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[G. R. No. 2646. July 25, 1907]

MARIA ROURA AND JUAN BOURA, PETITIONERS AND APPELLANTS, VS. THE INSULAR GOVERNMENT, RESPONDENT AND APPELLEE.

D E C I S I O N

ARELLANO, C.J.:

The plaintiffs petitioned for registration of the title of ownership to a parcel of land having an area of more than 2,000 square meters, situated in the barrio of Sibul, town of San Miguel de Mayumo, Province of Bulacan.

The Insular Government objected thereto on the ground that it was public land.

The plaintiffs allege their hereditary right, and support it by the will and testament of their father, Juan Roura, by virtue of which they succeeded ,in the possession of the land which their father had acquired.

Possession was obtained by Juan Roura by virtue of bill of purchase and sale executed in a public instrument in his favor on the 24th of March, 1885, by Jose Mercado, the former owner of the land.

Jose Mercado acquired the land by virtue of a composition with the Government, which granted him the title thereto on the 19th of October, 1885.

It results, therefore, that in spite of the fact that the land was sold before the title had been issued, it was bought by Juan Roura from a party who had acquired.it from the Government by a sufficient title, namely, by composition as authorized by the *Leyes de Indias*, and regulated by the royal decree of June 25, 1880.

However, according to the conclusions set forth in the judgment, it appears:

> "That from the evidence adduced by both parties in the suit the fact has been shown that the land in question, or a portion thereof, had been adjudicated on November 9, October 19, and September 25, 1885, to Regino Pengson, Jose Mercado, and the parish priest of San Miguel de Mayumo, respectively, by means of titles of ownership issued the above-mentioned dates by the late *direccion de administracion civil* of these Islands, in favor of the said three different grantees.
>
> "It is likewise an unquestionable fact, as results from the evidence, that Regino Pengson, one of the three above-named grantees, presented his claim before the *direccion general de administracion civil* in order to enforce his right and the title he had obtained to the land which had been adjudicated, presumably excluding, considering the nature of the decision, the other two holdings by similar title. In these same proceedings an order was issued by the Governor-General, on March 5,1886, declaring the said three titles null and void, and further declaring that the Sibul Springs, included within the land described in two of the titles, is public property, and for this reason it belongs to the State. This is the actual wording of the aforesaid order." (B. of E., 6.)

It appears, therefore, that the title of ownership obtained by composition from the Spanish Government and issued in favor of Jose Mercado on the 19th of October, 1885, was declared null and void by the Governor-General of the Philippine Islands by his order of the 5th of March, 1886.

Said order was forwarded to the civil governor of Bulacan on the 15th of the same month and year with instructions to cancel the entries made in the record of the said titles, and to recover the possession.

The enforcement of the above order was intrusted to the local officer at San Miguel de Mayumo and he demanded the surrender of the respective titles, but the holders thereof replied in the following manner: The parish priest of San Miguel de Mayumo stated on the 22d of March, 1886, that his title deed was lost; Jose Mercado replied on the 23d of the same month and year that some time before he had delivered his title to the person to whom he had sold the land; and Regino Pengson stated on the same, date that his title was attached to the record of the proceedings instituted by reason of his claim in the *direccion general de administracion civil*. (B. of E., 6, T.)

The result is, therefore, that since the 23d of March, 1886-namely, one day before the expiration of one year from the sale to Juan Roura, on March 24, 1885-Jose Mercado was aware that the title issued to him by composition by the *direccion general de civil,* on October 19, 1885, had been declared null and void by the Governor-General of the Islands on March 5, 1886, and for this reason he had been requested to surrender his title to the Government.

The title by composition granted by the Government to Jose Mercado was a free one, for which he was only required to pay 2 pesos and 31 centavos as charges for the survey and demarcation of the land, and for the issuing of the document of title.

According to the other conclusions of the judgment appealed from it also appears:

> "That by reason of the claim filed by Regino Pengson to enforce the title to said land, which the Government had issued to him, or at least to a portion of the same which embraced the Sibul Springs, it has been disclosed in the record of the proceedings that the land within which the springs are located had been adjudicated, not only to Mercado but also to Pengson, the petitioner, a fact which was due to the error committed by the acting assistant surveyor of the department of forestry, when a survey of the land was made by him after a short interval. This error gave rise to the issuance of title not only to the persons named above but also to Hernandez, the parish priest.The lands described by the expert and stated in the grants did not agree with the actual conditions of the land, and the result was that the springs were included not only in the title issued to Mercado, the legal representatives of whom are now the applicants claiming to be the owners of the springs, but were also included in the grant made to Pengson, who long previously had filed his claim, according to the official record alluded to above, which claim was revived by his heir in the proceedings followed before this court, although her application was later on withdrawn.
>
> "The Government, upon learning of its error, through Pengson's claim, set aside the resolution and declared null and void not only the titles issued but also the "whole proceedings in connection therewith, and at the same time disqualified the expert who had made the survey, reserving,however, the right of the interested parties to institute new proceedings for composition of the land

> which they had formerly claimed. This right was not, however, exercised by any of them." (B. of E., 9,10.)
>
> Lastly, Maria Roura, as the daughter and heir to Juan Roura, who purchased the land adjudicated to Jose Mercado, and now one of the applicants, was herself demanded on the 29th of October, 1890, to surrender the title, and her reply to the go foernadorcillo of San Miguel de Mayumo was, "that while her father lived, she often heard him speak of the title, but at that date she was ignorant of the where abouts of the same." (B. of E., 12.)

