

WILLIAM ABRAHAM KINCAID, PETITIONER AND APPELLEE, VS. CAYETANO CABUTUTAN ET AL., OBJECTORS AND APPELLANTS.*G.R. No. 10072. November 29, 1916*

Ponente: TORRES, J.

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This appeal by bill of exceptions was raised by counsel for Cayetano Cabututan, Hilario Milo and others, occupants of different portions of the land sought to be registered by William Abraham Kincaid, from the judgment of September 13, 1913, in which the Court of Land Registration, after a declaration of general default, denied all the adverse claims filed by the objectors and decreed in favor of William Abraham Kincaid the adjudication and registration of the land applied for except the parcel situated in the sitio of Anduyan, barrio of Dacanay, municipality of Tubao, Province of La Union, described more specifically in the stipulation between the parties (record, pp. 329, 330). This parcel was excluded for the reason that on August 25, 1911, it had already been adjudicated and registered for school purposes in accordance with the provisions of the Land Registration Act. There was also excluded a strip of land 12 meters in width which composed the entire length of that part of the Tubao-Rosario Highway that crosses the land in question. The judgment further ordered the applicant to pay into the public treasury the sum of P147.58 for the surplus of 93 hectares included in the application, and that, once the judgment became final, the proper plan should be amended by excluding therefrom the parcels of land specified in the judgment.

On September 28, 1911, counsel for William Abraham Kincaid filed a written application in the Court of Land Registration for the inscription in accordance with law of a tract of land situated in the sitio of Cataguintingan, barrio of Anduyan, municipality of Tubao, La Union, of which the technical description, metes and bounds are particularized in the plan Exhibit A, a part of the application, and that stated that said tract contains an area of 5,738,952 square meters, is assessed at P15,000 and is free of all charges and encumbrances; that the applicant had acquired this land through conveyance in 1909 by Feliciano de la Rosa; and that the only adjacent owner was Guillermo Cabututan, a resident of the barrio of Anduyan of the said municipality of Tubao, although the property is occupied by 336 persons whose names the applicant cites in a list accompanying his application.

On March 6, 1912, the Director of Lands through the Attorney-General filed a written opposition to the registration sought on the ground that the said tract of land was public land, belonging to the Government of the United States, under the control and administration of the Government of the Philippine Islands and as such could not be registered in the name of the applicant, wherefore he prayed the court to deny the said application, with the costs against the applicant.

During the period granted by law, 124 objectors filed in court their respective adverse claims. Cayetano Cabututan claimed to be the owner of 1 parcel of land of 28,455 square meters, through inheritance from his ancestors, and of another parcel containing 1,560 square meters, acquired by purchase from its previous owner; Miguel Lijos also claimed to be the owner of 1 parcel of land of 64,472 square meters which, he alleged, he inherited from his ancestors; Nicolas Olat, of a parcel of 3,000 square meters; Felegrin Boado, of a parcel of 8 hectares in area; Isaac

de la Paz, of a parcel of 7,560 square meters; Francisco Cabututan, of a parcel of 1,820 square meters; Marcos Isit, of a parcel of 10,640 square meters; Modesto Selin, of a parcel of 85,720 square meters; Perfecto Garcia, of a parcel of 7,270 square meters; Irineo Vilorio, of a parcel of 26,000 square meters; Lucas Ollero, of a parcel of 1,440 square meters; Basilio Gago, of a parcel of 30,000 square meters; Julian Gago, of a parcel of 10,570 square meters; Antonio Selga, of a parcel of 10,184 square meters; Guillermo Albay of a parcel of 7,000 square meters; Bernabe Albay, of a parcel of 7,000 square meters; Saturnino Garcia, of a parcel of 8,600 square meters; Nazario Garcia, of a parcel of 2,204 square meters; J. Guillermo Laron, of a parcel of 416 square meters; Aniceto Estoesta, of a parcel of 3,600 square meters; Lauro Fan?, of a parcel of 11,890 square meters; Bonifacio Fan?, of a parcel also of 11,890 square meters; Antonio Tabara, of a parcel of 11,160 square meters; Aniceto Cañero, of a parcel of 15,762 square meters; Bernardo Biduya, of 2 parcels, respectively, of 1,260 and 12,720 square meters; Daniel Cabututan, of 2 parcels of 13,000 and 28,864 square meters, respectively; Felipe Cabututan, of 2 parcels of respectively 40,000 and 16,700 square meters; Felix Jacola, of 3 parcels of respectively 9,576, 4,120, and 25,800 square meters; Toribio Lijos, of 3 parcels of a total area of 36,785 square meters; Donato Biduya, also of 3 parcels, of a total area of 14,388 square meters; Sinforoso Olarte, of 2 parcels, respectively, of 20,800 and 8,640 square meters; Modesto Laron, of 3 parcels of a total area of 152,820 square meters; Estanislao Ramirez, of 2 parcels which together contain 97,100 square meters; Tiburcio Ventura, of 2 parcels of 1,760 and 13,910 square meters, respectively; Teodoro Isla, of 3 parcels whose total area amounts to 30,002 square meters; Mauricio Tabares, of 2 parcels, respectively, of 37,056 and 31,862 square meters; Leocadio Romero, of 3 parcels of a total area of 23,756 square meters; Tidal Tabares, of 2 parcels, of 1,550 and 1,323 square meters, respectively; Lucas Ofilada, of 2 parcels which together measure 25,600 square meters; Gregorio Selga, of 2 parcels of 2,470 and 50,785 square meters, respectively; Dalmacio Boado, of 8 parcels containing a total area of 21,995 square meters; Silvestre Biduya, of 3 parcels of a total of 23,704 square meters; Leon Vilorio, of 2 parcels containing; respectively, 6,650 and 990 square meters; Felipe Isla, of 3 parcels containing an area of 7,924 square meters; Segundo Fang, of 2 parcels, of 1,650 and 15,000 square meters, respectively; Antonio Laron, of 2 parcels respectively, of 11,899 and 5,300 square meters; Vicente Lijos, of 3 parcels of a total area of 79,500 square meters; Primo Fang, of 4 parcels containing an area of 54,924 square meters; Felix Tabares, of 2 parcels, respectively, of 528 and 15,080 square meters; Isidro Isla, of 3 parcels of a total area of 37,404 square meters; Crisanto Tabares, of 2 parcels of a total area of 31,900 square meters; Victor Biduya, 5 parcels which together measure 12,070 square meters; Crisanto Gago, of 3 parcels of a total area of 30,200 square meters; Basilio AspiHaga, of one parcel, the area of which is not stated; Isidro Emperador, of 2 parcels, of 1,800 and 5,600 square meters respectively; Eusebio Cañero, of 3 parcels containing an area of 2,400 square meters; Damaso Camacho, of a parcel of 48,300 square meters. All the foregoing objectors, 57 in number, represented by attorneys Mina, Manglapus, and Pinzon, claim as their property the respective parcels of land which they occupy, which they allege they inherited from their ancestors, and which, according to the stipulation found on page 960 of the record, they have possessed for more than thirty years.

