

JOAQUIN JOVER Y COSTAS, PETITIONER AND APPELLANT, VS. THE INSULAR GOVERNMENT AND THE CITY OF MANILA, RESPONDENTS. THE INSULAR GOVERNMENT, APPELLANT.

G.R. No. 2674. March 25, 1908

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-2674/>

CARSON, J.:

Although we are unable to agree upon the grounds upon which our conclusion is based, we are of opinion that the judgment of the Court of Land Registration should be affirmed, without costs to either party. So ordered;

Torres, Mapa, and Willard, JJ., concur.

Arellano, C. J., did not vote.

DISSENTING

JOHNSON, J.,

On the 10th day of December, 1903, the petitioner and appellant filed a petition in the Court of Land Registration for the registration, under the Torrens system, of the following-described land:

"Bounded on the front by the Pasig River; on entering, on the right, by the canal or creek of Vitas; on the left by the grounds and buildings belonging to the Bureau of Coast Guard and Transportation of the Insular Government; and on the back by Manila Bay. It is more particularly described in the technical description which is attached to and forms a part of this application; and as detailed in the attached map, has an area of 63,342.70 square meters."

The petitioner alleged that the said land had been assessed by the city of Manila at the sum of \$247,578, United States currency, and that the buildings thereon had been assessed at \$8,000, United States currency. The petitioner alleged in his petition that he was the absolute owner of said property, and made a part of his petition various documents showing the succession of title from the Spanish Government, as well as a map and technical description of said property.

The petition of the plaintiff, together with the documents showing his title, were referred to the examiner of titles for the judicial district of said court, who, upon the 26th of January, 1904, made the following report concerning the title of the petitioner:

"1. In the registry of property, entry No. 1, city property No. 793, folio' 23 of volume 15, district of Binondo, and volume 52 of the records, it appears (a) that by a judicial decree issued on September 20, 1870, by the Court of First Instance of Intramuros, Jose Horacio, Aurora and Maria Dolores Camps, and the minor Aurelia Roman, as daughter of Josef a Camps, deceased, were declared the heirs of their late father as well as of their late grandfather respectively named Jose Camps. Said decree contained a clause providing for the appointment

of Jose Camps y Montilla as guardian of the minor Aurelia Roman, and as legal representative of his brother and sisters, Aurora, Horacio, and Maria Dolores; (b) that by a grant from the Superior Government of these Islands, the intestate Jose Camps owned a parcel of land 400 Spanish yards long by 200 deep, situated on Malecon del Norte, district of Binondo; on said land there were built two warehouses of strong materials adjoining each other, and a dwelling house which has been destroyed, and upon which there is a mortgage in favor of the Obras Pias for the sum of \$7,777.86; (c) that, by a judicial sale held on August 17, 1877, in the Court of First Instance of Intramuros, the property above referred to was sold to Manuel Alvarez, representing Francisco Hernandez y Fajarnes for the sum of 32,000. Jose Camps, jr., for himself and representing with sufficient power of attorney his brother Horacio and his sisters Aurora and Maria Dolores Camps, and in his capacity as guardian of Aurelia Roman, duly authorized to sell for her, all in their capacity as heirs of Jose Camps, deceased, executed the proper deed of sale in favor of Francisco Hernandez y Fajarnes, who in his turn sold the property in question for the same price of \$32,000 to Juan Jover Serra, represented by Eduardo Vidal; (d) Juan Jover Serra died intestate in the city of Barcelona on February 22, 1879, and at the request of his widow, Maria Rosa Costas y Lluvia, her two sons, Miguel and Joaquin Jover y Costas were, on March 7 of the same year, 1879, declared to be the heirs of the deceased, by the Court of First Instance of San Pedro, Barcelona; (e) Miguel Jover y Costas also died intestate on April 29, 1888, and his mother Maria Rosa Costas y Lluvia, and his brother Joaquin were, on May 29, 1888, declared equal heirs of his estate by the Court of First Instance of the city of Barcelona; and (f) that, by a deed executed in the city of Barcelona before the notary Manuel Larreteia y Catalan, on August 22, 1888, Maria Rosa Costas and Joaquin Jover made a partition of the estate of Miguel Jover, and agreed that that half belonging to the latter in the property mentioned should be given to Joaquin Jover as payment of his credit; after these partition proceedings the said Rosa Costas and Joaquin Jover executed another deed, in which they set forth that Joaquin and his late brother Miguel Jover had constructed two warehouses at their expense on the land, bounded as per the summary information approved November 17, 1888, and registered December 6 of the same year in the office of the notary Enrique Barrera; that the said warehouses and land belonged to the brothers Miguel and Joaquin Jover in equal shares, and that the share belonging to the former became the property of the latter by virtue of the said deed of partition.

"2. In the second registration of the property in question it is set forth that, as an addition to the property of Joaquin Jover y Costas, two buildings were erected on the land, one consisting of two warehouses of strong materials, forming a single building, and the other being another warehouse with a galvanized-iron roof, respectively valued at 8,000 and 3,500 pesos.

"3. On the margin of the first registration entry the mortgage credit existing on the building appears as canceled, as per marginal notes on folios 125, 13 and 32 (vuelto) of the suppressed books of the abolished anotaduria de hipotecas.

"4. Certain data and particulars of the first registration are corroborated by a deed of sale executed before the notary Numeriano Adriano, on September 5, 1877.

"5. The documents examined show that the owner of the estate is Joaquin Jover y Costas. The present boundaries may be admitted as true.

"6. No acts or contracts opposing the petitioner's title appear in the registry of property, nor have any facts contrary to those stated in the petition developed from the investigations made.

"OPINION.

"Based on the foregoing report, I am of opinion that the title of Joaquin Jover y Costas is valid and may be registered.

"Manila, January 26, 1904.

"AGUEDO VELARDE."

On the 13th day of April, 1904, the city of Manila, by its attorney, filed in said court its opposition to the registration of said land in favor of the petitioner, basing said opposition upon the ground that the said land was within the limits of the city of Manila and that it belonged to the public domain.

On the same day the then Acting Attorney-General for the Philippine Islands, representing the Insular Government of the Philippine Islands, presented his objection to the registration of the said land in favor of the petitioner, upon the ground that the land constituted a part of the public lands.

The issue being thus formed, the case was duly tried, and after hearing the evidence adduced during the trial of said cause the said Court of Land Registration granted the registration of that part of said land within the letters A.-B.-C.-D.-U.-L.-K.-N.-P. as represented on the plan presented by the petitioner as a part of his petition and refused to register in favor of the petitioner the balance of the lands included in said plan.

From this decision the petitioner and the Insular Government each appealed.

The petitioner and appellant made the following assignments of error:

"I.

"The court erred by stating that the concession 200 brazas long and 100 brazas wide on the place marked therein was not absolute.

"II.

"The court erred by declaring that, even supposing that the concession was conditional, the condition has not been complied with.

"III.

"The court erred in determining that the concession was only for the portion 'which is or may be filled in' within the limits of the concession.

"IV.

"The court erred in declaring that a Spanish conditional concession of lands might be impugned after the treaty of Paris, and that the entry in the registry of property might be canceled."

The Insular Government, respondent and appellant, made the following assignments of error:

"I.

"The court erred in stating in its decision that the question raised by the parties is reduced to a determination of whether the concession of the land granted by the late Spanish Government has expired, and whether said land has been transferred in its entirety to the petitioner, Juan [Joaquin] Jover y Costas.

"II.

"The court erred in not declaring that the concession of the land, which is the subject-matter of this case, granted by the Governor-General of the Philippines in favor of Jose Camps, is null and void.

"III.

"Even admitting the validity of the concession made to Jose Camps, the court erred in not holding that such concession in its entirety was granted under the conditions and limits expressed in the grant, and especially under the condition that the land granted would be filled in, and that the concession would not produce its effects until such condition had been complied with.

"IV.

"The court erred in not declaring that the concession made to Jose Camps has completely expired, the latter having failed to comply with the condition of filling in all the land granted by said concession.

"V.