In consideration of the above facts and of the legal principles stated in the conclusion of the decision of the Court of Land Registration ;

> "The title issued by the late *direction general de administration civil* of these Islands in favor of Jose Mercado being null and void, as it has been shown, the bill of sale executed by the latter to Juan Roura is likewise null and void, and the applicants have not acquired by inheritance any right of dominion over the land in question."

And it was further decided by the court—

> "That the opposition offered by the Insular Government should be sustained. The adjudication and registration asked for by Maria and Juana Roura is hereby denied.No costs will be allowed in this court." (B, of E., 11.)

Three errors are assigned by the appellants in the above judgment:

> "I. That the Court of Land Registration erred in declaring null and void the title of ownership by composition issued to Jose Mercado, on the 19th of October, 1885, to the parcel of land the registration of which is petitioned for.
>
> "II. That the Court of Land Registration also erred in declaring null and void the deed of conveyance executed on the 4th of March, 1885, by Jose Mercado to Juan Roura,the person from whom the applicants derived their title to said parcel of

land.

"III. That the Court of Land Registration also erred in considering facts which have not been the subject of evidence at the hearing, in order to deny the actual possession of the applicants, as well as that of their principal,over the land in controversy."

I.
NULLITY OF THE TITLE BY COMPOSITION.

1. The title by composition was presented by the applicants as evidence. Its tenor is as follows:

> "OFFICE OF THE DIRECTOR GENERAL DE ADMINISTRACION ClVIL.
>
> "Whereas Don Jose Mercado has petitioned for composition with the Government over two parcels of land which he holds within the limits of the town of San Miguel de Mayumo, Province of Bulacan, the location, area, and boundaries of which are as follows (here follows their description), and since by virtue of an order issued by this office on the 7th of September, 1885, the ownership of the said parcels of land has been adjudicated gratuitously to the applicant, in pursuance of the provisions now in force,the sum of 2 pesos and 31 centavos having been paid by him to the Government as legal fees, I hereby issue this title in order that by virtue thereof Don Jose Mercado be considered the lawful owner of the two aforesaid parcels of land. This title shall be recorded in the *inspeccion general de montes* and thereafter presented to the chief of the province for registration in accordance with the provisions of the circular

dated December 6, 1881, in order that the possession which becomes legalized by the present title may be ratified and published by notices and oral proclamations *(bandillos)*.

"Given at Manila on this the nineteenth day of October,1885.

(Signed) "V.BARRANTES."

2. The record of the case contains the following decree of the Governor-General of these Islands dated March 5,1886, submitted as evidence by the representative of the Government:

"DIRECCION GENERAL DE ADMINISTRACION CIVIL,

"Manila, March 15, 1886.

"H. E. the Governor-General having been informed by this bureau of the proceedings instituted by D. Jose Fores on behalf of D. Regino Pengson, regarding a claim for lands granted by composition in the *barrio* of Sibul, town of San Miguel de Mayumo: Whereas the land granted to the said Pengson as well as the lands granted to Jose Mercado and to the parish priest of San Miguel do not agree as to their location, area, and boundaries with the description contained in the titles issued by this office under date of November 9, *October 19*, and September 25, of last year, respectively; and that the said differences arise from errors committed by D. Jose Moreno, the land surveyor, when surveying the land as acting assistant inspector of the bureau of forestry. Whereas the

Sibul Spring has never been known as private property nor is the land within such category; rather on the contrary, the said medicinal waters have been utilized without any obstacle or hindrance whatever, not only by the residents of the town but by the public generally, as shown, among other things, by a certificate from the municipal council of San Miguel de Mayumo, and public opinion confirms it unanimously and universally. Whereas both the *inspeccion general de montes* and this *direccion general* have been mislead by the aforesaid expert for the purpose of causing them to issue, as they did, titles of ownership by composition, to land adjoining the Sibul Spring, in accordance with the demarcation made by him, inducing the belief that the spring was included within either of said titles, and that the public and open zone necessary to the utilization of all waters had disappeared. Considering that, the three aforesaid proceedings are null and void from their commencement in view of the fact that the survey and demarcation of the land described therein and the plans attached thereto are not true, and that in consequence thereof the titles issued do not define the lands such as they in reality are; considering that the expert Jose Moreno is responsible for this discrepancy, and that when called upon to account for his errors he did not furnish a satisfactory explanation,his errors being less pardonable when the fact is considered that the parcels of land referred to are comparatively small and their survey was made within a very short interval from the one to the other, suspicion is thus raised that such editors were not simply the result of negligence, but were willfully and knowingly committed; and considering that it having been once proven, as is now the case, that the dominion over

the medicinal waters of Sibul does not pertain to a private individual but to the Government, it is necessary that the administration undertake to construct buildings and establish rules and regulations which the conditions of the country, hygiene, and humane sentiments demand, thus contributing to encourage the use of such health-giving waters: H. E. the Governor-General, under date of the 5th instant has been pleased to direct as follows: 1. It is hereby declared that the spring of minero-medicinal waters of Sibul has always been public property,and that it therefore belongs to the State. 2. The three titles of ownership issued on composition by the *direccion general de administraccion civil* on the 25th of September,19th of October, and 9th of November, 1885, are hereby declared to be null and void. All action taken in connection with the respective proceedings, which may, however,be instituted anew, if the parties so desire it, are likewise annulled. 3. Prior to entering upon new composition for these lands, the *direccion general de administraccion civil* shall direct that a project be submitted by an officer from the department of public works, describing all the buildings required for an unpretentious but comfortable bathing establishment. Such land as may be used for this purpose shall forthwith be reserved from composition, without prejudice to the indemnities which may subsequently be offered, in case any private individual should prove that land owned by him has been occupied. The bathing establishment shall at once be constructed by the administration as soon as the established formalities have been complied with. And 4. The appointment as land surveyor to the Government shall be withdrawn from D. Jose Moreno, who shall be

> disqualified to practice said profession,and the record of these proceedings shall be referred to the courts of justice for such action as may be deemed proper.
>
> "BARRANTES.