The following parties also filed adverse claims, alleging themselves to be the exclusive owners of the parcels of land described in their respective oppositions, by their quiet, peaceable, and continuous possession thereof during various periods ranging from thirty to sixty years; Alfonso Ventura, 3 parcels; Eulogio Ventura, 2 parcels; Mariano Halog, 2 parcels; Guillermo Selga, 1 parcel; Tranquilino Aspuria, in his own name and in representation of his brothers or brother and sister (Valerio and Mariano or Maria Aspuria), 1 parcel; Miguel Ventura, 2 parcels; Toribio Milo, 1 parcel; Esteban de la Paz, one parcel; Guillermo Tabara, 1 parcel; Gregorio Laroya, 1 parcel; Marcos de la Paz, 1 parcel; Justo Rivera, 1 parcel; Mauro Gago, 1 parcel; Antonio Refuerzo, 1 parcel; Alipio Padilla, 2 parcels; Jacinto Selga, 2 parcels; Felipe Lloren, 1 parcel; Valerio Panelo, as successor of Pablo Panelo, 2 parcels; Narciso Orenia, 1 parcel; Felipa Orenia, 1 parcel; Pedro Estoparre, 2 parcels; Tiburcio Madriaga, 2 parcels; Ambrosio Isla, 4 parcels; Alejandro Estoparre, 2 parcels; Servando Estoparre, 2 parcels; Eustaquio

Estoparre, 2 parcels; but Adolfo R. Gonzalez and Guillermo Orenca each of whom claims one parcel, allege that they hold possession of these lands, the subject matter of their respective claims by title other than that of inheritance.

The following named parties also objected to the registration sought and alleged themselves to be the exclusive owners of the parcels of land included within the land sought to be registered and held by them quietly, peaceably and continuously during periods of time ranging between thirty and sixty years; Jose Bautista, 1 parcel; Higinio Aspiras, 2 parcels; Raymundo Padilla, 2 parcels; Inocencio Dacanay, 1 parcel; Angel Milo, 4 parcels; Ignacio Dacalcap, 1 parcel; Roberto Cabututan, 1 parcel; Faustino Padilla, 1 parcel; Sotero Isla, 2 parcels; Inocencio Padilla, 2 parcels; Doroteo Milo, 2 parcels; Ignacio Dacanay, 1 parcel; Ricardo Cabututan, 2 parcels in the barrios of Verceles and Lloren; Fausto Dacanay, 1 parcel; Antonio Isla, in substitution for his deceased father Segundo Isla, 2 parcels; Miguel de Ocampo, 2 parcels; Gelacio Milo, 8 parcels; Serapio Cabututan, 1 parcel; Valeriano Padilla, 1 parcel; and Alberto Cabututan, 2 parcels.

At the hearing of this case, the provincial fiscal of La Union, in representation of the municipality of Tubao, and the herein applicant; reached an agreement (part 2 of the record, pp. 329-30), whereby the applicant excluded from his application the land situated southwest of the TubaoRosario highway, in the sitio of Anduyan, barrio of Dacanay, municipality of Tubao, containing an area of 5,412 square meters, which land had already been registered under the Torrens Law in August, 1911, and had been set aside for school purposes.

The interested parties also agreed to exclude the strip of land 12 meters wide comprising that part of the TubaoRosario highway which crosses the land in question, and also the following four parcels of land, namely: one of 6 hectares, 43 ares, and 75 centares, in behalf of Santiago Betia; 2 of a total area of 5 hectares, 37 ares, and 50 centares, in behalf of 3 objectors, Feliciano, Cenon, and Candido, brothers, all surnamed Ballejo; and another of 12 hectares, 18 ares, and 75 centares in area, waived by the applicant in behalf of the objectors Mariano Orenca and Esteban Orenca. According to agreement (p. 962 of the record) Tomas Montemayor, Victoriano Olarte, and Guillermo Milo withdrew their oppositions, their lands not being included in the land in question.

The application for registration was accompanied by a list of the names of 336 persons who, according to the applicant, actually occupy the tract of land situated in Cataguintingan which he seeks to register, and of whom, in spite of due notification and summons, only 124 filed adverse claims;. 3 of these, Victoriano Olarte, Guillermo Milo or Melo, and Tomas Montemayor, already mentioned, must be excluded. Three other adverse claims should be excluded, to wit, those of the aforementioned Santiago Betia, the representative of the brothers Feliciano, Cenon and Gandido Ballejo, and the representative of the other brothers Mariano and Esteban Orenca.

Of the 118 remaining objectors, 4, Fernando Vilorio, Bibiana Emperador, Gregorio Boado, and Simeon Boado, did not appeal from the judgment; but according to the bills of exceptions, although the objectors Hilario Milo, Primo Padilla, Honorato Mabalot and Susana or Ricardo Campos, did appeal, yet they did not, either by themselves or by their counsel, file any brief in support of their appeal in this second instance.