"Finally, the court erred in not declaring null and void the entry in the registry of property as regards the whole of the land granted, instead of only that as to the portion of the same not filled in.

The petitioner and appellant contends that he is the absolute owner of the land in question. He bases this contention upon the following facts:

First. That the Spanish Government on the 12th day of February, 1859, conceded to Jose Camps the absolute right and title to the possession of said land, which grant was evidenced by the following document:

"Don Jose Luis de Baura y Soriano, lawyer of this royal court of chancery, knight of the Military Order of San Juan of Jerusalem; member of the Royal Economical Society of 'Friends of the Country;' member of the general commission of statistics; and secretary of the superior civil government of these Islands, etc.

"I certify that on the petition filed by Don Jose Camps, oficial primero jubilado at this office, in which petition he asks for the concession of a piece of land, 200 brazas long and 100 brazas wide, in the lowland back of the northern wharf (Murallon del Norte) of the Pasig River, the superior decree, hereinafter set forth, was issued on February 12, 1859:

" 'Acting upon the petition in which Don Jose Camps on November 17, 1858, solicited a grant for the land which he fills in at his expense on the lowlands situated along the northern wharf (Murallon del Norte) and on the north side thereof, on the right side of the mouth of the Pasig River with an extension of 200 brazas in length and 100 brazas in width, beginning at a distance of 25 varas (Spanish yards) west of the bridge built on said wharf for the connection of the waters pf the river and of the bay from the beach of Binondo, as appears on the plan hereto attached, to which land, after it has been filled in, he intends to move his artistic establishment called "Camps e Hijos," and a manufactory of hemp rope; in view of the report made on the 26th of the said month of November by the Alcalde Mayor 1° of Manila, who, after consultation with the director of public works of the province, is of the opinion that the waste land asked for should be granted to Camps, said land being at present covered by the sea, and being far from the houses situated on the Binondo beach, it is very suitable for purposes of maritime commerce and is convenient for the purpose of public adornment, that the foundry, ironworking, and scientific instrument establishment of Camps e Hijos be located at that place, provided that the said Camps shall agree not to erect such building with brick and stone or strong materials, for the reason that the same is outside of the military lines: in view of the report made on December 17, 1858, by the commanding general of marine, in agreement with the captain of the port, regarding the convenience of such concession for the merchant marine and public adornment, but with the precise condition that Camps "shall leave a distance of 16½ varas between the outside edge of the wharf and the intended building, which width is the one fixed for wharves; in view also of the report of the subinspector of engineers, with the approval of the commander of the post, proposing that the concession asked for shall not be granted for a building of strong materials, on account of the forts of the place, and that the building to be erected shall consist of only one story, and shall be removed at the expense of its owner at the discretion of the superior authority of the Islands, when the public interests so require, taking into consideration the circumstances and official and industrial merits of the said Bon Jose Camps, and the offer of protection stated in the decree dated November 4, 1858, when refusing the sale, asked for by him, of an irregular piece of land adjoining the new Cuartel del Carenero, and in conformity with the above-mentioned reports of the commanding general of marine, the subinspector of engineers, and the civil chief of the Province of Manila, I hereby decree: Don Jose Camps, comisario de guerra honorario, oficial mayor jubilado of the office of the secretary of this superior government, and director of the ironworking and nautical instrument establishment of Camps e Hijos, is

granted the possession and ownership of a parcel of land 200 "brazas" in length and 100 "brazas" in width, covered at present by the waters of the sea? near the Binondo beach, which land is situated alongside the "Murallon del Norte," and requested authority to fill in the same at his expense is also hereby granted, subject to the following conditions and restrictions:

" 'First. The land to be filled in shall form a quadrangle 200 brazas long, and 100 brazas wide; beginning on the longer aide, nearest to the Pasig River, at a point 25 varas from the bridge connecting the waters of the river and of the bay, and running parallel with the wharf toward the light-house.

" 'Second. The buildings to be erected by Camps on this new land so granted shall be located along the said longer side parallel to the breakwater, separated from the edge of the exterior wharf for its whole length, a distance of 16½ varas, which is the width required for wharves.

" 'Third. The said buildings shall consist of only one story, no materials of the kind, prohibited in the military zone shall be employed therein, and they shall be roofed with zinc, tarred paper, nipa, or other similar materials.

" 'Fourth. The said buildings shall be removed at the expense of Don Jose Camps or his. successors whenever, at the discretion of the superior authority of the Islands, the military service so requires. Let the interested party be notified and a certified copy be issued to him.

" 'NORZAGARAY.'

"At the request of the interested party I issue these presents at Manila, on the first day of July, eighteen hundred and sixty-two.

"Signed.

"There is a seal reading: 'General Office of the Secretary of the Superior Government of the Philippines.'"

Second. That on the 17th day of August, 1877, the said land, having become the property of the heirs of the said Jose Camps, was sold by said heirs to Juan Jover y Serra.

Third. That sometime on or about the 22d day of August, 1888, the estate of the said Juan Jover was duly settled and the property in question, under the division of his estate, became the property of his son, Joaquin Jover y Costas, the petitioner herein.

Fifth. That the original grantee, Jose Camps, and his successive grantees, have been in the actual, peaceable, quiet, and uninterrupted possession of said land since the said 12th day of February, 1859.

Sixth. That the title to said land had been duly registered in the registry of property, of the Province of Manila.

Seventh. That at the time of the purchase of the land in question by Juan Jover, the father of the present petitioner, due inquiry was made by him or his representative, of the representatives of the Spanish Government, then existing in the Philippine Islands, concerning the validity of the original grant to the said Jose Camps, and he was informed by each of them that the said grant was made with authority and was valid. (See testimony of Eduardo Vidal, record, pp. 82, 89.)

Eighth. That relying upon the validity of the title obtained under the above grant by the said Jose Camps, the petitioner and his ancestor paid for the said land the sum of 32,000 pesos.

Ninth. That relying in good faith upon his title thus obtained the petitioner has made improvements upon the said land, so that now, according to the assessing authorities of the city of Manila, the land with such improvements is valued at \$255,578, United States currency, or the sum of \$511,156.

Tenth. That the Spanish Government fully recognized the title of the predecessor of the present petitioner—

- (1) By making an express grant of said land to the said Jose Camps; and
- (2) By permitting the said Camps and his successors to register the said title in the registry of property, thus holding out and representing to third persons that the petitioner and his predecessors were the real owners of and entitled to the possession of said land as against all the world.

The contention of the respondent and appellant, in effect, is that the said grant above quoted was made without authority, and was therefore null, and that the predecessor of the present petitioner acquired no rights in said land.

The lower court held, in effect, that the grant was valid, but that it was conditional, and that the grantee Jose Camps and his successors only had acquired ownership to so much of the land included in the original grant as he and they had actually reclaimed and terreplained, and that the part of said grant which had not been reclaimed had not passed to the said Jose Camps and his successors, but still constituted a part of the public domain.

The contention of the petitioner and appellant is that the original grant was valid; that the authority to make said grant was fully justified; that said grant was not conditional but was absolute, and that the absolute title with the right to possession of all the lands mentioned in said grant passed, without condition or limitation, to the said Jose Camps.

The United States Government has from time to time acquired large tracts of territory, with the right to govern the same, from the Government of Spain. In each of the various Sessions, made by the Government of Spain to the United States, there have been found numerous tracts of land ceded by the representatives of the Spanish Government to private persons. Many of these cessions to private persons, at the time of the transfer of the property to the United States Government, had not been completed; in other words, at the time the United States Government took possession of these various grants of property, it found private¹ persons laying claim to certain tracts or parcels of land, claiming under grants made by the representatives of the Spanish Government, but who had not complied technically with all of the conditions of said grants. However, it has been the policy of the Government of the United States, in every instance where it was possible, to respect such grants and to protect such persons in the interest which they had acquired from said Spanish Government. Instances without number might be cited to support this statement. The United States Government, through its courts, has presumed, whenever it found a grant of land made by a representative of the Spanish Government, that the person making such grant had authority so to do, unless the party disputing the grant presented positive proof to the contrary. The United States Supreme Court has frequently decided that "public acts of public officers, purporting to be exercised in an official capacity and by public authority, shall not be presumed to be usurped, but that the legitimate authority had been previously given or subsequently ratified." To adopt a contrary rule would lead to infinite confusion and uncertainty of titles. The presumption arising from the grant itself makes it prima facie evidence of the power of the officer making it and throws the burden of proof on the party denying it.