[Seal of the alcalde mayor of the Province of Bulacan.]

"To the GOBERNADORCIDLO OF S. MlGUEL:

> "Under date of the 15th instant, the *direccion general de administracion* civil of these Islands informs me as follows: In the proceedings instituted at the instance of D.Jose Fores, on behalf of D. Regino Pengson, regarding his claim for land which has been granted him by composition in the barrio of Sibul, town of San Miguel de Mayumo, in your province, H. E. the Governor-General, under date of the 5th instant, has issued a decree which you will in full find in the 'Gaceta de Manila,' and among other provisions he has resolved as follows: It is hereby declared that the spring of minero-medicinal waters of Sibul has always been public property, and that in consequence thereof it belongs to the State. The three titles of ownership by composition issued by the *direccion general de administracion civil* on September 25, October 19, and November 9, 1885, are hereby declared null and void. The respective proceedings in connection with the same are likewise annulled, and said proceedings may be instituted anew upon request of the parties. Prior to entering on new composition of said lands the *direccion general de administracion civil* shall direct that a project be submitted by an officer of the

> department of public works for the construction of such buildings as may be necessary for an unpretentious but decent bathing establishment. The land needed for this purpose shall forthwith be excluded from composition without prejudice to indemnify any private individual who may prove that his land has been occupied.The bathing, establishment shall be built at once by the administration after complying with the formalities established by law. You are informed of the foregoing in order that you may comply with such duties as pertain to you,and in order that you may claim from the interested parties the return of the said titles of ownership, and forward them to this office as soon as they coine to your possession and cancel the entry made in the registry of your province. And I now forward this to you for your information and action, with the request that after perusal of the above-quoted decree of the 5th instant, published in full in yesterday's Gazette, you claim from the parties the titles of ownership referred to in the foregoing superior communication, remitting them to this office as soon as possible, in order that what has been determined by H. E. the Governor-General of these Islands be fully complied with. To be returned with such record of proceedings as may shown that the above order has been faithfully complied with.
>
> "Bulacan, March 10, 1886.
>
> *" PARDO.""*

This resolution of the Governor-General of the Islands,besides having been published in the Gaceta de Manila of the 18th of March, 1880, was transmitted, as may be seen,to the *alcalde mayor* of the Province of Bulacan who in

compliance therewith ordered the cancellation of the entry made of the three titles in the provincial registry, and directed also that the decree be transcribed to the *gobernadorcillo* of S. Miguel de Mayumo to be notified to the interested parties, and for the recovery of the titles issued to them. Everything was done accordingly, but the title of Jose Mercado was not recovered when he was notified on the 23d of the said month of March, 1886, because he stated that he had delivered it to the purchaser of the land, and later, on the 29th of October, 1890, as Maria Roura,one of the appellants herein, was requested to surrender the said title, she replied that while her father was living she often heard him speak of the title, but that at the time she was ignorant of its whereabouts.3. The applicants have offered as evidence an opinion dated May 31, 1890, submitted by the law division of the *consejo de administracion* of the Islands (an advisory body of the administrative organization) which reads thus:

"CONSEJO DE ADMINISTRACION DE FLLIPINAS.

"YOUR EXCELLENCY: [It is addressed to the Governor General.] At the session held by this division composed of the gentlemen Avhose names appear at margin, the following proposed opinion was unanimously approved * * * Most Excellent Sir : On the 20th of February last you were pleased to refer to this council the record of the proceedings in connection with the establishment of a bathing house at Sibul, granting the ownership of said waters to private enterprise under the inspection of the Government, and urgently inviting an opinion thereon. * * * In this sense, the advisability and long-felt necessity of placing the Sibul Spring in condition, by the construction of a suitable building; so thafc its waters may be used by the many persons continually suffering from maladies for which the use of such waters is prescribed by science and experience, and it being beyond doubt that the State would not be a desirable administrator thereof * * * this council not only finds no objection to the granting of the bathing place to private enterprise, but considers the same as unquestionably advisable, on the supposition that the spring and the land adjoining it are owned by the State * * * it is the opinion of the council that the decree of March 5, 1880, is not sufficient to establish the desire certainty; rather, on the contrary,it raises the fear that the unpleasant contingency insinuated may arise, because, besides showing that there are persons claiming to be the owners or holders of the land where the waters in question are located, it does not seem that it may be taken as a safe ground for determining the

question of ownership, as is supposed, for the reason that the right contained in the aforesaid resolution is at least questionable, and some of its points might be considered as not in keeping with the sovereign provisions which regulate the manner and procedure to be followed in exercising the right of eminent domain in connection with works of public utility, and for this reason it is not efficient and can not be applied in opposition thereto nor against the rights protected thereby * * * Lastly,the final decision of this matter rests with His Majesty's Government."4. The respondent offered as part of his evidence a copy of the proceedings instituted to this end in "Exhibit 1," and also by "Exhibit 2" he presented '-the final decision of His Majesty's Government" by a royal order dated 7th of September, 1895, wherein is a statement of facts and principles of law connected with this matter which are to be observed. The statement of facts is of this tenor:

"Whereas the civil governor of the Province of Bulacan,when submitting the report requested from him regarding the ownership of the lands, forwarded a copy of the record wherein it appears that the *direccion general de administracion civil* had ordered a composition of lands, and issued three titles of ownership to the bathing place of Sibul, dated September 25, October 19, and November 9,1885, and that said concessions were annulled by a decree of the Governor-General published in the *consejo de admimstracion*, was reported upon in the same sense, although it was the opinion of the council that the question of the Government's ownership needed to be more clearly determined.Whereas the said Governor-General, in conformity with said report, directed the civil governor of Bulacan to institute new proceedings in order to ascertain the right of ownership of the Government, *from which proceedings*,besides *confirming the facts* which were approved in the first investigation, the *free use of the waters appears as proven* "without any opposition or claim. Whereas on the 15th of March, 1886, it was directed by the *direccion general de administracion civil* that plans, projects, and all other technical work for the construction of the bathing establishment be prepared * * * "

The final sovereign resolution on the matter reads thus:

"Considering, finally, the fact that the State does not itself construct or subsidize the bathing establishment is no reason why private enterprise should be prohibited to build the same and operate the spring, and that in such an event the proper thing to do would be to *dispose of the spring and the adjoining land* by public auction, H. M. the King, and in his name the Queen Regent of the Kingdom,after hearing the opinion of the come jo de Filipinas y *posesiones del Golfo de Guinea,* and the *seccion de hacienda y ultramar del de estado,* has been pleased to resolve that it is not advisable to construct with the funds of the Islands,or with provincial funds, the bathing establishment of Sibul, and that after due assessment of *the spring and the adjoining land belonging to the state*, the same be sold at public auction subject to such specifications as the *direccion general de adminnistracion civil* shall prescribe. The grantee shall be obliged to abide by the provisions of the *reglamento provisional de aguas minero-medicinale*s,approved by royal order of February 27, 1890; it being also the will of H. M. that this resolution be published in full in the Gazette of this city and in that of your capital. May God be with you many years.

"Madrid, 7th of September, 1896.

"TOMAS GASTELLANO.

"THE GOVERNOR-GENERAL OF THE PHILIPPINES."

In view of these facts, which are legal provisions published in the Gazettes of Manila and Madrid, the question is whether the decision of the Court of Land Registration holding or rather repeating and confirming the previously declared nullity of the title issued by composition on the 19th of October, 1885, in favor of Jose Mercado is or is not erroneous.

It must not be overlooked that during the trial and in this appeal the subject of contention has been the decree of the Governor-General of the Philippine Islands dated March 5,1886, which declared: (1) The nullity of the proceedings in the composition of land instituted by Jose Mercado before the *direccion general de admmistracion civil*then existing; and (2) the nullity of the title issued to

Jose Mercado by the said *direccion general de admmistration civil* of the Islands on the 19th of October, 1885,directing in consequence thereof the recovery of said title by composition, the same being null and void.

It must not be forgotten, either, that no remedy has been applied for against the decree of the Governor-General of these Islands, nor an appeal *contencioso-administrativo,* nor to the civil courts after all recourse to the Government had been exhausted. This is the main point.

The question which this court has to consider is not whether the Spanish Governor-General acted properly or otherwise, whether he acted within or outside of the law. Supposing the latter to be the case, to which all the arguments of the appellants are directed, with minuteness, before anything else, the question is whether this court,whether the courts of justice of the present sovereignty or even those of the former one, can or could decide, in accordance with what is claimed by the appellants after the lapse of more than eighteen years from the date and publication of the aforesaid decree in the "Gaceta de Manila", *that the Governor-General of the Philippines had no authority* to issue his said decree of the 5th of March, 1886, and that *said decree is the same as if it did not exist* that everything that has been set forth, considered, and resolved therein is null and void. With regard to this important point, absolutely nothing has been alleged, in spite of the fact that the parties have maintained all the points which constitute the main question, since it is true and unquestionable that the title was issued, and that was declared null and ordered to be withdrawn, it being likewise true and unquestionable that no claim or objection has been offered during more than eighteen years against the declaration of nullity and the withdrawal of the title.

The important question to be decided by this court, or even by the Spanish courts if they still existed here, is whether a final decree of the Governor-General, issued in the performance of his administrative duties, could at any time, and much less after the lapse of eighteen years, be held by a civil court to be. null and void, of no effect,importance, and value whatever.

In the United States the Supreme Court may do so upon proper appeal filed in due course, but in the Philippines, Could the Supreme Court, could the courts of

justice, do as much?