Felipe Padilla, Nicomedes Lustrino, Hilario Gagauin, Emeterio Tabora or Tabara, Melecio Dacanay, and Bernardo Dacanay do not appear, from the record, to have filed adverse claims in the Court of Land Registration; but the record shows that they appealed from the judgment, though their names, with the exception of Bernardo Dacanay, do not appear in the briefs presented in this second instance. Bernardo Dacanay's name appears in the brief submitted by the attorneys Abad Santos, Manglapus & Pinzon

After a hearing of the ease and the introduction of evidence by the parties, the court rendered the judgment aforementioned, to which the interested parties excepted and in writing moved for a reopening of the ease and for a new trial. These motions were overruled, exception was taken by the respondents, and, upon the filing of the

proper bills of exceptions, the same were approved and transmitted to the clerk of this court.

In this decision, therefore, we shall not only consider the appeal of the 105 objectors named in the bills of exceptions, but also the appeal filed by Bernardo Dacanay, notwithstanding that he did not object to the application for registration.

On June 13, 1882, Basilio Biduya, a resident of Agoo, Province of La Union, applied to the Direccion General de Administracion Civil, under the previous sovereignty, for the adjudication of 3 parcels of waste or uncultivated land situated in Ambangonan, Tarambang, and to Cataguintingan. The metes and bounds of this last parcel are as follows: On the north, the Masalit River; on the east, the barrio of Anduyan; on the south, that of Damusil; and on the west, the streams or creeks called Caoigui, Pucao and Tubao. The boundaries of the parcels of land situated in Ambangonan and Tarambang are not given, their registration not being applied for, only the parcel of Cataguintingan was included in the application, as will be seen further on.

Between November 17 and 20, 1882, by delegation of the gobernadorcillo of Agoo, the teniente de justicia, accompanied by two prominent residents and a forestry employee (after due notice and summon to the holders of the land adjacent to or comprised within those intended to be inspected) went upon the lands, applied for by Basilio Biduya for the purpose of measuring the same. As Basilio Biduya had since died his eldest son Sotero was present in his place and stead but no opposition or adverse claim whatever was presented. The parcel of land in Cataguintingan, barrio of Tubao, 7 kilometers from the church, was found to be waste or uncultivated, situated outside of the legua comunal of the pueblo, and to have the following boundaries; on the north, the Masalit River; on the east, the river flowing from Ambangonan toward Masalit and known as the Anduyan, Pugo, etc.; on the south, by the Damusil Creek and public forests; and on the west, by the creeks known as Caoigui, Pucao and Tubao. No mention is made of the parcel of land in Ambangonan, or in Tarambang, as they are not concerned in the application.

The two tracts of land applied for both in Manila and in La Union, on April 16, 1885, having been offered for sale at public auction, by virtue of the decree issued by the office of the Intendencia General de Hacienda, the unappropriated public lands situated in Cataguintingan and Ambangonan were awarded for P750 to the bidders Manuel Bents! and Froilan Sabugo; and, as on August 11th of the same year, the latter alone paid the aggregate amount which the two should have paid, to wit, P783.75 (Manuel Bernal making no payment) the sub deputy of the treasurer of La Union issued to Froilan Sabugo alone, in the name of the Government, the proper deed to the said land. This document was recorded in the Administracion General de Rentas y de Propiedades, in the Inspeccion General de Montes and in the Gobierno Politico Militar of La Union.

On January 26, 1900, Froilan Sabugo sold the said two tracts of land to Francisco de la Rosa for P800. Feliciano de la Rosa, administrator of the estate of the deceased Francisco de la Rosa, lacking funds to pay the fees of attorney William Abraham Kincaid employed in the proceedings for the probate of the will, on November 8, 1909, made a deed of conveyance of the tract of 480 hectares situated in Cataguintingan, Tubao, and bounded on the north by the Masalit River, on the east by the Anduyan River, on south by the Bamusil Creek and public forests, and on the west by the Caoigui, Pucao, and Tubao Creeks. This deed of conveyance, approved by the court, was entered in the registry on February 4, 1911, by virtue of the decree of the 17th of the preceding month of January being rendered on a petition of the said grantee Kincaid asking that the said tract of land granted by said administrator of said estate of Francisco de la Rosa be ordered registered, notwithstanding that its registration had previously been denied by the register of deeds of the said Province of La Union.

It is unquestionable that the grantee William A. Kincaid through the conveyance made by the administrator of the estate of the deceased Francisco de la Rosa in the deed of November 3, 1909, obtained the ownership of the tract

of land situated in the place known as Cataguintingan, barrio of Tubao, pueblo of Agoo, containing 5,738,952 squares meters, or an area of 673 hectares. Decedent De la Rosa's title to the land was derived from Froilan Sabugo who sold it to him in addition to another for P800, the vendor, Sabugo, in his turn having acquired both tracts from the Government during the former sovereignty.

Section 19 of Act No. 496 provides that the person or persons claiming, singly or collectively, an estate in fee simple may apply for registration of title. The applicant, in applying for the inscription of the said tract of land in the registry, bases his petition on the ground that he is the owner of the property by reason of the conveyance made to him by the representative of its former owner— a conveyance which constitutes a just title conveying ownership.

Froilan Sabugo, the original owner who acquired from the Government the tract of land in Cataguintingan together with another tract, resided, not in the pueblo of Agoo, but in San Fernando, the capital of the Province of La Union, where he had a store. From the time he purchased the land in question then occupied by several residents of the place, he commended the collection of the rents paid by the occupants of the land for several years before the Revolution broke out in 1896 to the parish priest of said pueblo of Agoo, but after this priest left the said pueblo, no one collected the rents or canon for the occupation of the land, according to the testimony of the witness Timoteo Soberano who stated that he did not know whether Froilan Sabugo cultivated the said land or not. But another witness, Mariano Fang, positively asserted that for two years he himself was engaged in clearing the land; that afterwards he himself delivered it to Sabugo. Witness added that at that time and during a period of four years, he paid rent for land, within the land in question, occupied by himself, to Gregorio Selga, one of the collectors; that such rent consisted of a certain amount of rice, but that he paid this rent in the belief that the land belonged to the Government, that this was also the belief of the other holders of various portions of the land in question, about twenty in number. The parties stipulated between themselves that the witnesses Antonio Subitan and Sebastian Nieva, if called to the stand, should give the same testimony as the preceding witness. Esterio Romero, 26 years of age, stated that he was one of those who accompanied the surveyor when the survey was made and boundaries fixed on the land sought to be registered.

