

**ROSA DUPILAS, ADMINISTRATRIX OF THE ESTATE OF THE
DECEASED, CECILIO ALUMISING, PLAINTIFF AND APPELLANT, VS.
VLCTORIANO CABACUNGAN ET AL., DEFENDANTS AND APPELLEES.**

G.R. No. 11201. February 15, 1917

Ponente: TRENT, J.

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TRENT, J.:

On September 29, 1892, Gregorio Cabacungan, Marcelino Cabacungan, and Mariano Cabacungan obtained from the Spanish government state grants for the following parcels of land located in the sitio

of Patalan, municipality of Paniqui, Province of Tarlac:

"Gregorio Cabacuñgan: Parcel 1.—Bounded on the north by lands of Ramon Gonzales and Felipe Madolora; on the east by the Patalan Road; on the south by lands of Marcelino Cabacungan; and on the west by land of Lorenzo Tabios. Area, 22.46 hectares.

"Parcel 2.—Bounded in the north by the land of Mariano Cabacungan; on the east by the Patalan Road; on the south by the lands of Cristobal Lopez and Romualdo Tiamsing; and on the west by land of Romualdo Tiamsing. Area, 18.40 hectares.

"Parcel 3.—Bounded on the north by land of Marcelino Cabacuñgan; on the east by lands of Tomas Dacoma and Juan Dacoma; on the south by the division line between Paniqui and Gerona; and on the west by land of Felizardo Tiamsing. Area, 25.48 hectares.

"Marcelino Cabacuñgan: Parcel 1.—Bounded on the north by land of Mariano Cabacungan; on the east by lands of Martin Villanueva and Tomas Dacoma; on the south by land of Gregorio Cabacuñgan; and on the west by the Patalan Road. Area, 28.365 hectares.

"Parcel 2.—Bounded on the north by the land of Gregorio Cabacuñgan; on the east by the Patalan Road; on the south by the land of Mariano Cabacuñgan; and on the west by the land of Lorenzo Tabios. Area, 17.40 hectares.

"Mariano Cabacuñgan: Parcel 1.—Bounded on the north by the lands of Julian Macaraeg, Mariano Domingo, and Juan Mendoza; on the east by lands of Esteban Salazar and Leonardo Beltran; on the south by land of Marcelino Cabacungan; and on the west by the Patalan Road.. Area, 28.665 hectares.

"Parcel 2.—Bounded on the north by land of Marcelino Cabacuñgan; on the east by the Patalan Road; on the south by land of Gregorio Cabacuñgan; and on the west by land of Romualdo Tiamsing. Area, 20.40 hectares."

The titles were duly registered on November 9, 1892. On May 4, 1895, the three grantees appeared before a notary public and duly executed Exhibits D, E, and F, wherein they acknowledged having sold for cash in hand on that day their respective parcels of land to Leon Alumising for the prices stated, and at the same time turning over to Leon Alumising their state grants. Exhibits D, E, and F were likewise duly registered on June 18, 1896. Leon Alumising died in 1897, leaving surviving him his wife, Alejandra Pacquing, and two daughters, Angela and

Agripina. Alejandra Pacquing sold the lands to Cecilio Alumising, brother of Leon Alumising, on the 30th of March, 1905. This purchase and sale is evidenced by a duly executed and ratified notarial document, but not registered. Subsequent to the death of Cecilio Alumising and on September 12, 1912, Rosa Dupilas, as administratrix of the estate of the deceased Cecilio Alumising instituted this action for the purpose of recovering the possession of the following described parcel of land, together with damages for the illegal detention of the same:

"A parcel of land located in the barrio of Patalan, Paniqui, Tarlac, bounded on the north by Ramon Gonzales, Felipe Madolora, Juliana Macaraeg, Mariano Domingo, and Juan Mendoza; on the east by Esteban Salazar, Leonardo Beltran, Martin Villanueva, and Tomas Dacoma; on the south by the division line between the towns of Paniqui and Gerona, now Pura, and Cristobal Lopez and Romualdo Tiamsing; and on the west by Felizardo Tiamsing, Romualdo Tiamsing, and Lorenzo Tabios. Valued at P34,100, with an area of 160 hectares and 71 ares."