> "The judiciary in the United States says a Spanish writer is so organized that the Supreme Court not only decides finally and in a sovereign manner all properly legal questions, but political and even the constitutional questions also, because that high court is vested with the power to declare whether or not the laws enacted by Congress are in conformity with the Federal Constitution, it being evident that with this basis there can be no conflict, as is the case in other countries, between the different branches of the Government, for the reason that it may be said, as a matter of fact, that the chief point, the synthesis of the political, administrative, and judicial life of that country, is represented by the Supreme Court." (*Fabie,Comento de la Ley para el ejercimo de la jurisdiccion contenciosa, 15.)*

Whatever might have been the nature of that decree or resolution of the Governor-General of the Philippines; whatever might have been its defects, or the injuries caused by it, the logical course was that the supposed error, the violation of law, the lack of jurisdiction, the abuse of power, infringement of private right—briefly, everything to which objection might have been offered should have been properly objected to in due time before the high authorities, either through administrative channels or through the *contencioso-administrativo* proceedings before the courts of this jurisdiction which existed under the former sovereignty.

Besides being logical, it was the lawful thing to do, as may be seen from the numerous citations by both parties to this appeal. No statute or doctrine has been quoted by the appellants to show that silence or the postponement of the appeal to the Government or to the *contencioso-administrativo* courts entitled them, in spite of the long lapse of time, to claim that the lawfulness or unlawfulness of the administrative action by the chief executive of the Islands be now discussed before the civil courts of justice. Such is the nature of the case at bar, more than openly appears to be; that is to say, a contest in support of a civil right supposed to have been acquired and maintained, not with standing the fact that the title to the property thereunder was declared null and its recovery from the holder had been ordered.

It is a fundamental function of the Spanish colonial administrative law to determine whether the decision of the Governor-General of the Philippine Islands of March 5, 1886, was in

pursuance of his powers as *regulated* by law,or in the exercise of *discretionary powers* invested in him latterly or formerly, as the case may be; whether the decision was such that it should be considered a final one (being in accordance with some law, regulation, or administrative provision) or was rendered by virtue of the *discretionary* powers of said governing authority. Nowithstanding the fact that the above two methods of determining according to the periods of time and the legal provisions applicable thereto are identical, it becomes necessary to express them in their own language in order to judge the matter with certainty.

The trial court and the appellants coincide in discussing and reasoning the first method. The court says:

> "Whether it be the one or the other, it is beyond all doubt that the interested parties whose respective titles were declared to be null did not appeal from it either within or after the term granted by article 28 of the royal decree which organizes the administration of affairs in the colonies, issued on the 21st of September, 1888, applied to these Islands by means of the royal decree of the 23d of the said month and year, if it Avas considered that a discretionary power had been exercised by the administration; nor was an appeal filed before the *contencioso de administrativo*courts established by article 7 of the *contencioso de administrativo*law of September 13, 1888, applied to these Islands by the royal decree of November 23 of said year, if it was considered that the aforesaid decision had been rendered by the Governor-General within his *regulated* powers. Thus the question at issue is a decision of the administration which has become final, not only by the lapse of the time allowed to secure its repeal, either through executive channels or by applying to the *contencioso de administrativo*courts, but also by the consent of the interested parties, among whom is the person whose right is herein claimed." (B. of E., 7.)

This main basis of the decision is entirely in accordance with the law, except that the law applicable thereto is not the royal decree of September 21, 1888, nor the *contencioso administrativo*law of September 13, 1888 (although the said legal provisions are invoked by the appellants), since the decision appealed from has a previous date (5th of March, 1886), to which legal provisions issued "in 1888 can
hardly apply.

The appellants state:

> "In accordance, therefore, with the legal precepts just cited by us (those of the decision of the trial court), we may establish the conclusion that the decree of the 5th of March, 1886, which annulled the title of ownership of Jose Mercado, can not be the subject of a *contencioso administrativo* appeal, because it was a decision rendered by virtue of the *discretionary* powers of the Governor-General. * * * (Brief 15, 10.)

This being the opinion of the appellants, the principle of the decision appealed from subsists. According to their own judgment, the appellants should have appealed from the royal decree of March 5, 1886, not under the royal decree of September 21, 1888, but pursuant to that of June 9, 1878 (also invoked by them in another argument), which was the one applicable, because article 7 thereof provides:

"The resolutions of the Governor-General in connection with matters of government or in pursuance of his *discretionary* powers, and those of a general or regulative nature, may be *revoked*, or amended by the Supreme Government whenever it decides that they are contrary to law, to regulations, or to provisions of a general character, or that they are inimical to the proper government and good administration of the Islands, and also *whenever claims are filed against them by a private individual who considers that his right has been prejudiced*, provided they are not to be subject to procedure *en la via contenciosa* before the *conscejo de administracion*, before a corporation, or before the Governor-General himself, who might consider that the interest of the administration had been prejudiced."

No appeal having been taken by the appellants to the Supreme Government which was appropriate procedure under said royal decree of 1878, according to the theory set up in their conclusions as to the nature of the decision of March 5, 1886, it is natural that said decision should have become final according to the findings of the trial court, and that no court of justice should usurp that exclusive power which then belonged to the Supreme Government of Spain, repealing, setting aside, or simply ignoring its act, especially when, as shown, it has been the basis for new proceedings and new decisions of far-reaching importance.

If the decision of the 5th of March, 1886, is not within the discretionary powers of a Governor-General, it must be one of those that are final, and, according to article 8 of the said royal decree, "against all final decisions of the Governor-General, *contencioso-admrnistrativo* appeal may be resorted to subject to provisions in force."

The provisions in force herein alluded to are:

(1) The royal decree of the 4th of July, 1861, organizing the *consejos de administracion* for the colonies, reestablished by royal decree of March 19, 1875, article 26 of which reads as follows:

> "Any person who shall consider that his right has been prejudiced by reason of a decision of the superior civil governor or of the superior administrative authorities, considered as final, shall be entitled to appeal from it *en la via contenciosa* in the manner and form provided in the regulation prescribing the procedure in connection with contentious business in the administration of the colonies."