In the present case, the respondent and appellant presented no proof in the court below showing or tending to show that the said grant was made without authority.

The Supreme Court discussed at length, in the case of *United States vs. Clarke* (8 Pet., 436), the powers of the Spanish Governors and other Spanish officers to grant lands within the colonies, and there held that such governors and such Spanish officers, as a general rule, within the colonies, had full authority to grant title to lands, and that Such authority was without restriction as to quantity. Such governors had full authority to grant title to lands without restriction, and these grants have always been respected by the United States Government.

In support of this general policy adopted by the Government of the United States, we desire to call attention to the

following cases: U. S. vs. Arredondo, 6 Pet., 691; U. S. vs. Percheman, 7 Pet., 51; U. S. vs. Clarke, 8 Pet., 436; U. S. vs. Sibbald, 10 Pet, 313; U. S. vs. Levi, 8 Pet., 479; U. S. vs. Segui, 10 Pet, 306; U. S. vs. Chaires, 10 Pet, 308; U. S. vs. Seton, 10 Pet., 309; Fremont vs. V. S., 17 How., 542-576; Pacheco vs. U. S., 68 U. S., 282; More vs. Steinbach, 127 U. S., 70.

In the present case, the grant of land to Jose Camps was made by a proper authority of the Spanish Government in the Philippine Islands. The Government received what to it was a full compensation for the land and delivered the same to him, at the same time executing and delivering to him a document in which the Government fully indicated that the land was granted to him without any reservation whatever. Under this grant, Jose Camps went into possession and had the same surveyed and properly segregated from the public domain.

After the date of said grant the Spanish Government continued to control the Philippine Islands for a period of nearly forty years, allowed the original grantee and his successors to continue in possession, to make valuable improvements thereon without making any objection whatever to the validity of the original grant. We believe that any objection made on the part of the Government of the Philippine Islands, after the lapse of nearly forty years, during which time the original grantee and his successors have been in the quiet, peaceable, and uninterrupted possession of said land, under an express grant of the Spanish Government, is contrary to the spirit of the United States Government and contrary to the policy which it has heretofore adopted in dealing with lands, the title to which had been granted to private individuals by the Spanish Government.

The grant of February 12, 1859, was absolute to a definite tract of land and no conditions precedent or subsequent were imposed. The grantee was required to do nothing in order to make said grant to said tract of land complete. He has expended large sums of money upon the same, believing that the Government would protect him in the title which he had, and which had been granted without reserve and without condition to his predecessor.

We have said that it was the policy of the Government of the United States to maintain grants of land made to private persons by the Spanish Government in territory acquired by it. It is not necessary, however, to rest our conclusions upon a mere policy adopted by the Government of the United States upon the theory that the Spanish officers making such grants had authority, for the reason that we find abundant express authority applicable to the Philippine Islands on the part of the officer making the grant in question to justify his authority in so doing.

It is manifest that the validity of a concession like the one in question must depend upon the authority of the Governor-General, in his capacity of superior civil governor, to make it.

The governor and captain-general was the direct representative of the King in this Archipelago. In order to determine the questions presented, it is necessary to ascertain first the authority of the latter, because if the King could not make the grant, clearly he could not delegate such authority to his representative.

On both of these points, to wit, the authority of the King and the delegation thereof to the governor-general, I am content to rest my opinion on the following authorities found quoted in the brief and written argument of Hon. W. A. Kincaid, one of the attorneys for the petitioner :

"The preamble of title 1 of Partida 2 reads:

" 'Emperors and kings are the most noble men and honorable persons, invested with powers, more than anybody else, to maintain and keep their kingdoms in justice, as we have said in the beginning of this Partida *
* *"

"And Law 5, of the same title of the same Partida, reads:

" 'Kings are representative's of God in their respective kingdoms, appointed over the people in order to

maintain them in justice and in truth regarding temporal affairs, as is an emperor in his empire * * *. And the saints said that the king is placed on earth in place of God, in order to comply with justice and to give to every one his rights.'

"Law 8, of the same title and Partida, speaking of kings, says:

" 'For they are not only the lords of their kingdoms during their lives, but they may leave the same to their heirs at their death, because they possess such seignory by inheritance, which can not be done by emperors, who obtain the same by election, as has been said. And, moreover, the King may give a town or a castle of his kingdom, by way of inheritance, to whomsoever he may wish, which an emperor can not do, because he is obliged to increase his empire, and never reduce the same; in the same manner, the King might grant such property by feudal tenure to anyone he wished in consideration of some service performed or promised to be performed by the latter. We hold also that the King may utilize the services or help of his people when necessary, in many ways, which the emperor can not do.'

"In Law 5, of the same title and Partida, it is said:

" 'And wise men naturally said that the King is the head of the kingdom, for, as the senses are derived from the head, by which senses all members of the body are governed, in the same way, all members of the kingdom must be ordered and led by the order derived from the King, who is the lord and the head of all of them, and they must agree with him in order to obey and protect him, and to preserve and increase the kingdom. Hence, he is, the soul and head, and they are the members.'

"That is to say, on the date in question, the Spanish King was the viceregent of God in his dominions, the same as the superior civil governor of the Philippines was with respect to the King. In this sense, Law 5, title 3, book 3, Laws of the Indies, was enacted, which reads as follows:

" 'It is our will, and we order that the viceroys of Peru and New Spain be the governors of the provinces under their charge, and that they rule and govern the same in our name, and make rewards, favors, and pardons which they may deem to be convenient * * *'

"In Law 2, title 3, book 3 of the Laws of the Indies, it is said:

" 'Those who are to be appointed viceroys of Peru and New Spain shall have the conditions and qualifications required by an office of so great importance and dignity; and after they have commenced to perform their duties * * * they shall do what they may think and consider to be suitable, and provide for everything we might do and provide for, of whatever quality and condition it may be, in the provinces under their charge, as if the same were governed by ourselves, in all cases where no special prohibition exists. * * *'

"Law 3, title 3, book 3 of the Laws of the Indies reads as follows:

" 'The viceroys of Peru and New Spain are hereby constituted and appointed captains-general of the provinces of their districts, and they are permitted to personally exercise this office therein over sea and land on all occasions that may arise, * * * and we order that * * * they be obeyed and respected as the persons representing ourselves * * *.'

"The royal ordinance of December 4, 1780, in its article 2 (Legislacion Ultramarina, Coronado, p. 372, vol. 3), says :

" 'The viceroy of New Spain shall continue in the full exercise of the supreme authority and entire powers granted by my royal patents and instructions and the Laws of the Indies as the governor and captain-general in the district under his command * * *'

"The royal order of February 18, 1835, addressed to the captain-general of the Island of Cuba, reads:

" 'YOUR EXCELLENCY : Her Majesty, the governing Queen, has been informed of the contents of your letter of the 25th of November last, regarding the inconvenience resulting at present from the weakening of your authority as the first chief of the island, by the appointment of a civil governor; and in view of the statements of Francisco de Arango, on the 16th of the same month, in reply to the royal order of April 12 of last year asking him for a report on this matter, Her Majesty has declared that the duties and powers of the civil governor of the island are to be exercised by you in your capacity as captain-general * * *.'

"This royal order giving to the captain-general the character of civil governor for the island does nothing but ratify the supreme authority already conferred on the former (according to Zamora y Coronado in his *Legislacion Ultramarina*, p. 292, vol. 3, edition of 1845), 'to secure public peace, good order, policing and government, the security of the persons and property of the inhabitants of the island, the publication and punctual execution of the laws and orders of the superior government, and in general, everything touching public order and the greatest prosperity of the territory intrusted to him * * *.'

