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> “Article 33 of the Mortgage Law provides as follows:
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> ‘The record of instruments or contracts which are null in accordance with the law are not validated thereby.’
>
> “Article 34 of the same law provides that a purchaser from one who appears from the registry to be the owner of the property acquires, under certain circumstances, a good title thereto, although the vendor may not be, in fact, the owner.
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> “That part of the article so providing can have no application to this case because in the same article is found the following statement: ‘The provisions of this article may at no time be applied to the instrument recorded in accordance with the provisions of article 390, unless the, prescription has validated or secured the interest referred to therein.’

> "Moreover, article 394 of tne same law provides in part as follows: 'Entries of possession shall prejudice or favor third persons from the date of their record, but only with regard to the effects which the law attributes to mere possession.'
>
> "The defendant, Boncan, is therefore not protected by the fact that a possessory information was inscribed in the Registry of Property in the name of his grantor."

Article 389 of the Mortgage Law makes it a condition precedent to the presentation in court of any document affecting real estate that it be recorded in the Registry of Property. So few titles of ownership were recorded, and the practical difficulties in securing registry were so great that articles 390 and 394 of the law provided for the registry of mere physical possession, and permitted the introduction in evidence of entries of "possessory proceedings" had in accordance with the rules therein prescribed. As is shown above, however, such proceedings confer no title whatever upon the applicant, and their only effect is to enable him to record subsequent transactions affecting his right in the property, to present the record of those proceedings in evidence, and to maintain his prescriptive title when possession ripens into ownership after the lapse of the prescriptive period prescribed by law.

It is manifest, therefore, that the registry of these proceedings is no more than an annotation of applicant's possession of the property, and gives to her no title as against the State either at the date of such annotation or at any time thereafter.

(4): Title to the land in question did not vest in the applicant by virtue of the enactment of section 6 of Act No. 627, because the Philippine Commission did not have authority thus to dispose of public lands—that is, lands of the United States—situated within a military reservation which had been designated by the President of the United States prior to the enactment of that act.

It is not contended that the Philippine Commission had any authority to dispose of the lands or property of the United States in the Philippine Islands other than by Tirtue of "the Philippine bill," an act of Congress enacted July 1,1902. Section 12 of that act is as follows:

> "That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other

> property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are, hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this act."

The exception of land or other property of the United States within military reservations,.from land and other property of the United States placed under control of the Government of these Islands, is so explicit and so sweeping in its terms that it would seem to preclude discussion.

This section contains the general grant of control over lands and other property of the United States upon which the Government of the Philippine Islands must ultimately rely in undertaking to administer all such property, and the remaining sections of the act dealing with this subject-matter are no more than additional limitations and restrictions upon the general grant and directions as to how it should be exercised.

It is said, however, that the authority of the Philippine Commission to administer and control the land in question and to vest title therein in the applicant is to be found in section 14 of the act.

Section 14 of the Philippine bill is as follows:

> "That the Government of the Philippine Islands is hereby authorized and empowereft to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their titles to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for Jthe acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight."

It is contended that the provisions of the first paragraph of this section are in no wise dependent on the general grant of authority in section 12 or limited by the exception as to

military reservations contained therein, because as it is said the lands to which it refers are not in fact public lands in the true sense of the word, but lands in which the occupant has acquired an equitable title as against the Government by virtue of long continued or immemorial possession or otherwise. But I think it has been shown in accordance with the general doctrine laid down by this court in such cases, that the mere possession of public agricultural lands for however long a period of time prior to the transfer of sovereignty from Spain to the United States does not give the occupant an equitable or an imperfect title as against the United States; and therefore even were we to admit the authority of tfre Commission to vest title in occupants of public lands within military reservations, under the provisions of the first paragraph of this section, the applicant in this case can not set up a claim by virtue of such legislation.

But it is contended that even though that portion of section 14 of the Philippine bill which authorizes the enactment of rules for the perfecting of titles did not authorize the Commission to vest title in the applicant under the provisions of section 6 of Act No. 627, such authority may be found in the latter part of said section 14 which provides for the issuance of patents to tracts of land not,more than 16 hectares in extent to natives in possession of public lands prior to or on the 13th of August, 1898.

The provisions of this section touching free patents are in no wise a recognition of a right in the settler, and are in truth a generous gift to those native inhabitants of these Islands who are benefited thereby. If they had been intended as a recognition of a right, they would not have been limited to tracts not more than 16 hectares in extent, nor denied to claimants other than native settlers.

