

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT AND APPELLEE, VS. FRANCISCA ABRAN ET AL., CLAIMANTS. THE MUNICIPALITY OF BAYAMBANG AND AGUSTIN V. GOMEZ ET AL., APPELLANTS.

G. R. No. 34338. December 31, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This case was presented to the court together with G. R. Nos. 34336 and 34337,[1] by the writer of this opinion, because the three cases are closely related.

The present case deals with the claim of Agustin V. Gomez to certain portions of lots 8-16, 41, 49, 60-69, 102-104, and to the whole of lots Nos. 42-48; the claim of Consolacion M. Gomez filed by her guardian ad litem, Teodoro Gomez, to certain portions of lots 15-25, 35, 41, 68, 69, 71-73, 76-79, 95, 94, 102, and the whole of lots Nos. 34, 36-40, 70, 74, and 75; and the claim of Julian Macaraeg to portions of lots 24-31, 33, 78, 79, 82-89, 91, 152, and to the whole of lots 32, 80, and 81.

The Director of Lands and the Director of Forestry hold that the land referred to is public land.

The municipality of Bayambang, in turn, claims the ownership of all the lots in the case from No. 1 to No. 182, inclusive, and prays to be declared the owner thereof.

After due hearing, the Court of First Instance of Pangasinan rejected the claims of Agustin V. Gomez, Consolacion M. Gomez, and Julian Macaraeg, as well as that of the municipality of Bayambang, declaring that lots Nos. 8-49, 60-89, 91, 94, 95, 102, 103, 104, and 152 belong to the Insular Government.

From this judgment an appeal was taken by the municipality of Bayambang and by the private claimants, Agustin V. Gomez, Consolacion M. Gomez, and Julian Macaraeg, each insisting upon the original claims presented in this case, and assigning several errors as committed by the trial court.

With reference to the claim of the municipality of Bayambang, we find the evidence insufficient. Its possession prior to the year 1928, or its acquisition of the lots claimed either from the Insular Government or from any other person or entity, has not been satisfactorily shown. And even assuming it to have been in possession of these lots prior to the year 1928, it has been held that our municipalities, as at present constituted, do not acquire public agricultural lands by mere possession or occupation. (Municipality of Tacloban vs. Director of Lands, 17 Phil., 426; 18 Phil., 201; Municipality of Hagonoy vs. Roman Catholic Archbishop of Manila, 29 Phil., 320.)

The fact is, however, that the lands here litigated are not, so far as the record shows, public lands. There is a pre-ponderance of evidence to show that as far back as the Spanish regime, they were the subject of a possessory information obtained by Juan Fajardo. (Exhibit C—Gomez-Macaraeg.) The fact that this information was recorded in the registry only in 1920 does not affect its present probative value. That entry was made in accordance with

the law, and the lack of it only prevented it from adversely affecting third persons; but once recorded, it carried full legal effect.

The preponderance of the evidence shows, to our mind, that the lands here in question are portions of those described in the aforementioned possessory information. Marciano Fajardo's testimony, corroborated by that of Primitivo Artacho and by the documentary evidence bears this out.

According to Marciano Fajardo, his father made out a declaration of ownership of all these lands in the year 1902 (p. 34, t. s. n.), although it does not appear he paid the corresponding tax. In 1925, Agustin V. Gomez made out an assessment declaration of the lands here in question. (Exhibits J, K, L, pages 48-50, Bill of Exhibits.)

Marciano Fajardo's testimony loses none of its force from the fact that in 1911 he gave the surveyors the data they needed to survey the lands mentioned in the plan (Exhibit A—Gomez-Macaraeg), inasmuch as it appears that the survey was made, not because the land belonged to the municipality of Bayambang, but in order to determine the dividing line between that municipality and Moncada and Camiling.

With reference to the document (Exhibit 30-Bayambang), we are satisfied that it does not refer to the lands here in question.

As far as the possession is concerned, we find that the preponderance of the evidence shows that the individual appellants, Agustin V. Gomez, Consolacion M. Gomez, and Julian Macaraeg have been in possession of the lands in question (except for certain portions awarded to some homesteaders; but we shall speak of this later), and their predecessors before them, so that, all in all that possession may be traced back as far as 1882, when Juan Fajardo entered upon the possession of those lands. The record shows that that possession was held as owners, peacefully, publicly, continuously, and in fine, with all the elements required in paragraph (b), section. 45, Act No. 2874, for which reason said appellants are entitled to have their respective parcels registered in their names, except for the portions alluded to above, which were granted through homestead certificates of title Exhibits 34, 35, 36, 37, 38, 39, 40, 41, and 42, of the Insular Government.