"Sr. Rodriguez San Pedro, on page 05 of Volume I of his *Legislacion Ultramarina*, from which we took the other citations, speaking of governors-general as successors of the viceroys, says in his note:

" In order to maintain peace and justice in the provinces of the Indies, supreme courts (*audiencias*) and magistrates were formerly instituted. But, as said provinces became sufficiently inhabited and ennobled, it was deemed convenient that, at least in the principal ones, governors of a higher designation be appointed, with the title of viceroys, who would justly perform the duties of presidents of the *Audiencias* therein, and who would hold solely under their charge the government of those wide kingdoms and of all military operations that might occur therein, as captains general of the same and who, finally, might do, and would actually do, and who might take and would actually take care of all those things that the Royal Person would do and take care of, if he were present, and which they might deem suitable for the conversion and protection of the natives, the propagation of the Holy Gospel, political administration, and for the peace, tranquillity, and increase of all spiritual and temporal affairs.

" 'The first governors appointed were given particular instructions as to their conduct therein; which instructions were gradually extended, and are so full and complete that they do not seem to have failed to foresee, or to provide everything necessary for the exercise of their duties piously, cautiously, and prudently, the greater part of said instructions being compiled in the Laws of the Indies.

" 'In the provinces under their command and in all cases and matters not specially excepted, they have and exercise the same powers as the king appointing them, and this jurisdiction was ordinary rather than conferred.

* * * * *

" 'On account of the great dignity of the office of Viceroy and of the immediate representation of the Royal Person, all ceremonies and homage paid to the kings themselves may be and are usually rendered to the former, except those especially prohibited * * *.'

"On account of certain differences having arisen between governors-general of Ultramar and deputy superintendents of finance, the royal order of March 4, 1844, was promulgated, which reads as follows:

" 'YOUR EXCELLENCY : Her majesty, the Queen, agreeing to the proposal of the cabinet (*concejo de los senores ministros*), has resolved that, inasmuch as there is joined to the persons of the governors-general (*gobernadores capitanes generales*) of these Islands the character of superior political governors (*gobernadores politicos superiores*) for which reason they are also the superior delegates of the supreme government in all its branches, and it being desirable to guard against all doubt prejudicial to good service, with respect to the prerogatives granted them by the Laws of the Indies in Book 3, to hear in certain cases matters concerning the royal treasury (*real hacienda*), the said *gobernadores capitanes generales* shall be always considered as preferred over the deputy superintendents of finance, the decision of any doubtful cases that may occur

between both authorities being, therefore, under their control * * * (Legislacion Ultramarina by San Pedro, vol. 1, p. 75.)

"This leads us very near the date in question.

"And in Law 9, title 17, book 4 of the Laws of the Indies, we find a text exactly applicable to the case of this grant, which reads:

"Viceroy and the audiencias shall see to what is necessary for good administration with regard to pastures, waters, and public buildings, and shall provide what may be deemed convenient for the occupation and perpetuity of lands * * *.

"It might, perhaps, be said that, according to Laws 3 and 4, title 8, Partida 3, marshes formed by the overflow of the tide, on account of their being on the shore, belong to those communal things which all men may use; but, should we base such observation on the said laws, we would disregard the full powers of sovereignty of the nation, that is, of the King, 'the representative of God on earth.'

"These laws might be strictly applicable to private persons, but as regards the King, who acts through his viceroy, it should never be forgotten that no laws existed in the whole kingdom other than his will, and when a law or any other thing was in opposition to this will, the former had to give way to the latter, because it was the Supreme Will on the earth. Therefore, these laws may produce their effect only when the sovereignty of the nation, to which the seashore belongs, does not wish to order otherwise.

"This, besides being logical, has been precisely established by the supreme court of Spain in the following decision :

" 'That, although Laws 3 and 4, title 28, Partida 3, explaining and determining what are the things common to all men, and how the latter may use them, enumerate, among others, the sea and its shores as such common things, yet this should not be understood to be absolute, since several exceptions are established for the common benefit, which exceptions have been enacted in order to attend to the security and general interest of the nation, and that the latter may grant the lands of such shores for improvement, whenever the same are not under private ownership, acquired by legitimate title.' (Decision of May 1, 1863.)

"In another decision of April 30, 1863, it was also held:

" '1. That the general principle that the sea and its shores belong to all creatures in common, and that all may use them, which principle has been already limited in certain cases by the same laws and orders establishing the same, may be and is actually limited by administrative orders which, modifying it in its exercise, subject the same to special and determined rules granting and creating rights of possession and exclusive benefits in the place and within the limits which are granted, provided this is done by the one who has authority to order it and in such a way that the communal use is not prevented.

* * * * *

" '3. That in the time when the King used to administer the properties and interests of the nation, he was the legitimate representative of the latter.'

"In any case, marshes formed by the overflow of the tide, in the Indies, were specially reserved to the King, since Law 6 of the Ordenanzas de Poblaciones of Philip II, of 1523 and 1680 (Vol. IV, p. 473, Legislacion Ultramarina by Coronado), provides:

" No territory or land for a new town shall be granted, nor shall one be established at seaports, nor at any place, which at any time might result in prejudice to our royal crown, or to the nation, because it is our will that such lands be reserved for us.'

"Such reservations were made for the purpose of benefiting those who might go to inhabit them for the first time, or with the view to doing with them whatever might be the royal will, as Law 11 (*id.*, p. 474) says:

" 'Lands shall be divided by lot between the inhabitants, continuing from those corresponding to the "plaza mayor," and the remainder be reserved so that we may grant the same to those who may go and found a town for the first time, or for what might be our will; and we order that a plan of the place where the city is to be founded be always made.'

"In *City of Galveston vs. Menard* (23 Tex., 349), the supreme court of that State, after noting the rules of the Roman civil law, adopted in the Spanish and Mexican laws, regarding the provisions governing shore lands, which rules were cited as a defense in that case by alleging that the shore was dedicated to the public use, stated (p. 391):

" 'The Republic of Texas had the power, through its legislative department, to grant that part of the Galveston Bay, which lies south of the channel, usually covered with salt water, which constitute what is called the "flats;" and thereby vest an exclusive right in Menard to the soil thereof, and to the full ownership of the same, just as if it had been dry land,

" 'This power results, as a necessary consequence of the absolute sovereignty of the republic, over the territory included in its limits. This claim of the republic upon her coast may not have been admitted by other nations, further than one marine league from the shore. (Angell, *Tide Waters*, 2; Vattel, 129.) That would very much have depended upon her power to enforce her claim, as we have seen in the case of the British seas, and Danish sound. (Wheaton's *Law of Nations*, 152-158; 1 Kent Com., 29.) But as between her own citizens, in respect to the rights to the soil, which they might respectively acquire, the boundaries prescribed and claimed by the government are conclusive. (Vatt., 128.) Her right to an inland bay, such as Galveston Bay, could not be disputed; both as to right of property in the unappropriated soil, and in the jurisdiction of her government. (*Id.*, 123, 124, 130.)

" 'In the civil law it is said that the sea, bays, and rivers, with their shores, are common, free to use of anyone, and are deemed, to belong to no one. (Angell, 18, 19, 178, 179.) Vattel on this subject, says, "The shores of the sea incontestably belong to the nation that possesses the country, of which they are a part; and they belong to the class of public things. If civilians have set them down as things common to all mankind, it is only in regard to their use; and we are not thence to conclude that they considered them as independent of the empire; the contrary appears, from a great number of laws. Ports and harbors are, manifestly, an appendage to, and even a part of, the country; and consequent are the property of the nation. Whatever is said of the land itself will equally apply to them, so far as respects the consequences of the domain, and the empire." (Angell, 129.)

" * * * It often happens, however, that the public use and enjoyment of this species of property may be promoted and increased by allowing portions of it to become private property; If the government could not exercise this right, in severing this common property and appropriating portions of it to private use, it would not only curtail the ordinary powers which every nation has for self-development but it would presuppose a deficiency in the sovereign power to control or dispose of what belongs to it.'