It can not be contended therefore that the lands affected by these provisions are not lands of the United States in the sense in which those words are used in section 12 of the act, nor that Congress “having in mind the equitable or imperfect titles of the occupants, could not have intended” to limit these provisions of section 14 by the exception contained in the general grant.

The reasons of public policy which dictated the retention of *direct* control in the hands of the Government of the United States of lands and property of the United States within military reservations are so apparent that it does not seem necessary to set them out at this time, but in construing this statute it is proper and necessary that these reasons should be kept clearly in mind. Reading section 14 together with section 12, I am unable to discover any reason why the lands mentioned therein should be held to be unaffected by the express

exception contained in the general grant as to lands of the United States situated within military reservations.

I am of opinion, moreover, that the authority to grant free patents to "public lands" contained in section 14 of the act of Congress could not be interpreted so as to authorize the Commission to grant a free patent to lands within a military reservation, even though no express restriction was contained in the act itself.

The words "public lands" are habitually used in our legislation to describe those lands belonging to the Government which are subject to sale or other disposition (Newhall *vs*. Sanger, 92 U.S., 761); "there is a clear distinction between public lands and lands that have been severed from the public domain and reserved from sale or other disposition under general laws. Such a reservation severs the land reserved from the mass of the public domain, and appropriates it to a particular use. * * * The reservation of the lands in question is therefore a disposal of them, so far as the public domain is concerned." (U. S. *vs*. The Tigh Valley Land and Live-Stock Company, 76 Fed. Rep., 693, 694)

Laws relating to public lands do not extend to lands which have been previously appropriated or reserved for special uses, unless they are specifically mentioned in the law itself; and whenever a tract of land has been once legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; *and no subsequent law or proclamation with reference to the public lands shall be construed to embrace it or to operate upon it.* (See Wilcox *vs*. Me-Connel, 13 Pet., 498, 513; 26 Am. & Eng. Ency. of Law, pp. 222-223, and cases there cited.)

The Island of Corregidor was designated as a military reservation prior to the enactment of the act of Congress under which the applicant claims a right to a free patent. Section 14 of that act contains no specific provision making it operative as to the land to which she claims title, or to any of the public land within the military reservation on Corregidor Island; hence in accordance with the doctrine laid down in the above-cited authorities, its provisions could not be held to embrace these lands, even were we to hold that the express exception contained in section 12 is not applicable thereto.

(5): The reasons advanced for denying to the Commission authority to vest title in the applicant to lands of the United States within a military reservation by virtue of section 6 of Act No. 627 apply with equal force to the provisions of subsection 6 of section 54 of Act No. 926; and pf course the implied approval of Congress of this latter act can not be taken as

giving new or additional force and effect to any part thereof which is in conflict with or unauthorized by the Philippine bill.

(6): That the treaty of Paris gave the claimant any higher or better right to possession or ownership in the land in question than .she had prior thereto is not borne out by the provisions of article 8 of that treaty, which declares that "property or rights which by law belong to the peaceful possession of property of all kinds" shall not be impaired, but does not give the possessor any higher or better right than he had prior to the transfer of sovereignty. As we have seen, the applicant had no claim of title whatever as against the former sovereign and therefore she has no such claim against the new sovereign unless it be by virtue of something arising after the ratification of the treaty.

I have discussed the questions involved in this application at some length, because it appears that this is a test case, the decision of which is to determine the actions of the respondent in regard to a great number of similar applications throughout the Islands, and for the same reason I have quoted extensively from decisions of this court which have not yet been published, instead of referring to them by title and number. In conclusion, it may not be improper for me to observe that while I am convinced of the right of the Government of the United States to reserve to itself full, complete, and dweeb control of all public lands within military reservations and that such right has in fact been exercised, I do not accept the gratuitous assumption of counsel for the applicant that the Government will be any less just or less generous in its treatment of native settlers upon its military reservations than is the Government of the Philippines in its treatment of native settlers upon those public lands over which it lawfully exercises its delegated authority.

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[1] See Vol. VII, Phil Rep.

[1] 3 Phil. Rep., 637.

[2] Page 320, supra,

[3] See Vol. VII, Phil. Rep.

[1] See Vol. VII, Phil. Rep.

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