(2) This regulation concerning the procedure, of the same date, provides in article 1:

> "Any person considering himself prejudiced by reason of any resolution adopted by the administration, considered as final, according to the provisions of article 26 of the royal decree of this date relative to the organization and powers of the *consejo de administracion* of the colonies,shall be entitled to file a complaint against it before the *seccion de lo contencioso* of the respective council within ninety days in the American provinces and one hundred and twenty days in the Philippines, from the date on which the resolution which is the subject of the appeal, was made known to him by administrative channels * * *
> (1Rodriguez San Pedro, 296, 298.)

Therefore, all the arguments on which the appellants now base the first error attributed by them to the decision appealed from could only have been alleged in the appeal,if the case were considered as within the discretionary powers, or by means of the *contencioso-administrativo* procedure, if the decision was a final one.

Without running the risk of the execution of the judgment, it is not within the discretion of any person to fail to appeal from a decision in the belief that he can resort to other kinds of action, for inaction or silence leads to the legal presumption that, after the lapse of time, the unappealed decision has been consented to and acquires the condition of *res adjudicata*.

As a reason for not having appealed from the too often mentioned decision of the 5th of March, 1886, the appellants, while arguing directly on the latter point therein contained, only indirectly touch the former, and this court takes cognizance of the same by mere inference. No direct argument is offered in support of the theory that the said decision could not be appealed from, but the appellants maintain that the *contencioso-administrativo* procedure could not be resorted to. And there can be no such argument in view of the fact that the appellants, in order to maintain their position, have set forth the conclusion that—

> "The decree of the 5th of March, 1886, canceling the title of ownership issued to Jose Mercado, was a decision rendered by virtue of the *discretionary* powers of the Governor-General."

They thus furnished the evidence derived from article 7 of the royal decree of June 9, 1878, cited above, that the proper remedy in the case was to appeal, and that it was necessary to impugn the decision by means of an appeal, if it was not desired that it should become firm and attain the authority of *res adjudicata*, as a thing consented to by the interested party himself.

If an inquiry were made as to why no appeal had been taken by Jose Mercado, nor by the principal of the appellants, nor by the latter themselves, such being the only remedy allowed by the law against decisions of the Governor-General rendered by virtue of his discretionary powers, the most that could be found in the writ of error would be the following argument:

"The decree above referred to, the appellants Bay, is not only beyond the actual jurisdiction of the authority that issued it but is also in open conflict with the just principles of the

legislation in force at the time. The royal decree of June 9,1878, enforced in the Philippine Islands by another royal decree of the 8th of November of the same year (Berriz, p. 374, *Guia del Comprador de Terrenos*), prescribed in article 6 thereof that the Governor-General may modify, amend, or repeal his own resolutions and those of his predecessors in office, *provided* that they have not been confirmed by the Government or that *no rights are therein declared or acknowledged, etc*. The decree of adjudication dated September 7, 1885, by which the title of ownership dated the 19th of October of the same year was issued to Jose Mercado, was a governmental decision or resolution declaring and acknowledging the right which the said Jose Mercado invoked as having the effect of a law. This being the nature of the decision which it was pretended to annul by the decree of the 5th of March, 1886, the latter could be enforced in full because the authority that issued it had no power to modify or amend resolutions which established or acknowledged any right." (Brief, 9.)

But even in order to make this statement to the aforesaid authority, some kind of an appeal should have been entered, unless it can be shown that it was only necessary to keep silent, to do nothing and allow the resolution to run, upon the theory that in the end it could have no effect.

It is erroneous to suppose that the question at issue is one with reference to a decision of the Governor-General amending or repealing a previous resolution of the same Governor-General. The decree of the 7th of September, 1885, by virtue of which the title of ownership was issued by composition on the 19th of October of the same year, had been issued by the director-general of civil administration, as may be seen from the seal of the *direccion general de administracion civil en Filipinas* and from the entire context including the following:

> * * * and whereas by a decree from this *direccion general dated* September 7, 1885, the ownership of said lands has been gratuitously-adjudicated to the interested party, etc. * * * ."

The issuing of the documents of title pertained to the *direccion general de administrativo civil*, in conformity with the royal decree of June 25, 1880, article 11 of which reads:

> "The instituting of proceedings regarding the composition of Crown lands and

> the disposition of the same and of all incidents in connection therewith pertains to the *direccion general de administrativo civil*."

What the Governor-General did by his decision of the 5th of March, 1886, was to revoke and set aside the decree of the *direccion de administracion civil* dated September 7,1885, and the title which in consequence thereof was issued on the 19th of October following, in accordance with the decree of the Governor-General of the 9th of September,1874, article 12 of which reads thus:

> "The decisions of the *director general de administracion civil* in all matters under his charge shall be final provided *that they have not been amended by my authority* and may be appealed from before the *ministerio de ultramar*, the appeal being filed through this General Government, or, in case of assuming a contentious character, before the *sala de la audiencia* having jurisdiction in such matters."