"If a constitutional republic has these powers, with much more reason an absolute monarchy, which has no other restrictions than the will of a monarch or of his viceroy, must be invested with the same.

"In *Knight vs. United States Land Association* (142 U. S., 161), the Supreme Court, speaking of the treaty of Guadalupe Hidalgo, by virtue of which the United States acquired the State of California, among other things, said (pp: 186-188) :

" * * * When the United States acquired California it was with the duty to protect all the rights and interests which were held by the pueblo of San Francisco under Mexico. The property rights of pueblos equally with those of individuals were entitled to protection, and provision was made by Congress in its legislation for their

investigation and confirmation. * * * The duty of the Government and its power in the execution of its treaty obligations to protect the claims of all persons, natural and artificial, were superior to any subsequently acquired rights or claims of the State of California, or of individuals. * * * Its rights were dependent upon Mexican laws, and when Mexico established those laws she was the owner of tide lands as well as uplands, and could have placed the boundaries of her pueblos wherever she thought proper. * * * The treaty of cession also stipulated for such protection. The obligation to which the United States thus succeeded was, of course, political in its character, and to be discharged in such manner, and on such terms, as they might judge expedient.'

"Under the common law of England and the United States, two kinds of law exist, called *jus privatum* and *jus publicum*. The former is inherent in the sovereign, who possesses the same as the owner, and the latter is the right, which the government or the sovereign has, to control waters in the interest of the public. It results that the States of the American Union have not only the ownership of the soil under the waters, but at the same time they have powers to regulate and control the public rights. (Martin vs. Waddell, 41 U. S., 16 Pet., 367, 10:997; Smith vs. Maryland, 59 U. S., 18 How., 71, 15:269; Com. vs. Alger, 7 Cush., 53; Nichols vs. Boston, 98 Mass., 39, 93 Am. Dec. 132; People vs. New York & S. I. Ferry Co., 68 N. Y., 71; Langdon vs. New York, 93 N. Y., 129; Stevens vs. Peterson & N. 11. Co., 34 N. J. L., 532, 3 Am. Rep., 269; Gould on Waters, sec. 32; Manchester vs. Massachusetts, 139 U. S., 240, 35:159; McCready vs. Virginia, 94 U. S., 391, 24:248; Den vs. The Jersey Co., 56 U. S., 15 How., 426, 14:757; Hardin vs. Jordan, 140 U. S., 371, 35:428; Goodtitle vs. Kibbe, 50 U. S., 9 How., 470, 13:220; Doe vs. Beebe, 54 U. S., 13 How., 25, 14:35; Pollard vs. Hagan, 43 U. S., 3 How., 212, 11:565; Mumford vs. Wardell, 73 U. S., 6 Wall., 423, 18:756; Weber vs. State Harbor Comrs., 85 U. S., 18 Wall., 57, 21:798; St. Clair County vs. Lovington, 90 U. S., 23 Wall., 46, 23:63; The Genesee Chief vs. Fitzhugh, 53 U. S., 12 How., 443, 13:1058.)

"The legislature of a State, having the supreme power, may dispose of the property of the same State on navigable waters, in whatever manner that, in its opinion, may serve the public interest. (Kerr. vs. West Shore R. Co., 127 N. Y., 269; Lyman vs. Gedney, 114 111., 388; Harris vs. Whiteside County Suprs., 105, 111., 445; Cairo & St. L. B. Co. vs. Warrington, 92 111., 157; Mason vs. Wait, 5 Ill., 127; Nichols vs. Boston, 98 Mass., 39; Hoboken vs. Pennsylvania R. Co., 124 U. S., 656, 31:544; Pound vs. Turck, 95 U. S., 459, 24:525; New York vs. Miln., 36 U. S., 1 Pet., 102, 9:648; Cooley Const. Lim., 87-89.)

"This right of the States is subject only to the power of Congress to control and regulate navigation. (Illinois vs. Illinois Central Railroad Co., 146 U. S., 387.)

"In U. S. vs. Arredondo (6 Pet, 691) dealing with a Spanish concession granted on December 22, 1817, by Don Alejandro Ramirez, intendent in the army and subdelegate and general superintendent of unappropriated lands in the Island of Cuba and both Floridas, the Supreme Court of the United States, among other things, said (p. 714) :

"* * * The laws of an absolute monarchy are not its legislative acts; they are the will and pleasure of the monarch, expressed in various ways; if expressed in any, it is a law; there is no other law-making, law-repealing power—call it by whatever name, a royal order, an ordinance, a cedula, a decree of council, or an act of an authorized officer, if made or promulgated by the king, by his consent or authority, it becomes, as to the persons or subject-matter to which it relates, a law of the kingdom. It is emphatically so in Spain and all its dominions. * * * The instructions of the King to his governors are the supreme law of the conquered colony; * * * A royal order, emanating from the King, is a supreme law, superseding and repealing all other preceding ones inconsistent with it. The Laws of the Indies have not their force as such, by any legislative authority vested in the council, their authority is by the express or implied expression of the royal will and pleasure; they must necessarily yield to an order, prescribing a new rule, conferring new powers abrogating or modifying previous ones.

" 'The principle that the acts of a king are in subordination to the laws of the country, applies only where there

is any law of higher obligation than his will; the rule contended for may prevail in a British, certainly not in a Spanish province.'

"All this is sufficient to prove that, at the date in question, no law could be invoked against an act of the King of Spain, or of a viceroy representing him. "This case of U. S. vs. Arredondo agrees exactly with the grant in question, for it is said further in the same (p. 734):

"* * * It appeared in evidence, by authentic documents, that, in 1816, a controversy arose between the captain-general and the intendant of the Island of Cuba, as to the superintendency of the royal domain of the Floridas, which, being referred to the King, he, by a royal order of the 3d of September, 1817, conferred it on the intendant, Ramirez, "commanding him therein to facilitate the increase of the population of these provinces by all the means his zeal and prudence could dictate." This is the order recited in the grant, and the authority under which it was made; with the general superintendency of the domain of the provinces, the local authorities acting under his direction and supervision, and acting under the command contained in the order, we can have no hesitation in saying that the grant in question was within the authority thus conferred. This order was a supreme law, superseding all others, so far as it extended; its object was to increase the settlement and population of the whole province, which could only be done by corresponding grants of land, adequate in extent to their desired effect. The power to do it was ample, and the means confided to the discretion of the officer, which was not limited. We can not say that, in executing this grant, he has acted without authority. Our opinion, therefore, is that * * * the grant is perfect and valid, and even if a special authority was requisite, that is conferred by the royal order referred to,'

"It is immediately seen that the royal order above mentioned in the case of Arredondo is very similar to Law 9, title 17, book 4 of the Laws of the Indies, which reads:

" 'Viceroys and audiencias shall see to what is necessary for good administration with regard to pastures, waters, and public buildings, and shall provide what may be deemed convenient for the occupation and perpetuity of lands.* * *'

"But, in any case, the royal cedula and instruction of October 15, 1754 (Legislacion Ultramarina of San Pedro, Vol. IV, p.673), is an express delegation of all the prerogatives of the King, and places the question beyond discussion, inasmuch as it says:

" 'Experience having shown the damages caused to my vassals in the kingdoms of the Indies by the order published by royal cedula of November 24, 1735, stating that those who might enter the unappropriated lands of those dominions should personally apply to my Royal Person, in order to ask ratification of the limits assigned to them, under penalty of losing the same, should they fail so to do * * * I have decreed that, in gifts, sales, and agreements regarding unappropriated and uncultivated lands, * * * the contents of these instructions shall be carefully observed and practiced.

"'1. That, from and after the date of this, my royal resolution, the power to appoint the deputy ministers who shall exercise and effect the sale of mid agreements regarding unappropriated lands be exclusively in the hands of the viceroys and presidents of my royal audiencias in those kingdoms * * *.'

"But this is not all; the presumption that the superior civil governor of the Philippines had sufficient power to make the grant in question is conclusive.