From the documents exhibited by the applicant, it is unquestionable that he holds a valid and effective title by virtue of which the ownership of the land situated in Cataguintingan, containing some 480 hectares, was conveyed to him by the representative of its former owner, Francisco de la Rosa, who had acquired it, together with another tract of land, from Froilan Sabugo who in his turn had purchased it from the Government at public auction; but the record does not show as duly proven that the applicant Kincaid, on obtaining by conveyance said tract of land, took possession in November, 1909, or at any time afterwards, through himself, or representatives, or agents.

Neither does the evidence adduced at the trial show that Froilan Sabugo held this tract of land for any length of time, for the testimony of the two witnesses to the effect that they and some twenty other people were paying rents for certain portions of the land they were occupying, under the belief that they were thereby complying with an obligation due the Government, does not show conclusively that Froilan Sabugo was in possession of these 480 hectares of land awarded to him at an auction sale by the Government under the previous sovereignty, and still less so because there is no proof who those twenty persons were who paid such rents or canon nor whether they or their successors are among the present objectors and appellants.

There was no proof that Francisco de la Rosa, who substituted Froilan Sabugo in the rights in the land in Cataguintingan, took possession of the property. In fact the record discloses no proof whatever of any such possession, nor can it be considered to have been proven by the statements of the several witnesses presented by the applicant to the effect, that prior to the latter's obtaining the conveyance of the land, the attorney Cayetano Lukban at various times offered to sell portions of the land to its occupants, in the name and by order of Feliciano

de la Rosa.

The owner of real property sought to be registered by him in the property registry must exercise the ownership, that is, the right of ownership and possession, of the said realty belonging to him in fee simple (art. 348, Civ. Code). If the owner does not enjoy the possession of the thing that belongs to him, he cannot exercise complete right of ownership over the same, and then, pursuant to article 446, the possessor is entitled to be respected in his possession, in which case it is presumed that the owner has, by one or another of the causes specified in article 460 of the same Code, lost the possession of the property of which he is the owner. It must always be borne in mind that, pursuant to article 447 of the Civil Code, the possession acquired and enjoyed as owner will serve as a title for acquiring the ownership, for the reason that the possessor under such a title has in his favor the legal presumption that he holds possession by reason of a just title and he cannot be forced to show it (art. 448 of the same Code). Possession, the unquestionable foundation of the prescription of ownership, after the expiration of the long period fixed by law, even without just title or good faith, weakens and destroys the force and value of the best possible title to the thing possessed by one who is not the owner thereof (arts. 447, 448, and 1959, Civ. Code).

During the trial of the case and the taking of the evidence adduced by the objectors, the attorney for the applicant Kincaid and Attorney Valentin Manglapus, of the law firm of Mina, Manglapus & Pinzon, in representation of 57 objectors, made the following stipulation:

"That the said objectors and their witnesses shall be deemed to have testified that, were they called to the witness stand, they would testify that the objectors hold the lands they claim as owners, as set forth in their oppositions; that they have been in possession, counting that of their predecessors in interest, for more than thirty years; and that such possession has been open, public, and adverse and always as owners, until they were cited to appear in these proceedings." (Record, p. 961.)

The said 57 objectors referred to in the preceding stipulation, are: Crisanto Tabares, Crisanto Gago, Basilio Aspillaga, Isidro Emperador, Eusebio Canero, Damaso Camacho, Cayetano Cabututan, Miguel Lijos, Nicolas Olat, Felegrin Boado, Isaac de la Paz, Francisco Cabututan, Marcos Isit, Modesto Selin, Perfecto Garcia, Irineo Vilorio, Lucas Ollero, Basilio Gago, Julian Gago, Antonio Selga, Guillermo Albay, Bernabe Albay, Saturnino Garcia, Nazario Garcia, Guillermo Laron, Aniceto Estoesta, Lauro Fang, Bonifacio Fang, Antonio Tabara, Aniceto Canero, Bernardo Biduya, Daniel Cabututan, Felipe Cabututan, Felix Jacola, Toribio Lijos, Donato Biduya, Sinforoso Olarte, Modesto Laron, Estanislao Ramirez, Tiburcio Ventura, Teodoro Isla, Mauricio Tabares, Leocadio Romero, Vidal Tabares, Lucas Ofilada, Gregorio Selga, Dalmacio Boado, Silvestre Biduya, Leon Vilorio, Felipe Isla, Segundo Fang, Antonio Laron, Vicente Lijos, Primo Fang, Felix Tabares, Isidro Isla, and Victor Biduya. No documentary evidence was presented.

It was also stipulated between the attorney for the applicant and Attorney Alejo Mabanag, in representation of the objectors, Angel Milo, Jose Bautista, Faustino Dacanay, Inocencio Padilla, Higinio Aspiras, Faustino Padilla, Valeriano Padilla, Miguel de Ocampo, and Ambrosio Isla, that, if these objector-appellants and their witnesses were called to the witness stand, they would testify in accordance with their respective adverse claims, in regard to the same previously stipulated facts of possession, and in accordance with the testimony already given by the objectors Ignacio Dacanay and Pedro Madriaga. By virtue of this stipulation the said objectors (those mentioned at the beginning of this paragraph) and their witnesses were deemed to have testified in the sense here explained (rec, pp. 932 to 936). It is to be noted that four other objectors who have not appealed are comprised in this stipulation.

Ignacio Dacanay testified that for more than thirty years he had been in the quiet, peaceable and uninterrupted possession of the land that is the subject matter of his opposition, that he inherited this property from his

ancestors; that he had recognized no person as owner of the land; and that he had never paid any rent or canon to Father Franco or his agents or collectors.