It is evident, therefore, (1) that it was the *direccion general de administracion civil* that terminated, as within its jurisdiction, the proceedings for composition of Crown lands instituted at the instance of Jose Mercado, and promulgated the decree of the 7th of September, 1885, by which the title of ownership was issued to Mercado; (2) that it was the *direccion general de administracion civil* that terminated, because it was within its jurisdiction, the incident caused by Pengson which led to the issue of said title by reason of the substantial errors committed by the expert Jose Moreno in said and two other proceedings, in which "*the inspecion general de montes* and the *direccion general* were deceived by said expert in order that titles of ownership might be issued upon his surveys, as they were actually granted by composition of the lands adjoining the Sibul waters, from which it might have been implied that the spring was included;" (3) that the decision rendered in the matter was that of the Governor-General, issued by virtue of his powers, as therein stated:

> "H.E. the Governor-General, by-his decision dated the 5th instant, has been pleased to *decree*: (1) It is hereby declared that the spring of minero-medicinal waters of Sibul has always been public property and that, therefore,it belongs to the State; (2) the three titles of ownership of land by composition, issued by the

> *direccion general administracion civil* on September 25, October 19, and November 9,1885, remain null and void,"

The result of not having contested or appealed from the above decision was that it became firm and *fully effective* with respect of the declaration that the spring of Sibul was public property and that it belonged to the State, as will hereinafter be more clearty shown.

As a reason for not having appealed through the *contencioso-administrativo* procedure, the appellants allege that the decree of March 5, 1886, could not be appealed from under such procedure because the right annulled was of a civil nature and derived from acts performed by the administration as a juridical person, and invoked article 4 of the royal decree of November 23, 1888 (cited also in the judgment appealed from), which would appear to justify the conclusion; but it has already been stated that the said legal provision can not apply to a decision that was rendered when the latter was not yet in force, as may be seen from the respective dates. Moreover, they invoke the royal order of the 20th of September, 1852, article 1 of which provides :

> "That all actions concerning dominion over national property, or any other right based on title issued prior to or after the public auction or independent of it, shall come under the jurisdiction of the proper courts of justice and other tribunals.
>
> And from the preface of the same royal order the following words of the legislator are quoted by them:
>
> > "But acts of dominion or any others which may be based on independent titles issued prior to or after the auction or lease, shall always be subject to the jurisdiction of ordinary courts of justice." (Berriz, Guia del Comprador de Terrenos, 229.)

For several reasons the trial court and the representative of the Government in this instance deny that the composition made in favor of Jose Mercado on October 19, 1885, is in the nature of a contract of purchase and sale, especially because no price was fixed, the title having been granted gratuitously as expressly stated therein.

It is not a question for this court to determine now the nature of titles issued on composition of Crown lands in the Philippines; it suffices to suppose, following the argument, that it was actually a contract of purchase and sale between the State and a private individual, and to consider for the moment that the laws of Spain for the redemption and sale of national property are identical with the laws for the sale and composition of Crown lands in the Philippines; under such hypothesis Jose Mercado could not decline to contest the decree of the Governor-General of the Philippines dated .March 5, 1886, considering, a *priori*,that he held the right of dominion, and that actions arising from such right are not within the scope and jurisdiction of the administration but appertain to the courts of justice.

No action for dominion or right of ownership could arise out of a contract which while it effected the transfer of dominion from the State to Jose Mercado, the supposed purchaser, was afterwards canceled and failed to produce the necessary effect because Jose Mercado consented to the decision which rendered null and void both the contract and the title. It is turning the question into a matter of mere fancy to assume that one is an owner when his character as such is denied; or that a title of dominion exists when the title has been annulled; or that by virtue of said title an action for dominion arose when no effect could have been produced by it, for the reason that it was set aside, as will appear.

In addition, according to the said royal order, what is reserved to the courts of justice, as the appellants emphatically state in their argument, are the action for dominion or any others resting on *anterior* or posterior title, independent of public sale, and Jose Mercado could not invoke in 1886 anterior title to the composition, nor a posterior one independent of the composition, which was the main point of the question then as now. And within this hypothesis this same consideration ought to have been offered as the basis for an appeal from the decision of the administration, in order to oust its jurisdiction, or to prohibit it from taking cognizance of an appeal or an action which was considered as beyond its jurisdictional powers.

Even if the remedy which the party prejudiced could have sought by the former legislation against the administration had been really of a civil nature and within the jurisdiction of the courts of justice, the plaintiff could not resort to judicial proceedings without having previously exhausted the administrative remedies.

In no case will the judicial authorities take cognizance of any suit against the decrees of the

civil administration,unless the plaintiff shall attach to the complaint documents which show that he has exhausted the administrative remedy. (Royal decree of September 20, 1851, art. 1.) The royal order of the 11th of April, 1860, directs the application of article 10 of the *Ley de Contabilidad* of February 20, 1850, and article 173 of the instructions of May 31,1835, "prohibiting the admission of contentious complaints unless the plaintiff has exhausted the administrative remedy." (Valenton vs. Murciano, 3 Phil. Rep., 537.)

The decision of the 5th of March, 1886, was not within the discretionary powers of the Governor-General of the Philippines, and could not be appealed from under article 7 of the royal decree of June 7, 1878. If Jose Mercado believed that he was prejudiced by a decision which annulled his rights, he should have made the latter the subject of declaration filed under the contencioso procedure with the *consejo de administracion*, as prescribed by the same article.

For the very reason that no administrative remedy could be applied for against the decision of March 5, 1886, it was final, and the proper procedure against it was the *contencioso-administrativo* appeal in accordance with article 8 of same royal decree.