"In the same case of Arredondo, the court, at page 724, in reply to the request of the Attorney-General of the United States, that the petitioners be compelled to exhibit the authority under which the grant, etc., was made, said:

"* * * As it formed no part of the evidence of title to be recorded, deposited, or acted on by the commissioners, they were not authorized to call for it, before making their decision. The grant, legally and fully executed, was competent evidence of the matters set forth in it, and as none other was necessary it was in effect conclusive.'

"And on page 727, after having discussed the various laws enacted by Congress regarding the Spanish grants in the territory of the Floridas, and the intention of the United States to establish tribunals to examine the same, said:

"* * * They [the United States] have submitted to the principle which prevails as to all public grants of land, or acts of public officers, in issuing warrants, orders of survey, permission to cultivate or improve, as evidence of inceptive and nascent titles, which is, that the public acts of public officers, purporting to be exercised in an official capacity and by public authority, shall not be presumed to be a usurped but a legitimate authority, previously given or subsequently ratified, which is equivalent. If it was not a legal presumption that public and responsible officers, claiming and exercising the right of disposing of the public domain, did it by the order and consent of the government, in whose name the acts were done, the confusion and uncertainty of titles and possessions would be infinite, even in this country; especially in the States whose tenures to land depend on every descriptive and inceptive, vague and inchoate equity, rising in the grade of evidence, by various intermediate acts, to a full and legal confirmation, by patent, under the great seal.

" "To apply the principle contended for to the various papers which are sent from the general or the local land offices, * * * by requiring any other evidence of the authority by which it was done than the signature of the officer, the genuineness of the paper, proved by witnesses or authenticated by an official seal, would be not only of dangerous tendency but an entire novelty in our jurisprudence, as "a rule of equity or evidence," or "principle of law or justice." * * *

"(The Camps grant was authorized by the signature of the superior civil governor and certified by the secretary of the superior government of the Philippines with the latter's seal.)

" 'A patent under the seal of the United States, or a State, is conclusive proof of the act of granting by its authority; its exemplification is a record of absolute verity. (Patterson vs. Winn., 5, Pet, 241.) The grants of colonial governors, before the revolution, have always been, and yet are, taken as plenary evidence of the grant itself, as well as authority to dispose of the public lands. Its actual exercise, without any evidence of disavowal, revocation, or denial by the King, and his consequent acquiescence and presumed ratification, are sufficient proof, in the absence of any to the contrary (subsequent to the grant), of the royal assent to the exercise of his prerogative by his local governors. This or no other court can require proof that there exists in every government a power to dispose of its property; * * * we are bound to presume and consider that it exists in the officers or tribunal who exercises it, by making grants, and that it is fully evidenced by occupation, enjoyment, and transfers of property, had and made under them, without disturbance by any superior power, and respected by all coordinate and inferior officers and tribunals throughout the State, colony, or province where it lies.* * *

" 'Taking, then, as a settled principle, that a public grant is to be taken as evidence that it issued by lawful authority, we proceed to examine the legal effect of a Spanish grant * * * The validity and legality of an act done by a governor of a conquered province depends on the jurisdiction over the subject-matter delegated to him by his instruction from the King * * *. If any jurisdiction is given, and not limited, all acts done in its exercise are legal and valid; if there is a discretion conferred, its abuse is a matter between the governor and his government, etc. (King vs. Picton, late governor of Trinidad, 30 St. Tr., 869-871.) It is a universal principle that where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally, for any thing done in the exercise of that discretion, within the authority and power conferred.'

"Beside the full powers conferred on the governor general of the Philippines by a King who claimed to be 'the owner of the ocean and of the Indies,' the royal order of January 4, 1856, existed (1 San Pedro, p. 75), which provides:

" 'YOUR EXCELLENCY : By the royal order of November 17, 1854, instructions were given to the superior authorities of Ultramar for the purpose of securing the due fulfillment of the sovereign's orders in those

provinces. As a complement thereof, and by virtue of the same principles of regularity and good administrative order dictating it, Her Majesty the Queen has ordered that the said authorities inform this ministerial office monthly of all the resolutions conclusively enacted by them in the exercise of their powers, by means of brief but clear reports. Of this royal order I inform you for your information.'

"It is to be presumed, therefore, that the grant made in favor of Camps was duly communicated, in conformity with the preceding order, and, consequently, it is as valid as if the same had been signed by the King himself with the assent of his ministers,

"The Attorney-General, however, says in his brief that the governor-general of the Philippines, on the date in question, was neither a viceroy nor had he the powers of the latter.

"Coronado in his *Legislacion Ultramarina* (Vol. II, pp. 175 and 176) says:

" 'Captains-general of Ultramar.— The governors captains-general of the Island of Cuba and the Philippines, who have been so from the sixteenth century, and those of Porto Rico, who were declared captains-general in 1643, unite all the powers and prerogatives annexed to the superior authority exercised by them over all military and political matters in the districts under their command, and those included under the titles of viceroys and presidents in the Laws of the Indies, with the following powers: Those inherent in their character and dignity as presidents of the territorial *audiencias*; those as delegates of the royal "patronato" of the Indies; those as presidents of various boards and corporations, subdelegates of posts, etc.; and besides their ancient powers as presiding *corregidores* of the respective *ayuntamientos*, there have been recently conferred upon them those of civil governors, subordinate to the *ministerio de estado*, the *despacho de marina*, and the *gobernacion de ultramar*.

" 'This consolidation of such vastly important powers, although it has some inconveniences, has been deemed necessary in order to surround with prestige and sustain a superior authority, at so great a distance from the sovereign, in the capitals of those large provinces, sufficiently to provide speedily and easily all requirements for their preservation and tranquillity, for which the captains-general are responsible, and to provide also a good policy and administration, the security of the persons and property of the inhabitants, the publication and due execution of the laws and orders emanating from the high government, and, generally every wise and prudent measure demanded by the public order, the tranquillity and greater prosperity of the countries intrusted to them.'

"In the Dictionary of the Administration of the Philippines, by Rodriguez Berriz (Vol. VIII, p. 179), under the heading 'Manila,' we find the following:

""(Honors)—Royal cedula of June 21, 1574—D. Felipe by the grace of God, etc. Whereas, by the council of justice and administration (*regimiento*) of the city of Manila, Island of Luzon of the west, we have been informed that the inhabitants of said city have served us very faithfully and loyally, and have suffered great hardships, and said island having been discovered and pacified, and the said city having been founded therein, and Governor Miguel Lopez de Legaspi, now deceased, having in our name founded the same and called it "Noble and Ever Loyal City," and the Island of Luzon "The New Kingdom of Castile," requesting that, for the greater growth of said city, and to perpetuate the memory of the services performed by its inhabitants, we confirm the said titles "Noble and Ever Loyal City" for Manila and "The New Kingdom of Castile" for the said Island of Luzon, and that we be pleased to so call and designate them, or as we might wish; therefore, I, agreeing to the above stated, and in consideration of the faithful and loyal services rendered to us by the said city and its inhabitants, have approved the same; and hereby affirm and approve the title of "Noble and Ever Loyal City" for the city of Manila, given by the said Governor Miguel Lopez de Legaspi in our name, and the said title and new name of "The New Kingdom of Castile" for the said Island of Luzon, and we assent that the city of Manila may be perpetually called and designated "Noble and Ever Loyal," and the Island of Luzon "The New Kingdom of Castile," and we, by virtue of this letter, give them such title and name, as well as the license and right to be so called and designated, and to so state in all instruments whatsoever that might be made and

granted by them, and in the letters they might write, and I order these presents to be issued and signed by myself, and sealed with my seal, and issued by the members of my council of the Indies.'