Gregorio Cabacungan died in 1906 and Mariano Cabacuñgan died some time later, but before the commencement of this action. The original defendants are Victoriano Cabacuñgan, Marcelino Cabacuñgan, Liberate Mateo, Gabino Donato, and Juan de los Reyes. Marcelino, Mariano, and Victoriano are the sons of Gregorio Cabacungan. The other three above named defendants are in no wise related to the Cabacungan family. The complaint was amended on February 10, 1914, making various other parties defendants, none of whom are related to the Cabacuñgans, unless Silvestre Domingo is the same person referred to as Silvestra Domingo, a descendant of Gregorio Cabacuñgan. There are some sixteen other descendants of Gregorio Cabacuñgan who were not made defendants. On March 22, 1913, Marcelino Cabacuñgan and Victoriano Cabacuñgan answered, denying all the allegations in the complaint, and interposed a counterclaim in which they alleged that Leon Alumising obtained the deeds (Exhibits D, E, and F) and the possession of the state grants by means of fraud, and prayed for affirmative relief to the effect that the deeds and the state grants be returned to them. On March 22, 1913, Juan de los Reyes filed his answer, disclaiming any interest in the lands in dispute. On the same date Gabino Donato filed a general denial and alleged as a special defense that he is the exclusive owner of a parcel of land situated in the sitio of Patalan, bounded on the north by Rosendo Cortez, on the south and east by Victoriano Cabacuñgan and on the west by Victoriano Cabacuñgan and Leon Lacayanga with an area of more than one hectare. This defendant further alleged that a judgment had been rendered in his favor as defendant in a suit for the possession of this small parcel of land in which the deceased Cecilio Alumising was the plaintiff. Liberate Mateo in his answer filed on March 22d, alleged, after making a general denial, as a special defense, that he is the sole owner of a parcel of land situated in the sitio of Patalan, bounded on the north by Teodoro Andres; on the east by Martin Villanueva; and on the south and west by Victoriano Cabacuñgan. Dionisio Macadangdang and Angelo Austria entered a general denial on March 11, 1914. The other named defendants filed a joint answer on February 28, 1914, denying the allegations in the complaint and set up, as a special defense, that they are simply tenants of their co-defendants, Victoriano Cabacuñgan and Marcelino Cabacuñgan.

From a judgment in favor of the defendants dismissing the complaint upon the merits, with costs, and ordering the return of the deeds and state grants, plaintiff appealed and now urges that the court erred (1) in finding that the seven parcels of land all belonged to Gregorio Cabacuñgan; (2) in finding that the sales to Leon Alumising were fictitious and made for the sole purpose of enabling him to raise a loan on the lands in order that Gregorio Cabacungan might pay him a debt of P77.50; (3) in finding that the letters, Exhibits Nos. 2, 3, and 4 of the defendants, are authentic and not forged; (4) in finding that Leon Alumising had never been in possession of the land up to the time of his death; and (5) in finding that Gregorio Cabacuñgan and his heirs have been in continuous, peaceable, and quiet possession of the lands since and before the issuance of the state grants. All of these alleged errors may be considered together.

The three letters, Exhibits Nos. 2, 3, and 4, read as follows:

"[Exhibit 2.]

"Apo Gorio: As they do not believe in Manila that you have in trusted the sale of your land to me, even when I show them your title, for the reason that there has not decided to write you in order that you may come here to Moncada, that then we may go together to Tarlac to make an instrument of sale, for in this manner it will be easier to negotiate the sale; have no fear of the step I propose nor feel that I will deceive you in the future, for you have already that contract which was made there.

"Yours, etc.,

"LEON ALUMISING MEND.A.

"[Exhibit 3.]