In addition to this general consideration that it is a decision which is final, there is the special consideration that it is by itself a *contencioso-administrativo* matter included in case 7 of article 27 of the royal decree organizing the *consejos de administracion* the colonial possessions, reestablished by a further royal decree dated March 19,1875, already cited, which provides :

> "The seccion de lo contencioso, constituted as a tribunal, shall take cognizance of matters connected with the administration of the provinces of this nature (as a general rule, decisions which become final, art. 26) and more particularly in the following: (7) In connection with the fulfillment, settlement, *rescission*, effects, or incidents arising under leases, *sales and grants* made of State property, when in the two latter cases the *original act of acquisition* is at issue, excepting suits for ownership.'"

For either of the reasons stated, the *contiencioso-administrativo* remedy should have been sought within the term of one hundred and twenty days, reckoning from the day when the administration gave notice of its decision, in accordance with article 1 of the regulations

for the contencioso-administrativo procedure dated July 4, 1861, previously quoted.

As neither the latter nor any other remedy has been sought, nor even a civil complaint filed, on the supposition that the matter was of a purely civil nature, the decision of the 5th of March, 1886, is a final one; it has assumed the authority of *res adjudicata*, and produced an effect of far-reaching importance, as already set forth in the legal history of the case, from which principles of law are derived, among others, that the courts of justice can not now reverse this matter, whether for the purpose of correcting errors, extralimitations, or abuse of powers committed by the governing authority that rendered the decision.

A matter of great importance also is the record of the proceedings instituted regarding the ownership of the Sibul waters and the final decision rendered therein which is set forth in point 4, in connection with the Government's "Exhibit 2." It is the royal order of September 7, 1895, which "confirms the facts approved in the first investigation," namely, in the proceedings instituted at the instance of Pengson, the final decision of which was the decree of the 5th of March, 1886, and, lastly, as a final ruling in the matter, "the spring and *adjoining land owned by the state*" were ordered to be sold at public auction. Said decision was published in the Gazettes of Madrid and Manila, and was not contested before the *consejo de estado* of Spain within the term fixed by law.

By virtue of the above resolution it is certain that the said spring and the adjoining land were a portion of the public domain ceded to the new sovereignty under the treaty of Paris on the 10th of December, 1898. The fact that the property is a part of the public domain is opposed to the claim of the appellants based on a title annulled by the decree of March 5, 1886, which annulment was virtually confirmed, *ex consequenti*, by the royal decree of the 7th of September, 1895.

Therefore the Court of Land Registration did not err when it considered null a title by composition which had been declared void by the past administration.

II.

NULLITY OF THE PUBLIC INSTRUMENT OF SALE EXECUTED BY JOSE MERCADO IN FAVOR OF JUAN ROURA.

The title by composition whereby Jose Mercado "might have been considered and held as

the lawful owner of the aforesaid parcels of land," and by which his "possession of the same might have been *legalized*" according to the tenor of the title, was not issued to him until the 19th of October, 1885; and yet, on the 4th of March of same year, he had already sold the land to Juan Roura, stating in the deed of conveyance executed by him "that he was at the time the owner and possessor of the same."

It having been found by the trial court that the deed of conveyance executed by Jose Mercado in favor of Juan Roura was null, the appellants have not acquired by inheritance from the latter any right of dominion over the land in question, and this is cited as an error in the second specification of the appellants.

More precise is the consideration contained in the decision of the court stating that:

> "The nullity of the title of the seller having been declared by a decree of the Governor-General, consented to in the first place by the purchaser, and afterwards by his successors, the contract of sale entered into by means of the said deed falls to the ground." (B. of E., 13.)

Externally, the deed of conveyance was executed in accordance with the laws then in force, and in this respect nullity can not be argued against it; but as to its substantial contents, to which the trial court refers in its foregoing consideration, it is true and in accordance with the law that the contract of sale which it was intended to prove by such deed is null, because Jose Mercado held no title to or right of dominion over the thing sold to Juan Roura.

No person can transfer to another more rights than he himself possesses. Where the right of the transferrer is decided, that of the transferee is likewise settled. If the title was declared null, and if the dominion of Jose Mercado, who sold the land, was concluded, then the title of Juan Koura who bought the land must also of necessity be null and void.

In this sense, the Court of Land Registration did not err in considering as void the contract of sale entered into between Jose Mercado as seller and Juan Roura as purchaser,and therefore, as also void, the title of ownership which Ronra's successors invoked in their favor.

III.

POSSESSION OF THE APPLICANTS.

It is argued by the appellants that the trial court erred by denying their possession and that of their principal in the judgment appealed from.

But they finally contended, with regard to this point,in the following terms:

> "In case No. 1413, Andres Valenton et al. vs. Manuel Murciano, this honorable court-they say-has established the doctrine that: 'The title of the Spanish Government to alienable public lands in the Philippine Islands could not be divested by adverse occupancy alone, no matter over how long a period it might have extended.' Therefore, if the mere occupancy-that is, the material possession-cannot constitute a sufficient title in order to acquire alienable public lands by prescription, such as Crown lands are, it is superfluous and useless to invoke said fact under the provisions of Act No. 496." (Appellants' brief, 32.)

The material possession alone having failed to accomplish the purpose sought in the petition, and it being such that it lacks sufficient title or is based on a defective one, the findings in the judgment appealed from are correct.

In view of the reasons hereinbefore set forth the judgment appealed from is affirmed, without the costs of this instance. So ordered.

Torres, Johnson, Willard, and Tracey, JJ., concur.

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