"Laws I and XI of Don Felipe IV, book 2, Title XV of the Recopilacion de Indias, are as follows:

" 'Whereas, in the places which have been so far discovered in our kingdoms and seignories in the Indies, twelve audiencias and royal chancelleries are established, with the limits expressed in the laws which follow, in order that our vassals may have those who will govern and direct in peace and justice, and the districts of the same have been divided into gobiernos, corregimientos, and alcaldas mayores, which provision is made in accordance with our laws and orders, and the same are subordinate to the audiencias reales, and all of them are subordinate to our supreme council of the Indies, which represents our Royal Person; therefore we hereby decree and order that, for the present and until further orders, the said audiencias be preserved, and, in the district of each of them, the gobiernos, corregimientos, and alcaldas mayores at present existing, and that no alteration be made in them without our express order or that of our said council.

" 'In the city of Manila, Island of Luzon, capital of the Philippines, another audiencia and royal chancellery is established, with a president who shall be the governor and captain-general; four associate judges (oidores) who shall be also criminal judges (alcaldes del crimen); one fiscal; one high constable; one vice grand chancellor (teniente de gran chanciller), and the other necessary ministers and officials; and the said audiencia shall have as its district the lands of the said Island of Luzon, already discovered and which may be discovered. And we order that the governor and captain-general of the said islands and provinces, and president of the royal audiencia of the same, hold exclusively the superior government of the whole district of said audiencia in peace and in war, and make in our royal name those sentences and grant those favors, which, in conformity with the laws of this "Recopilacion" and of these kingdoms of Castile, and with the instructions and powers received from us, he may and ought to make, and in all those administrative cases and matters of importance, the said president-governor shall try the same together with the oidores of said audiencia in order that they may give him their opinion in consultation, and after hearing the same he shall provide for what is best for the service of God and our own interests, and the peace and tranquillity of the said province and community.'

"By Law 5, book 3, title 11, Laws of the Indies, dated April 1, 1580, it was said to the governor-general and president of the royal court of the Philippines:

" 'The governor and captain-general of the Philippine Islands shall always endeavor to keep good relations, peace, and tranquillity with the Emperor of Japan, using to this end the most prudent and convenient means, whenever affairs so allow, and not risk the reputation of our arms and state in those oriental seas and nations.' [Law 18, book 3, title 4 of the Recopilacion de Indias.]

" 'The governor and captain-general of the Philippine Islands shall take care to reward soldiers who may have served us there, as well as their sons, with the offices and trades under his control, in conformity with what has been ordered and in conformity with justice, so that they may have some reward, conforming to all the laws providing for this matter.' [Law 14, book 3, title 10 of the Recopilacion de Indias.]

"The royal order of August 16, 1854, provides as follows:

" 'ART. 1. The governors captains-general of ultramar shall continue to discharge the duties of the office of delegate superintendents of the royal treasury in their respective provinces in the same manner and with the same powers as viceroys, as determined in the ordinances of the intendents of 1786 and 1803.' (San Pedro, Legislacion Ultramarina, Vol. I, p. 75.)

"On account of an application filed by the commanding general of the apostadero of marine of Habana, the royal order of May 16, 1861, said, among other things, the following:

" 'And regarding the third and last of the consulted points; as has been decided in the previous one, and as has been suggested by the captain-general as deputy of His Majesty and of his government, the marine authorities

and the squadron under their orders, as an auxiliary force, are to support the orders of that high functionary. Therefore, the consultation above mentioned having been decided in so far as the same has merit, it is only to be added that, under the provisions of the royal decree of August 9, 1854, still in force, the captains-general of our dominions in ultramar enjoy the full powers with which the former viceroys of the Indies were invested with respect to the marine, according to articles 94, 95, 96, and 97, volume 6, title 7 of the ordinances of the navy of 1793, and that, although the commanding generals of the navy have to obey the orders received from the captains-general, by assisting them with the naval forces under their command * * *.' (San Pedro, *Legislacion Ultramarina*, Vol. I, p. 77.)

"The decree herein mentioned must be that of August 16, 1854, just cited, inasmuch as no decree dated the 9th can be found.

"By the royal order of "November 5, 1842, the following was resolved:

" 1. To the superior political governors, presidents of the "audiencias" of the Islands of Cuba, Porto Rico, and the Philippines, is given the publication of all the laws and decrees to them communicated, for due execution in their own dominions, and they have the power to suspend the same and to ask for them in those cases in which the welfare and tranquillity of the country so require, in accordance with the laws.⁷ (San Pedro, *Legislacion Ultramarina*, Vol. I, p. 81.)

"By royal order of June 18, 1859, a few months after the date of the grant in question, the following was ordered:

" 'YOUR EXCELLENCY: In view of the proceedings started on account of the questions which have arisen between the governor captain-general of the Philippine Islands and the commandant of the apostadero of marine of the same, for the reason that the latter put in force the provisions of the royal decree of April 8, 1857, regarding the organization of marine courts without having obtained the assent of the former; Her Majesty, in conformity with the advices of the departments of ultramar and marine of the ministry (consejo de estado), has expressed her will that your ministerial office caution the chief of that apostadero to observe the royal orders of November 5, 1842, and November 28, 1844, by which the governors captains-general of ultramar are vested with the power to suspend the execution of all royal orders and to approve those which are to rule in the territories wider their respective commands, and that all other authorities agree with them and obtain their assent for the publication of those communicated to them directly by the respective departments.' (San Pedro, *Legislacion Ultramarina*, Vol. I, p. 82.)

"The royal cedula of May 24, 1790 (published in Vol. I of San Pedro, *Legislacion Ultramarina*, pp. 135 et seq.), dealing with the honors and privileges of the president and oidores of the royal audiencia of Manila, when the same are to pay a visit to the president, or are to attend public ceremonies, always qualifies the governor and captain general as viceroy or president.

"The royal order of April 16, 1850, regarding the board of authorities, powers, and organizations, says:

" 'YOUR EXCELLENCY: Under this date I inform the governors captains-general of the Islands' of Cuba, Porto Rico, and the Philippines of the following: Proceedings having been commenced in the ministerial office under my charge, in consequence of a communication from the governor captain-general of the Island of Cuba, sent through the office of the first secretary of the state department, regarding the powers of the boards of authorities, etc., in the dominions of ultramar, Her Majesty the Queen, in conformity with the statements of the ministerial offices of finance and of marine, has resolved:

" "1. That the said board of authorities shall consist in each island of the governor captain-general, as president, of the deputy superintendent of finance, of the president of the audiencia of the capital, and of the commandant-general, or highest officer of the navy.

" ' "2. That the board neither has nor can have any other character than that of an advisory board in all those

matters about which, because they relate to the departments of marine or finance, its president may deem it convenient to consult the views of the said board, or in those extraordinary cases in which he may require the counsel and cooperation of the other authorities, for which purpose he may cause a meeting of the same whenever he may deem it convenient or whenever he may be invited so to do by any of the other authorities forming the said board.

" ' "3. That whatever may be the views of the board, the superior political authority shall be at liberty to resolve the case in the manner he may deem to be the most convenient for the performance of his duty, but should the said superior authority base his decision on the views of the board, he shall not thereby be freed from responsibility, except in those cases in which the matter is entirely under the control of the department of marine or finance.

" ' "4. That the ample powers granted to the governor captain-general are extended to any extraordinary condition which may arise on account of interior or exterior events which may put in danger or prejudice the interests of the mother-country; but he must always consult the board of authorities, even when the decision is exclusively his, as well as is the responsibility.

* * * * *

" ' "10. That, inasmuch as all the authorities are obliged to respect the governor captain-general of each island as the first officer in official rank and order and the one responsible for good order and security, each of the said authorities shall take care to fulfill the charge intrusted to him under the rules established by the laws and the particular instructions of each department." (San Pedro, Legislacion Ultramarina, Vol. I, p. 140.)

"The above-mentioned powers were increased on account of a communication from the governor-general of Cuba, by the royal order of May 26, 1851 (San Pedro, Vol. I, pp. 141, 142, referring to Cuba), which increase was extended also to the Philippines by another royal order of October 15, 1851. (San Pedro, Vol. I, p. 143.)