With respect to the portions of land covered by homestead certificates of title, we are of opinion that such certificates are sufficient to prevent the title to such portion from going to the appellants aforesaid, for they carry with them preponderating evidence that the respective homesteaders held adverse possession of such portions, dating back to 1919 or 1920, according to the evidence, and the said appellants failed to object to that possession in time. Under these circumstances, we believe that in this particular case, the doctrine laid down in *Zarate vs. Director of Lands* (34 Phil., 416) and reiterated in *Aquino vs. Director of Lands* (39 Phil., 850), is more applicable than that enunciated in *De los Reyes vs. Razon* (38 Phil., 480), in view of the fact that these appellants abandoned said portions, and the observations made in *Government of the Philippine Islands vs. Federizo* (G. R. No. 15946, January 14, 1922)[1] *Director of Lands vs. Peralta* (G. R. Nos. 25733-35, December 24, 1926)[2], and *Government of the Philippine Islands vs. Abad* (p. 75, ante) are applicable to them.

Wherefore, modifying the judgment appealed from, it is hereby ordered that the lots respectively claimed by Agustin V. Gomez, Consolacion M. Gomez, and Julian Macaraeg, be registered in their name, with the exclusion of the portions covered by the homestead certificates Exhibits 34, 35, 36, 37, 38, 39, 40, 41, and 42 of the Insular Government, affirming said judgment in all other respects compatible with this judgment, which is hereby rendered without express finding as to costs. So ordered.

Avanceña, C. J., Malcolm, and Villamor, JJ., concur.

[1] Not reported.

[2] Not reported.

[1] Aquino vs. Municipality of Bayambang, p. 393, ante.

IMPERIAL, J.:

I concur, but believe that the portions to which free patent titles have been issued, should not be excluded.

VILLA-REAL, J.: I am of the same opinion as Justice Imperial.

STREET, J., concurring in the result:

I concur in the result in this case for the reason stated below, but dissent from so much of the opinion as rests upon Zarate vs. Director of Lands (34 Phil., 416), which was expressly overruled in the well-considered decision of De los Reyes vs. Razon (38 Phil., 480).

The line of reasoning which commends itself to me in this case is this: The old possessory information relied upon by the appellants is so vague, uncertain, and positively incorrect with respect to the land which it is supposed to describe that it would be unsafe for the court to base a judgment in favor of the claimants upon that document. The circumstance that said possessory information was not registered for nearly thirty years shows that the individuals interested in the property supposedly described in it considered the information to be worthless.

But ignoring the possessory information, it is never the less, in my opinion, satisfactorily proved by a preponderance of the evidence that the claimants have been in continuous possession of the property claimed by them since prior to 1894, with the exception of the portions occupied by the homesteaders. It results that they are entitled to have the land registered, with the exception of the portions so held by the homesteaders. As to those portions possession was interrupted and has not been continuous in the sense required by Act No. 2874. Moreover, the claimants did not establish their right of possession as against the homesteaders during the period of the existence of the right to restoration to possession. Having interrupted the continuity of the possession of the claimants, and having obtained a homestead grant from the Government, the right of the homesteaders is superior to that of the claimants with respect to the land occupied by them.

This court has held in more than one case that a claimant who seeks to obtain registration by virtue of continuous possession alone, beginning prior to 1894, must prove possession continued from the date mentioned at least until the date when Act No. 2874 became effective. (Ongsiaco vs. Magsilang, 50 Phil., 380, and Government of the Philippine Islands vs. Abad, p. 75 ante.)

DISSENTING

OSTRAND, J.:

I have the greatest respect and consideration for my colleagues, but I am afraid that in the present case our court has been led astray, and it seems to me that the trial judge, Dionisio de Leon, has presented a better view of the case than that taken by this court. His decision is very well written, and as far as I can see, it is true and accurate in every respect. I shall therefore quote a rather large portion of that decision:

"The principal questions raised are: (1) Have claimants Agustin Gomez, Consolacion Gomez and Julian Macaraeg sufficiently and satisfactorily established the identity of the land being claimed by them? (2) Have they satisfactorily and sufficiently established the alleged continuous, uninterrupted and successive possession of the land in question by Juan Fajardo, Getulio Pitco and Agustin Gomez?