Pedro Madriaga testified that for more than forty-five years he had been in the quiet, peaceable, and uninterrupted possession of the parcel of land that is the subject matter of his opposition; that he did not know Father Saturnino Franco; and that he had not paid him or his representative any sum whatever as rent or canon.

The record also shows that a stipulation was made between the applicant and Attorney Ambrosio Asprer in representation of 18 of the objectors—the names of 7 are omitted on account of their not having appealed from the judgment; the remaining 11 did appeal and a brief was filed in their names which are as follows: Alfonso Ventura, Eulogio Ventura, Mariano Halog, Guillermo Selga, Tiburcio or Toribio Milo, Gregorio Laroya, Marcos de la Paz, Mauro Gago, Justo Rivera, Miguel Ventura, and Esteban de la paz. This stipulation consisted in the admission that, were these objector-appellants called to the witness stand to testify, they would give the same testimony as that in the stipulation between the applicant and the attorney Manglapus, to wit, that they have held the lands they claim for more than thirty years, including in this possession that of their predecessor in interest, and that their possession has been open, public and adverse and always as owners (rec, pp. 961 and 979). These facts were corroborated by Jacinto Selga, Antonio Refuerzo, Alipio Padilla, Tranquilino Aspuria, and Guillermo Tabara.

The objector Inocencio Padilla presented in evidence the documents Exhibits 2 and 3. The first of these is a certified copy of a document, issued by the gobernadorcillo of Agoo on December 5, 1879, wherein, it appears that Remigio Estoesta was the owner of a parcel of land in Caoigui, which he had inherited from his ancestors and which was appraised at P50. This document was protocolized by order of the Court of First Instance of La Union on December 13 of that year. The second document is one of a private character. It bears the date of November 16, 1870. In it Remigio Estoesta and his wife Estefania Castillo declare that they sold a parcel of land in the sitio of Caoigui to Teodoro Padilla for P40.

To prove his opposition, Valeriano Padilla exhibited a certified copy of the inscription of a possessory information approved on March 16, 1897, inscribed thirteen days later on the 29th of the same month, and relating to 2 parcels of land, one of them designated by the number 142 and situated in Caoigui, municipality of Agoo, barrio of Tubao. The objector Miguel Ocampo, son of the deceased Cosme Ocampo, to prove his opposition, exhibited a certified copy of certain proceedings, entered in the registry on March 28, 1898, relative to 4 parcels of land, of which the first and fourth are included in the application for registration and are situated in Caoigui, municipality or barrio of Tubao (Exhibit 13; rec, p. 563).

According to the stipulation (rec, p. 835) between the applicant and the Attorney Mabanag (in representation of his client Raymundo Padilla) the latter, if called to the witness stand, would testify in accordance with the statements contained in his written opposition. This objector presented in evidence Exhibit 4, which is a deed of purchase and sale executed on November 17, 1902, by Encarnacion Gonzalez who, for P300, sold to the said Raymundo Padilla a parcel of land in Cabacuasan, municipality of Tubao, his inheritance from his deceased father. This deed is shown to have been entered in the property registry of San Fernando de la Union on November 22, 1902; the objector also exhibited a certificate of the municipal president and the municipal council of the said pueblo, of November 14 of the same year, which states that though by a judgment of 1900 Santiago Fontanilla, husband of said Encarnacion Gonzalez had been deprived of his civil rights since then, nevertheless it is evident from the stipulation (rec., p. 933) that the said document (Exhibit 4) attested by the gobernadorcillo of Agoo in favor of Padilla was subsequently protocolized by the notary Tamayo, although it does not seem to have been entered in the registry in the name of the vendor Gonzalez. However, every one admits that the old registry books were burned or destroyed during the Revolution. The document Exhibit G which is a certificate by the registrar of property of La Union, issued on July 22, 1913, confirms the inscription of the said deed in the name of

Raymundo Padilla (rec. p. 603).

Contrary to the statements of applicant's witnesses known as Mariano Fang and Sebastian Nieva, that Santiago Betia was Father Franco's collector and that they themselves had paid rent or canon for certain parcels of land belonging to one Sabugo, the witness Betia testified that, though he was acquainted with Father Franco, he had never been authorized to collect the canon of the land in litigation, and that he never knew Basilio Biduya had purchased land in Agoo.

Having thus far considered the evidence of record in respect to 78 of the objectors who in their briefs have maintained their respective appeals in this second instance, we shall now examine the evidence and proofs of the remaining 19 objectors who also appealed from the judgment of the Court of Land Registration without counting the nine other objectors who presented no evidence at the hearing of the case in first instance and who are not included in the stipulations aforementioned.

The said 19 objector-appellants are:

Jacinto Selga, 53 years of age, alleges that he is the owner of 2 parcels of land included in the tract of land which is the subject matter of the application; that, aside from the possession of his predecessors in interest, he has been holding the first parcel peaceably and uninterruptedly for more than ten years, and the second parcel for more than 33 years, that is, since inheriting them from his father Toribio Selga; and that he never paid any sum whatever as canon to either Father Saturnino Franco, Severo Fontanilla or Gregorio Selga (with all of whom he was acquainted). This objector exhibited the document Exhibit 17 which states that the first parcel of land he claims belonged to the daughters of the deceased Fernando Ulac; he also presented a certified copy of a possessory information proceeding, instituted by himself, proving possession under title of ownership of 4 parcels of land entered in the registry on March 18, 1897. The witness Domingo Selga corroborated the testimony of this objector.

Antonio Refuerzo, 51 years of age, claimed to hold as owner the parcel of land that is the subject matter of his opposition, alleging that he inherited this property from his father some thirty-two years ago, and stated that he had never paid any sum whatever as canon to Father Franco, nor to the said Fontanilla or Selga. The testimony of this objector appears corroborated by the witnesses Jacinto Selga and Domingo Selga. Furthermore he exhibited a certified copy of a possessory information, Exhibit 20, entered in the property registry on March 15, 1897.