"SIR: It is strange to me that you did not go to Tarlac with your children on the day we fixed to go before a notary for the purpose of executing the instrument, and it hurts me to think that you seem to have doubts. I entreat you to banish that doubt from your mind, since you have the contract and these my letters in your hands. Therefore come so that we may agree on the day most convenient for you to go to Tarlac with the object of executing the instrument as if it were a sale, and if the notary asks you if you have already received the money tell him yes, nothing more, for you have this letter of mine which is proof that you have not really received any, except the P77.50 for that which was given me as guaranty.

"Yours,

"LEON ALUMISING MEND.A.

"[Exhibit 4.]

"SIR: Don't be grieved if I deliver now to other persons the land which you gave me in guaranty, as I have not been able to sell it at the price I wanted in order that both of us might make a profit; at any time, if you will give me the P77.50, I will deliver your land. I am informed that you are continually worried because of the instrument of sale which we had executed, but I tell you you have no cause to be anxious, because I will take them there when I go if I do not forget them as I did that other time I went. My papers are out of place; I do not trust them to any one because I am uneasy.

"Yours, etc.,

"LEON ALUMISING MEND.A."

Marcelino Cabacungan identified Exhibits Nos. 2, 3, and 4 and testified that each bore the signature of Leon Alumising. Paulino Villafuerte testified to the same effect. Santiago de Jesus testified that the signatures to Exhibits Nos. 2 and 3 are those of Leon Alumising. Both Paulino and Santiago were employees with Leon Alumising in the Court of First Instance of the Province of Tarlac for sometime prior to the death of Leon Alumising in 1897. When Exhibits Nos. 2, and 3, and 4 were offered in evidence counsel for the plaintiff asked time within which to read and examine them. Later on the court asked counsel what he desired to say with reference to these exhibits. Counsel replied as follows: "We object to the introduction of Exhibits 2, 3, and 4 because they are impertinent, for the reason that they are not dated and it is not known to what they refer; they speak of an indeterminate parcel of land," Court: "Exhibits 2, 3, and 4 are admitted." No exception was taken. No effort whatsoever was made by the plaintiff in the court below to show that the letters were not written by Leon Alumising. Neither did the plaintiff attempt to prove that these letters referred to other lands than those in

question. That the three letters were written by Leon Alumising and that they refer to the lands covered by Exhibits D, E, and F and the state grants, there can be no question.

The history of the transactions relating to the execution of Exhibits D, E, and F and the turning over to Leon Alumising of the state grants is stated by Marcelino Cabacuñgan substantially as follows: Gregorio Cabacuñgan obtained the state grants from the Spanish government. The land was divided, as appears in the state grants, by the surveyor. Notwithstanding the fact that the titles were issued in the names of the three Cabacuñgans, the whole of the land belonged to Gregorio Cabacuñgan. Gregorio Cabacuñgan owed Leon Alumising the sum of P77.50. Gregorio could not meet this obligation at the time the payment was demanded by Leon. Thereupon Leon proposed that he be given a power of attorney to pledge the three titles in Manila. The titles were then turned over to Leon. Sometime later Leon informed Gregorio that he was unable to pledge the titles and requested that the necessary documents be executed, purporting to sell the lands to Leon, Gregorio to make the simulated sales, which was done, as appears from Exhibits D, E and F. No money was received by the Cabacuñgan as a result of the execution of those documents. The only purpose of executing the documents was to authorize Leon to sell or pledge the lands. On receipt of the letter, Exhibit 4, the Cabacuñgans took the P77.50 to Moncada for the purpose of paying Gregorio's debt and obtaining the deeds and state grants. The debt was then paid to Leon, but the documents were not returned, Leon saying that they had been mislaid. Leon promised to return the documents as soon as they could be found. After the death of Leon the Cabacuñgans made a demand upon Leon's family for the return of the documents. The members of the family stated that they did not know where the titles were. In 1908 Cecilio Alumising instituted an action in the justice of the peace court for the possession of the land, but failed, the Cabacuñgans being absolved. Later Cecilio instituted another action against Donato, which suit was abandoned by Cecilio in the Court of First Instance.