"Under date of December 17, 1857, the governor captain general of the Philippines issued a decree concerning the Marianas Islands, a decree which could not be issued except by one who had been invested with full powers of sovereignty:

" 'Superior government of the Philippines.—Under this date I have decreed the following: In view of the reasons stated in the preceding communication by the governor of Marianas regarding his inability to perform the measures, which in his opinion are necessary for the best administration and improvement of those islands, on account of his having to wait for the approval of this superior authority in order to do so, which approval is sometimes a period of some years in reaching there, because of lack of communication, and these reasons being well founded, and desiring to remove every obstacle that may oppose the financial improvement and civilization of those inhabitants, who deserve particular attention on account of their backward condition and the special situation of said islands, which are a "stopping place" or port for whaling ships and which will become a stopping port for nearly all the vessels traveling from the western coast of America to Asiatic ports, when the said islands have sufficient production, I hereby confer on the governor of those islands, Major of Infantry Don Felipe de la Corte, captain of the engineer corps, ample authority in order that he may at once begin and perform any governmental measures he may deem conducive to an increase of the inhabitants and the production of the islands under his command, and any other orders which he may consider to be to the public good in all those matters not in apposition to the general laws of these kingdoms, nor onerous to the royal treasury. Let this decree be communicated to whom it may concern. Which I beg to communicate to your lordship for your knowledge. God guard your lordship for many years.' (San Pedro, Legislation Ultramarina, Vol. I, p. 213.)

"Under date of April 30, 1851, the same governor-general of the Philippines approved the following treaty made with the Sultan of Jolo, annexing his sultanate to the Spanish Monarchy, in the following terms:

" 'ART. 17. The articles contained in this solemn record shall have from this date their entire force and value, the same being, however, subject to the superior approval of his excellency the governor captain-general of these Philippine Islands. Any doubt that may arise regarding the text of this record shall be decided in accordance with the Spanish text literally. Signed in Jolo on the 19th day of April, 1851. There follows the seal of the Sultan. Idem of the Datto Mahamad Bullo. Idem of the Datto Daniel A mil Bajal. Idem of the Datto Mulok Cajal. Idem of the Datto Tamangon. Idem of the Datto San-Yajan. Idem of the Datto Mamaneha. Idem of the Datto Mulok. Idem of the Datto Ban-Da-Jala. Idem of the Datto Amil Barol. Idem of the Datto Yo-Han. Idem of the Datto Naip. And the signature of the Sheriff Mahamad Binsarin. The military and political governor of the province of Zamboanga, etc., Jose Maria de Carles y O'Doile.

" 'I, Don Antonio de Urbistondo y Eguia, Marques de la Solana, Knight of the Grand Cross of the Royal American Order of Isabel the Catholic, of that of San Fernando, of first and third class and of that of San Hermenegildo, lieutenant-general of the national army, governor and captain-general of the Philippine Islands, president of the royal audiencia of the same, subdeputy judge of the postal revenues, royal vice-patron and director general of the troops, etc. In the name of Her Majesty the Queen of Spain, Donia Isabel II (Q. 1). (1.), hereby approve, confirm and ratify this capitulation.' (San Pedro, Legislation Ultramarina, Vol. I, p. 235.)

"In the royal cedilla of July 31, 1744, published in the first volume of the Autos Acordados, the governors and captains-general of the Philippines are called royal vicepatrons. Also in another of April 25, 1847, suspending Law 20, title 7, Book 1, of the Laws of the Indies (2 Autos Acordados, 84).

"In the royal cedula of September 7, 1758, published on page 12 of volume 1 of the Autos Acordados, the King addresses it to the 'governor and captain-general of the Philippines and president of my royal attdiencia of the same.'

"In Volume I, page 3 of the 'Legislacion Militar,' by Salinas y Angulo, which treats of the Philippines as a military district, it is said:

" 'Office of captain-general—Its origin—The Philippine Archipelago forms a district, the origin of which dates back to the year 1571 when the adelantado of the Marianas Islands, Don Miguel Lopez de Legaspi, completed the conquest of the Philippines and was appointed their first governor, uniting the political and military commands, which his successors have kept, together with that of the presidency of the audiencia, according to the provisions of Laws 3, 4, and 5, title 3, book 3, of the "Kecopilacion de Indias" for the viceroys of America who were also captains-general of their districts, the same being the case with the independent governor, such as that of the Philippines, as set forth in all the royal cedillas which nominate them with the said three titles, whatever may be the object of the said cedula or the department to which they belong.

" 'The free election of the person who was to discharge the government of the Philippines was designated in the royal order of April 4, 1821, when it was ordered that the offices of viceroys, captains-general and governors of "ultramar" should be discharged for an indeterminate period and at the King's will, who might remove the said officers at his will. This royal order was modified in its essence by the royal order of October 14, 1867, which ordered that such appointments should be made by the president of the cabinet of ministers, in accordance with the latter and at the proposal of the same, the said office being obliged to communicate the corresponding orders to the other ministerial offices. This is the practice followed at present (1879).' (Ibid., p. 5.)

"In the case of *Benedicto vs. De la Rama*[1] (2 Off. Gaz., 166), this court, speaking of the suspension of titles 4 and 12 of the Civil Code by the commanding general of these Islands, said:

" 'Moreover, the power of the governor-general, without such order [of the Supreme Government] to suspend the operation of the code, was well settled. A royal order so stating was issued at Madrid on September 19, 1876, and with the cumplase of the governor-general published in the *Gaceta de Manila* on November 15, 187(5.' *Phil. Rep.*, 34.

"As we have already seen, the same powers existed in the governor-general of these Islands on the date of the grant in question, which powers were sufficient to actually repeal a considerable part of the Civil Code, which fact corroborates what has been stated, that no law can be invoked against a grant in the Philippines made by the Spanish King or by his viceroy.

"The History of the Philippines, inserted in Volume I of the Official Census, at page 390 et seq., says the following:

"The powers given to a governor of the Philippine Islands were practically unlimited, and no law could be enforced or remain in force if it was not in accordance with his views.' "

My conclusions are therefore;

- (1) That the grant in question was absolute and unconditional ;
- (2) That the authority making the same had full power so to do;
- (3) That the grant was to a definite, well-defined tract of land;
- (4) That the petitioner and his predecessors have been in the quiet, peaceable, and uninterrupted possession of said land under said grant for nearly fifty years;
- (5) That the Spanish Government permitted the title of the petitioner and his predecessors to be registered in the public registry of property, thereby representing to all persons that the petitioner was the owner of said land;
- (6) That the petitioner has reclaimed a large portion of said land and has expended large sums of money in so doing;
- (7) That the Government of the United States in the Philippine Islands recognized the title of the petitioner by taxing the same in the name of the petitioner.
- (8) That the Government of the United States, if it desires to annul the grant made by the Spanish Government, must bring an action for that purpose and can not do so in a collateral proceeding;
- (9) That the lower court had no authority to cancel the registration of the title to said property in a collateral proceeding;
- (10) That the lower court erred in holding that the original grant contained a condition, to wit, that the petitioner and his predecessors were only entitled to1 so much of said tract of land as should be reclaimed.

For all of the foregoing reasons, in my opinion, the judgment of the lower court should be reversed and the petitioner should be permitted to register, under the Torrens system, his title to the land described in the grant of the 12th. day of February, 1859.

DISSENTING

TRACEY, J.,

Notwithstanding inferences to the contrary from some decisions by American courts, it is as a matter of history, as well settled as a matter of that nature can be, that the power to grant land under tidal waters was one expressly reserved to the King of Spain. The authorities cited in the briefs show that the motive of this reservation was the same as that for the exclusion of similar land from the public-domain legislation of the United States. (Mann vs. Tacoma Land Co., 153 U. S., 273.) The better opinion appears to be that this reserved power did not pass even to

viceroys by virtue of the nature of their office, in which they may be said to have exercised the royal prerogative; much less was it transmitted to governors-general or like subordinate officials, who did not possess the royal power, in its plenitude, by personal representation, but only such powers as were delegated to them. Consequently the grant in question was void. No prescription has run in its favor as against the State, which is entitled to the possession of the property and the petitioner's application should be wholly dismissed with costs.

[1] 3 Phil. Rep., 34.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.