Alipio Padilla, 68 years of age, testified that for more than thirty-five years he had been -in the quiet and peaceable possession of two parcels of land—one acquired from a man named Esteban, and the other inherited from his father more than forty-five years ago—that he had held these parcels of land as owner; and that he had paid no canon to any of the aforesaid parties, Father Franco, Fontanilla or Selga. The witnesses Teodoro Padilla, 61 years of age, and Valeriano Padilla, 62 years of age, corroborated the testimony given by this objector who also exhibited a certificate of possessory information (Exhibit 21) entered in the property registry on May 7, 1897, relative to a sementera situated in Sabangan Caoigui of the pueblo of Tubao.

Tranquilino Aspuria testified that in his own name and in the names of his brother and sister, Mariano and Valeriana Aspuria, he had been holding as owner a parcel of land for more than eighteen years, without counting the period of possession of his father, Pio Aspuria, who in turn had inherited the land from the objector's grandfather Pablo Lagleba; that he never had paid canon for the land; (his testimony was corroborated by the witness Domingo Selga) and presented a possessory information title (Exhibit 22) obtained in 1856 by proceedings had before the gobernadorcillo of Agoo and protocolized by a judicial order.

Guillermo Tabara alleged that as owner he had held a parcel of land for more than seventeen years, without

counting the time of possession of his grandfather, Francisco Aspuria, from whom he inherited the property, and that he had never paid any canon to any person whomsoever (his testimony was corroborated by the witness Francisco Aspuria), and he exhibited a certified copy of a deed of sale (Exhibit 23) executed May, 1879, by Regino Tuvera in favor of Francisco Aspuria and protocolized on January 2, 1880.

Ignacio Dacanay, 55 years of age, testified that he possessed a parcel of land in the sitio of Cataguintingan, barrio of Lloren; that he had held it ever since he was 18 years of age at which date he received it from his father who in turn had inherited it from Dacanay's grandfather; that he had never recognized any person whomsoever as the owner of this land, and that he had paid no canon therefor to Father Franco or to any of his agents. The witnesses Angel and Hilario Milo corroborated his testimony.

Felipe Lloren testified that he held as owner a parcel of land situated in the barrio of Lloren and comprised within the land sought to be registered by the applicant; that 40 years ago he had inherited this property from his father Francisco Lloren who in turn had acquired same by right of first cultivation, when the objector was 18 years old; and that neither he nor his father had ever paid any person any sum whatever as canon. (His testimony was corroborated by the witness Buenaventura Dacanay.) He presented a possessory information title, obtained by proceedings brought by Francisco Lloren in February, 1886, before the gobernadorcillo of Agoo, which document proves his possession of a parcel of land in the sitio of Tubao, barrio of San Isidro, and was approved by the politico military governor of La Union and was afterwards transmitted by order to the main court of the province, for the purposes required by law.

So far as Felipa Orenca, Narciso Orenca, and Guillermo Orenca are concerned it was fully proven that these objectors are descendants of Agustin Orenca who, at his death in 1867, left, among other heirs, his children named Buenaventura Orenca (father of the objector Felipe), Quirino Orenca (father of the objector Narciso Orenca), and Joaquin Orenca (father of the objector Guillermo Orenca) as well as that the lands belonging to the said Agustin Orenca, the common predecessor in interest, were divided among his eight children in 1875. It was also duly proven by the Exhibit 6 that, in February, 1858, after compliance with the legal requisites and with the permission of the owners of the adjoining properties, the said Agustin Orenca filed information proceedings before the gobernadorcillo of Agoo regarding a parcel of land he was occupying in the sitio of Cataguintingan, barrio of San Isidro, pueblo of Agoo, and that his petition was granted, pursuant to article 9 of the superior decree issued by the governor and captain general, on October 80, 1827. The fact of the partition in 1875 of a piece of Agustin Orenca's land in Cataguintingan among his seven children and his adopted son Ramon Ballejo appears to be corroborated by the testimony of Buenaventura Dacanay, 77 years old, an eyewitness to this partition.

The applicant admitted by stipulation (rec., p. 872) that the objectors Guillermo Orenca and Narciso Orenca would state, if they testified, that the adjacent boundary owners and areas of their lands were the same as those set forth in their adverse claims. It was furthermore shown that in 1911 Guillermo Orenca inherited from his father Joaquin Orenca the piece of land of 5 hectares, 67 ares, and 60 centares, claimed by this objector, and that he also presented at the trial the Exhibit 7, a record of a possessory information proceeding brought by Joaquin Orenca in March, 1895, in respect to a parcel of land in Cataguintingan which he alleged he had inherited from his father Agustin Orenca who had held it since 1858. It is this land that was conveyed to the objector Guillermo Orenca. The second parcel claimed by the latter is a piece of land which his father Joaquin Orenca had held since 1858, situated in the barrio of Anduyan and also a subject matter of the said possessory proceeding, Exhibit 7, and on January 21, 1896, preventively annotated by the register of deeds of La Union, for lack of indexes in the old anotaduria. The piece of land that corresponds to Quirino Orenca, conveyed to him by the said Agustin Orenca, was likewise the subject matter of a possessory information proceeding brought by Quirino in 1895; said land passed into the possession of his son, the objector Narciso Orenca. However, by reason of a suit for ejectment

brought against Santiago Tabares, the title awarded in the said possessory information proceeding was attached to the record which disappeared as a result of a fire during the Revolution, after Narciso Orenca had defeated the said Tabares in the suit (as shown by the copy of the judgment therein rendered on November 12, 1897, in favor of the former, Exhibit 12) wherefore the land now occupied by Santiago Tabares belongs to the objector Narciso Orenca.

Felipa Orenca likewise proved that she had received the land she claims from her grandfather Agustin Orenca, through her father Buenaventura, in 1875, without considering the possession of her predecessor in interest which dated from 1858.

Ricardo Gabututan testified that he had held as owner the land he claims in the barrio of Verceles, pueblo of Tubao, for about twenty-two years, that he inherited same from his father Basilio Gabututan who had been in possession thereof for a long period of time, (this testimony was corroborated by his witness Sotero Isla) and also exhibited the document Exhibit 8, executed before the gobernadorcillo of Agoo, attesting that Basilio Gabututan owned a piece of land in the sitio of Piccao, barrio of San Isidro, which document was protocolized in court on December 13, 1879.