The defendants, Dionisio Macadangdang and Angelo Austria, have established that they are the owners, with other parties, of the parcels of land occupied by them. This ownership is evidenced by Torrens title issued on March 5, 1908, and November 11, 1910, respectively. The trial court found that the Cabacungans and their heirs are now, and have been since sometime prior to the issuance of the state grants, in the open, peaceable, and quiet possession as owners of the remainder of the land in question and that neither Leon Alumising nor anyone pretending to hold under him has ever been in the possession of the whole or any part of these lands, nor received at any time any of the products therefrom.

The result is that the Cabacuñgans, as a matter of fact, never sold the lands to Leon Alumising. Exhibits D, E, and F were executed at the instance of Leon Alumising in order that he might sell or pledge the lands for the Cabacuñgans. The Gregorio Cabacungan debt to Leon of P77.50 was paid during the lifetime of the latter. At the time Leon's widow attempted to sell the lands to Cecilio Alumising, Cecilio, who lived in the same community, knew that the lands were then in the possession of the Cabacuñgans and had been all the time. He also knew that neither Leon nor Alexandra had ever been in possession and had ever received any of the products from the land. If he paid the widow the amount stated in the document, he did so with full knowledge of these facts.

The question now arises whether Cecilio Alumising acquired title to the lands by virtue of the document executed in his favor by Alejandra. The solution of this question depends upon the effect produced by the registration of Exhibits D, E, and F. It is urged that Cecilio Alumising acquired absolute title to the lands by purchase from, as it is said, the registered owner and that Exhibits D, E, and F and the facts stated therein are binding upon the contracting parties and their successors in interest. Counsel in support of these contentions cite and rely upon articles 1215, 1218, and 1219 of the Civil Code, and *Escario vs. Regis* (31 Phil. Rep., 618) ; *Cacnio vs. Baens* (5 Phil. Rep., 742); *Nolan vs. Salas* (7 Phil. Rep., 1) ; *Mendoza vs. Fulgencio and De Asis* (8 Phil. Rep., 243); and *Dancel and Mina vs. Ventura* (24 Phil. Rep., 421).

Article 1215 of the Civil Code provides that proof of obligations may be given by instruments, by confessions, by witnesses, etc. Article 1218 reads:

"Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

"They shall also be evidence against the contracting parties and their legal representatives with regard to the declarations the former may have made therein."

Article 1219 provides that public instruments, made for the purpose of impairing a former instrument, between the same parties, shall be effective against third parties only when the contents of the former should have been entered in the proper public registry or in the margin of the original instrument, and in that of the transcript or copy, by virtue of which the third person may have acted.

Article 1215 and 1219 have no special application to the question under consideration. Article 1218 establishes a rule of evidence with reference to the probative force of public documents. This rule is not absolute in the sense that the contents of a public document is conclusive evidence against the contracting parties as to the truthfulness of the statements made therein. The supreme court of Spain, in its decision of July 10, 1896, said:

"Neither from articles 1218 and 1248 of the Civil Code, nor from any other provision of law, may it be concluded that public documents have always greater weight than any other evidence."

Manresa, in commenting upon article 1218, says in volume 8 at page 465, that—

"It having been determined who are to be considered as third persons, the provisions of article 1218 leave no room for doubt; public instruments, public documents in general, are perfect evidence, even against third persons, if the act which the officer witnessed and certified to or the date written by him in the document are not shown to be false; but they are not perfect evidence with respect to the truthfulness of the statements made therein by the interested parties."

Section 285 of the Code of Civil Procedure provides that,—

"When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of agreement other than the contents of the writing, except in the following cases:

"1. Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings;

"2. Where the validity of the agreement is the fact in dispute. But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity, or to establish its illegality or fraud. The term 'agreement' includes deeds and instruments conveying real estate, and wills as well as contracts between parties."

Consequently, the defendants in the instant case had a right to offer any competent evidence for the purpose of establishing their defense to the effect that the execution of the deeds, Exhibits D, E, and F, were obtained in the manner indicated above.

In *Escario vs. Regis*, supra, the subject-matter of the action was the ownership of three parcels of land. The plaintiff's ownership was evidenced by a state grant. The defendant sought to overcome the state grant by oral testimony alone. This Court held that—

"The possessor of a title issued in due form has in his favor the legal presumption that in the issuance thereof all

the requisites prescribed therefor by law have been fulfilled. * * *

"If titles duly issued by the Government under the laws in force could be destroyed or invalidated by purely parol evidence nobody would be secure in his property, and even one who had the very best title would be in danger of losing it, if parol evidence could in any manner prevail as a general rule over documentary proof. (In the decision of the case of Dancel and Mina vs. Ventura, 24 Phil. Rep., 421, the principle was laid down that the grantee of a tract of unoccupied land who has obtained a composition title issued by and in the name of the Government and duly inscribed in the property registry is the sole owner of the land granted that appears in his name in the registry, until his title be annulled or canceled by a final judgment of the courts.)

"So long as the composition title secured by the plaintiff Gregorio Escario, through a final judgment rendered after a hearing had in due form and according to the provisions of the laws that treat of the efficacy and validity of the titles granted by the state with reference to sale and composition, has not been declared null and void and without force or effect, he is the only one to be regarded as the legitimate owner of the lands in question, to the exclusion of anybody else who cannot exhibit better right and title thereto.

"The sum of the parol evidence adduced by the defendants has not satisfactorily demonstrated that said composition title was fraudulently obtained or vitiated by any defect that would nullify it, and therefore no legal reason exists to declare it null and void."

In *Cacnio vs. Baens*, supra, the defendant presented a duly registered state grant covering the land in litigation. The validity of the state grant was denied by the plaintiff. The court, after holding that public instruments are admissible in evidence, even against a third party, as to the fact which gave rise to their execution and of the date thereof, said:

"The inscription, therefore, of the instruments in question prejudices the plaintiffs, *Cacnio* and *Cruz*, notwithstanding the fact that they did not participate in the proceedings relating to the composition of the said land between the state and the defendant, and in view of the provisions of article 27 of the Mortgage Law there can be no doubt that the said plaintiffs should be considered as third persons, whom the execution of the deed or instrument of the defendant and the inscription thereof in the registry of property affected and prejudiced.

"It has not been shown that the deed or patent issued by the *Direccion General de Administration Civil* had any substantial defect which would render it null and void, nor has it been proved that the party failed to publish the necessary notice as to the possession of the land to which the said deed refers; and under paragraph 31 of section 334 of the Code of Civil Procedure it must be presumed that this was done in accordance with the law until the contrary is shown."

In *Nolan vs. Salas*, supra, the plaintiff sought to recover a credit of P690.18 assigned to him by a certain Chinaman. Three notes signed by the defendant, amounting to were introduced in evidence. The trial court entered judgment for this amount and rejected the remainder of the claim. On appeal this court held (quoting from the syllabus) that, "the entries and other writings of a deceased person made at or near the time of the transaction provided for in section 328 of the Code of Procedure in Civil Actions, are not admissible in evidence until after the authenticity of the manuscript in question has been first satisfactorily established."

In *Mendoza vs. Fulgencio and De Asis*, supra, the court laid down the rule that an action to recover property appertains to the owner of the thing, and he may proceed not only against the person who is in actual possession, but also against the person unlawfully detaining it. The mere holding or material occupation of property, without the circumstances and conditions prescribed by law does not constitute legal possession, but is simply an intrusion with the intention of securing control over it, and is ineffectual in every way to confer any right of possession.