In regard to the opposition of Adolfo R. Gonzalez, of his brothers Eduardo and Garlos and his sister Encarnacion Gonzalez, this objector testified that his 26 hectares of land had belonged to his father Felipe Santiago Gonzalez who had acquired the same by purchase from a man named Manuel Bernal. His testimony in regard to the purchase of the land from Bernal was corroborated by Raymundo Padilla. The document Exhibit 9, presented by the Gonzalez brothers and sister, shows that in 1885 Eugenio Ramos bought 3 parcels of land from the Government, of which the second situated in Tubao, pueblo of Agoo, containing an area of 26 hectares and 63 ares, is the parcel now claimed by these objectors, and that the payment of the purchase price was made by Manuel Bernal, as attested by the document Exhibit 10. No documental proof was adduced of the sale of the land by Manuel Bernal to the father of these objectors, though, in addition to the affirmation of Adolfo R. Gonzalez and his witness Raymundo Padilla, it appears that his land was sold by Bernal to Felipe Santiago Gonzalez who, in May, 1896, (according to the certified copy Exhibit 11) commenced possessory information proceedings in regard to 2 parcels of land, of which the second is the one described as the second parcel in the said document Exhibit 9 and also the one that is now claimed by these objectors. The title obtained by the said possessory proceedings was entered in the property registry of La Union on August 31, 1896.

Ignacio Dacalcap, 60 years of age, claims to be the owner of a piece of land situated in the barrio of Lloren, comprised within the land sought to be registered by Kincaid, and testifies that for more than thirty years he has been in the peaceable and uninterrupted possession of same which, inherited from his father, Eusebio, he has held as owner, without ever having paid to anyone any amount whatever as canon therefor. His witness Sotero Isla corroborated his testimony.

Sotero Isla, 50 years of age, alleged that he was the owner of 4 parcels of land, 2 in the barrio of Verceles and 2 in Lloren, as set forth in his adverse claim, and that he had held possession of them for more than thirty years, peaceably and uninterruptedly as the owner thereof, by reason of his having acquired them by inheritance from his father. His testimony was corroborated in all respects by the witness Ignacio Dacalcap.

Valerio Pabelo, 36 years of age and the successor in interest in the adverse claim filed by Pablo Pabelo, his father, testified that he held as owner 2 parcels of land included in the tract sought to be registered, situated in the barrio of Lloren, and added that his father had bought them of Ramon Ballejo, who, as an adopted son, had inherited them from Agustin Orenca. According to the testimony of Buenaventura Dacanay (rec, p. 866), it is unquestionable that the lands of Agustin Orenca were distributed among his seven children and an adopted son

named Ramon Ballejo. Although it was not established by documentary evidence that Ballejo's land was conveyed to Pablo Panelo, it was proven by the testimony of the witnesses Ignacio Dacalcap and Narciao Orenca (a grandson of Agustin Orenca) that it was actually so conveyed to Panelo. Narciso Orenca further stated that for more than twenty years the panelos had been in possession of the land that is the subject matter of this opposition (rec, p. 902). As the applicant made no objection to the oral evidence, offered by Valerio Panelo, to prove the conveyance of the land by Ramon Ballejo to the objector's father Pablo Panelo, this fact must be admitted as proven. (Conlu vs. Araneta and Guanko, 15 Phil. Rep., 387.)

Antonio Isla, son of Segundo Isla, testified that he was the exclusive owner of a parcel of land included in Kincaid's application, and that ever since he could remember his father had cultivated it. His testimony was corroborated by Sotero Isla.

Roberto Cabututan testified that he held as owner 2 parcels of land situated in the barrio of Lloren, comprised within the land sought to be registered by the applicant, and that he had held possession of them for more than seventeen years, without considering the time they had been held by his father from whom he received them. His testimony was corroborated by Ignacio Dacalcap.

Serapio Cabututan, 46 years of age (whose testimony was corroborated by Ignacio Dacanay and Roberto Cabututan), stated that he was the exclusive owner of a parcel of land in the barrio of Lloren, pueblo of Tubao, comprised within the land sought to be registered by Kincaid, and that he had inherited same from his father Remigio Cabututan who had been in possession of it from the time of this objector's earliest remembrances.

Gelasio Milo, 49 years of age, testified that he was in possession, as owner, of 3 parcels of land comprised within the land referred to by the applicant; and that the first of these parcels, situated in the sitio of Llavan, barrio of Lloren, was purchased for P230 from Erasmo Isit in October, 1907. (According to the document Exhibit 15, the vendees were Gelasio Milo and Hilario Gagauin, but it appears that in May, 1866, Erasmo Isit obtained a document accrediting his possession of a parcel of land in the sitio of Llavan and that his document was attested by the gobernadorcillo of Agoo, the proceedings being subsequently approved by the politico-military governor of La Union who ordered them recorded in the book of purchases and sales of the pueblo of Agoo, which was done.) Milo alleged that he inherited from his father Toribio Milo the other 2 parcels of land he claimed; that he has held them as owner for more than ten years; that his possession thereof has been peaceable, public and adverse, and that at no time has he paid to any person any sum whatever therefor as canon.

Therefore 97 of the objector-appellants now lawfully hold as owners their respective parcels of land, inasmuch as they have proven such possession by parol, and many of them by documentary evidence, and, furthermore, the applicant admitted that 78 of them had been in possession of their respective holdings for more than thirty years, according to the stipulations made between him and the attorneys representing these objectors. The other 19 objectors have also satisfactorily proven that they have, for more than twenty years, as owners, been in possession of the parcels of land they occupy, without considering the periods of possession enjoyed by their predecessors.

If a person enjoys possession under title of owner for more than thirty years, even though that title be neither just nor of good faith, especially if said resident be a native of this country, this fact constitutes title sufficient to acquire the dominion of the realty, for prescription by virtue of possession of real property for more than thirty years is a positive obstacle that an adverse claimant cannot overcome by the best title of ownership known to law (arts. 446, 447, 1959 and 1960, Civ. Code).