In *Dancel and Mina vs. Ventura supra*, the court, after observing that the possessor of real property must be respected in his possession so long as no other claimant appears with a better right and that the usurpation or detention of the property creates no right on the part of the usurper to the prejudice of the lawful owner, held (quoting from the syllabus) that, "the concessionary of an unappropriated tract of land who has obtained a composition title thereto, issued by and in the name of the Government and duly registered, is the sole owner of the property appearing in his name in the property registry, until his title be annulled or cancelled by a final judgment of the courts."

The cases just examined establish these propositions: (a) The possessor of a title issued in due form has in his favor the legal presumption that in the issuance thereof all the requisites prescribed therefor by law have been fulfilled; (b) parol evidence cannot, as a general rule, prevail over documentary proof, such as titles duly issued by the Government; (c) so long as state grants secured through a final judgment rendered after a hearing had in due form and according to the provisions of the laws that treat of the authenticity and validity of titles granted by the state have not been declared null and void, the grantee must be regarded as the true owner of the lands to the exclusion of anyone else who cannot exhibit a better right and title thereto; (d) the inscription of state grants prejudice third persons whether they participated in the proceedings which resulted in the issuance of such titles or not; and (e) the writings of deceased persons are not admissible in evidence until after the authenticity of such writings has been satisfactorily established.

The principal defendants are not attempting to have the state grants declared null and void. They do not question their validity. The authenticity of the letters of the deceased Leon Alumising was satisfactorily established before they were admitted in evidence. Consequently, the cases relied upon have no direct bearing upon the question under consideration.

Articles 33 and 34 of the Mortgage Law read as follows:

"Art. 33. The record of instruments or contracts which are null in accordance with the law are not validated thereby.

"Art. 34. Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the registry, has a right thereto, shall not be invalidated with regard to third persons, after they have once been recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry.

"Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article 389.

"The provisions of this article may at no time be applied to the instrument recorded in accordance with the provisions of article 390, unless the prescription has validated or secured the interest referred to therein."

In *Nery Lim-Chingco vs. Terariray* (5 Phil. Rep., 120), Lao-Yuco was the owner of the land in litigation. On the 3d of October, 1889, a public document evidencing the sale of the land was executed. The purchaser named in the document was the plaintiff. As seller there appeared before the justice of the peace, who was acting as judge of the Court of First Instance, with the power of a notary public, a person who stated that he was Lao-Yuco. Lao-Yuco was the husband of one of the defendants and the father of the other. Lao-Yuco died in 1902, The deed, although a forgery, was duly registered. Lao-Yuco remained in possession of the land up to the time of his death and the defendants continued in possession thereafter. This court held:

"This case does not come within article 34 of that law, and the record of the forged deed could not give the plaintiff any additional rights. There was nothing decided in the case of the *Compania General de Tabacos vs.*

Topino (4 Phil. Rep., 33), which is opposed to this proposition. It is very probable that if the defendants hereafter wish to record any instruments relating to this land, it will be necessary for them to procure the cancellation of the record of the deed in question, but the fact that they have not commenced any such action does not prohibit them from proving, when they are sued for possession of the land, that the deed under which the plaintiff claims is a forgery."

In *Merchant vs. Lafuente* (5 Phil. Rep., 638) the facts with reference to the ownership of the land therein involved were substantially these: On September 14, 1893, one Zamora presented to the registrar of property certain documents, which as he claimed, proved that he was the owner of the land and asked that he be inscribed in the registry of property as the owner thereof. A definite inscription was not then made, but in lieu thereof the registrar made a precautionary entry. Zamora afterwards sold the land to one Velarde. On January 25, 1894, Velarde presented his title papers to the registrar of property and asked that he be inscribed as the owner of the land. The same action was taken and a precautionary entry was made. On August 3, 1901, Velarde conveyed the land to Roxas. On December 4, 1902, Roxas conveyed the land to Ramirez Hermanos, and on January 5, 1903, Ramirez Hermanos conveyed it to the defendant Lafuente. All of these last named deeds were duly recorded in the registry of property. At the time Zamora was provisionally inscribed in the registry of property as the owner and at the time Velarde obtained a similar inscription in his name, neither one was the owner of the land, Veloso was the true owner at that time. The court held that—

"Although the title of Velarde was bad, this fact did not appear in the registry. From the registry Velarde appeared to have authority to convey. Roxas was entitled to rely upon this registry, and his grantees and subsequent purchasers have the same right. * * * Veloso was the owner of the property. His title was recorded in the old registry. He had the right to transfer it to the new registry. The law gave him an opportunity to do this before any interests in the land adverse to his could be obtained. If he had caused the transfer to be made at any time between 1889 and September 14, 1893, the date when Zamora secured his precautionary entry, the latter could in no event have acquired any rights against him. The entry which Zamora then secured was only a precautionary one, and under the terms of the seventh of the transitory articles of the regulations, it remained such for a year at least. During this time Veloso might have preserved his rights by making the transfer."

In *Suiliong & Co. vs. Chio-Taysan* (12 Phil. Rep., 13), a certain tract of land was duly inscribed in the registry in the name of Avelina Caballero. On March 27, 1903, Avelina borrowed from Francisca Jose P1,000 and turned over to Francisca the title deeds to the land as security for the loan, but no entry touching the transaction was noted in the land registry. Avelina died on June 5, 1903, and as a result of proceedings instituted for the purpose of obtaining a declaration of heirs, the court, On August 5, 1903, found and decreed that Silvina Chio-Taysan y Caballero was the sole heir of the estate of her deceased mother, Avelina Caballero. On March 9, 1904, the registrar of deeds, by virtue of the above mentioned decree, entered an inscription in the land registry whereby Silvina Chio-Taysan was made to appear as the owner of the parcel of land which stood upon the records in the name of her mother. On May 26, 1904, Silvina borrowed from the plaintiff company P2,500 and mortgaged the land as security for the payment of the loan. On October 10, 1906, the plaintiff company instituted an action praying for a judgment for the amount of the loan and the foreclosure of the mortgage upon the land. Francisca Jose intervened and prayed that the court declare the mortgage rescinded and annul the inscription in the land registry. From a judgment in favor of the plaintiff company, the intervener appealed and this court, in reversing the judgment, held that the inscription of the land in the name of Avelina did not prejudice the lien of the intervener, citing article 33 of the Mortgage Law.

In the first case *Lim-Chingco* was a party to the forgery, and the recording of the forged deed could not, of course, give him any additional right or validate the deed. In the second, *Lafuente* was an innocent purchaser for value

from, in so far as he knew, the registered owner. He had no notice either actual or constructive of any adverse claims against the lands. He was entitled to rely upon the registry. And in the third, Suiliong & Company knew from the entry in the registry, whereby Silvina Chio-Taysan was made to appear as the owner of the land, that she had inherited it from her mother, who died on June 5, 1903. The company also knew that under the law the property of the deceased Avelina was liable for her debts. It was the duty of the company to make inquiries as to the status of the estate of Avelina before making the loan.

In the instant case Cecilio Alumising knew at the time he purchased the lands that the defendants were, and had been for many years, as we have said, in the actual, open, visible, and exclusive possession of the entire parcel. These facts were sufficient to put him upon inquiry as to the claims of the defendants. By a reasonably diligent investigation he could have ascertained the nature and character of such claims. The defendants' possession under claim of ownership was notice to Cecilio of whatever interest they had in the land. Their interest being inconsistent with the title of the apparent owner of record, it necessarily follows that Cecilio's purchase was subject to the defendant's rights and that the recording of Exhibits D, E, and F, which were obtained by means of fraud, did not validate them as to Cecilio. It is very probable that if the defendants hereafter wish to record any instruments relating to this same land, it will be necessary for them to procure cancellation of the record of the deeds, Exhibits D, E, and F, but the fact that they had not commenced any such action did not prohibit them from proving, when they were sued for the possession of the land, that the deeds under which the plaintiff claims were obtained by Leon Alumising by means of fraud.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellant. So ordered,

Torres, Carson and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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