It has not been shown in the instant proceedings that the predecessors of the applicant were or the applicant himself is now in possession of the whole tract of land situated in Cataguintingan; wherefore, once proven that the said 97 objector-appellants have been holding and hold now possession, as owners, for a period of more than

thirty years, some for sixty (counting the possession of their predecessors) , it would be improper to refuse to recognize the right acquired by these 97 objectors, by virtue of the long period of prescription, especially when the applicant himself by stipulation found himself compelled to admit such long possession enjoyed by 78 of them. For this reason the applicant's title cannot prevail as a better title against the right of this extraordinary prescription, acquired over their respective properties, by these 97 objector-appellants.

The applicant's title can only prevail against the 9 objector-appellants who have not satisfactorily proven that they have acquired the ownership in the parcels of land they respectively hold, because they have not duly proven that they have been in possession thereof as owners and for the period of time prescribed by law. Therefore, not having acquired title of ownership therein by prescription, the parcels of land they occupy must be deemed to be a part of the tract of land in Cataguintangan sought to be registered by the applicant who for this purpose presented a title by which he lawfully acquired from the Government the ownership of the said tract of land awarded to him by the former sovereignty, although, in accordance with law, the rights held in the parcels of land comprised within this tract, held under title of ownership by their actual occupants who have lawfully acquired possession thereof by prescription, must be respected (arts. 438, 446, 447, and 448, Civ. Code).

The applicant has applied for the registration of 573 hectares, 89 ares, and 52 centares of land in the said sitio of Cataguintangan, barrio of Anduyan, municipality of Tubao (formerly only a barrio of the pueblo of Agoo), Province of La Union. Of this extensive tract of land, 93 hectares, 89 ares, and 52 centares are public land not included within the perimeter of the land awarded by the Spanish government to Froilan Sabugo, the first of the applicant Kincaid's predecessors in interest. This applicant now seeks to register not only that land awarded to Sabugao as above stated, comprising 480 hectares, but also the said 93 odd hectares, which two tracts make the aggregate area of 573 hectares, 89 ares, and 52 centares.

As, according to the evidence of record, the applicant's petition for registration may be granted only with respect to less than one-half of the said aggregate area of 573 and odd hectares of land, we shall now specify the number of hectares that should be excluded in favor of the Government, as well as the actual holders who are entitled to be considered owners of their respective properties. Said land comprises:

- Six hectares, 43 ares, and 75 centares, actually held by Santiago Betia, according to the stipulation between the parties.
- Two parcels of land containing 5 hectares, 35 ares, and 50 centares, actually held by the brothers Feliciano, Candido and Cenon Ballejo.
- The parcel of land of 2 hectares, 18 ares, and 75 centares, actually held by the brothers Mariano and Esteban Orenca, by virtue of applicant's relinquishment.
- There should also be excluded from the registration 315 hectares, 60 ares, and 71 centares of land, the aggregate area of the parcels held by the 97 objectors who have proven their respective rights and whose rights were recognized by the applicant, together with the parcel, acquired by the Government for school purposes, containing 54 ares and 12 centares. It is to be noted that the measurement of the parcels of land of 16 of the objectors are those of the circumference which, reduced to hectares and barring errors, are deemed to be equivalent to 23 hectares, 85 ares, and 44 centares, and are comprised within the said aggregate total area of 315 hectares, 60 ares, and 71 centares that must be excluded, as aforesaid, from the 573 and odd hectares of land that are the subject matter of the application.
- There should also be excluded from the land sought to be registered, the land of Baailio Aspillaga and the 12-meter strip that forms the Tubao-Rosario Road, as ascertained by its survey and boundary marks, in accordance with the stipulations between the parties.

So that, from the facts hereinabove stated, it follows that 233 hectares, 76 ares, and 69 centares, barring errors, should be adjudicated to the applicant Kincaid, and should be entered in the property registry. In this total are included the parcels of land of the 9 objectors who have not furnished proof of their respective rights therein.

The applicant's petition for the registration of the said 233 hectares, 76 ares, and 69 centares is granted, inasmuch as, in respect thereto, no one has come forward with any adverse claim and inasmuch as the 9 objectors who filed adverse claims for certain parts of the said land did not present satisfactory proof. Therefore, by reason of his title the applicant must be considered as the lawful owner of the said 233 hectares, 76 ares, and 69 centares that are not rightfully held by anyone else. It is to be noted that, by stipulation, the lands of Tomas Montemayor, Victoriano Olarte, and Guillermo Milo were likewise excluded, as not being comprised within the land in question.

For the foregoing reasons, it is proper to hold, as we hereby do that (1) the adverse claims filed by Pedro Estoparre, Eustaquio Estoparre, Alejandro Estoparre, Servando Estoparre, Inocencio or Tiburcio Madriaga, Alberto Cabututan, Doroteo Milo, Inocencio Dacanay and Bernardo Dacanay for certain portions of the land comprised in the application for registration are denied, as these claimants have not proved their respective rights therein.

(2) We likewise hold that there shall be excluded from the application for the registration, sought in these proceedings, the parcels of land specified in the second preceding paragraph of this decision designated under Nos. 1, 2, 3, 4, and 5 in which specific mention is made of the number of hectares of land to be excluded from the applicant's claim.

(3) After declaration of general default, the adjudication and registration in the property registry of the said 233 hectares, 76 ares, and 69 centares of land shall be made in behalf and in the name of the applicant, William Abraham Kincaid, who must pay to the Government the sum of P147.58 for the excess in the area of the land he seeks to register, and, at the applicant's expense, a new plan of the adjudicated land shall be made by the Bureau of Lands, from which plan there shall be excluded the parcels of land specified in the five paragraphs mentioned in the preceding paragraph.

The judgment appealed from is affirmed in so far as it agrees with this decision, and is reversed in so far as it does not. No special finding is made as to the costs of both instances. So ordered.

Arellano, C. J., Trent, and Araullo, JJ., concur.
Johnson, J., reserves his vote.

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