"We now proceed to the question of the identity of the land. It is contended by Gomez and Macaraeg that Psu-54793, Psu-54796, Psu-54794 and Psu-53122 all indicated on Exhibit A—Gomez-Macaraeg were formerly the

property of Juan Fajardo y Torres, forming one whole mass of property consisting of 1,000 hectares, more or less, and that Exhibit C—Gomez-Macaraeg is the information posesoria instituted by Juan Fajardo y Torres, covering that whole mass of property and that the six parcels of land described in said informacido posesoria correspond to that whole mass of property. The informacion posesoria describes the six parcels as follows:

" 'La primera: Es un terreno inundadizo para la siembra de palay conocido por Labir Pasugaoan sito en el sitio denominado Bautista de esta jurisdiccion de Bayambang, Provincia de Pangasinan, que mide doscientas ochenta hectareas, linda al norte con terrenos de D. Isabelo Artacho, D. Primitivo Artacho, y Jose Lagartiza, al este con Lucio Galsim, Estifania Junio, Josefa Iglesias, Abundio Niverva y Manuel Insao, al sur con un camino y al oeste con Gregorio Olfendo. Dicho terreno lo he adquirido por compra a Inocencio Silva, Carlos Olfendo, Juan Maniling y otros, valorado en ciento cuarenta pesos, sin titulacion alguna.

" 'La segunda: Es un terreno anegadizo para la siembra de palay denominado Cabalbalinoan en el Barrio de Poponto de esta misma jurisdiccion, que mide: trescientas veinte hectareas; linda al norte con un camino, al este con Pedro Perez, Pedro Abalos, Domingo Hipolito y D. Vicente Ulanday, al sur divisoria entre Bayambang y Camiling y al oeste con terrenos denunciados por D. Vicente Ma. Vales y D. Posidio Dumlaog. Dicho terreno lo he adquirido por via de cesion y traspaso de D. Vicente Ulanday, a favor del exponente, valorado en mil pesos.

" 'La tercera: Es un terreno anegadizo destinado para la siembra de palay conocido por Naclang, sito en el Barrio de Poponto de esta misma jurisdiccion, que mide: trescientas noventa hectareas; linda al norte con Juan Canino, al este con terrenos denunciados por D. Vicente Ma. Vales, Valentín Hipolito y D. Buenaventura Robosa, al sur con vereda y al oeste con terrenos del exponente. Dicho terreno lo he adquirido por compra y ocupación simple hace mas de diez años a esta parte, valorado en novecientos pesos.

" 'La cuarta: Es un terreno anegadizo para la siembra de palay, que radica en los sitios de Guteb na Mananzan y Benlag de esta misma jurisdiccion, que mide: cuatrocientas hectareas, poco mas o menos, linda al norte con un camino y bosque, al este con Ambrosio Dolog y Pedro Perez, al sur con senda, bosque y Domingo Estaria y al oeste con estero denominado Dalay duey y D. Honorato Carungay, adquirido por compra hace seis años a Filomena Diaz, viuda, poseyendolo Diaz mas de veintiseis años, valorado en trescientos pesos.

" 'La quinta radica en el Barrio de Tococ, que ocupa una extension de cuatro hectareas y cuarenta y seis centiareas, equivalente a cuarenta mil cuarenta y seis metros cuadrados, linda al norte con Eduardo Lasquete, al este con Valentin Hipolito, por el sur con una senda y por el oeste con Honorato Carungay, adquirido por compra hace cuatro años a Eduardo Paat, poseyendola Paat mas de veinte años, valorada en cien pesos.

" *Y la sexta en el Barrio ya mencionado que ocupa una extension de cinco hectareas, veinte areas y dos centiareas, igual a cuarenta y dos mil veinte metros cuadrados, linda por el norte con D. Buenaventura Robosa, por el este con el estero, por el sur con Pedro Basquez y por el oeste con Gaspar Mejia Ymalada, adquirida por compra hace cuatro años a Domingo Yglesias, poseyendola dicho Domingo mas de veinte años, valorada en cuatrocientos pesos/

"As may be seen above, the first parcel is described as being situated in the sitio known as Bautista of the municipality of Bayambang; the second parcel as being situated in the barrio of Poponto of the municipality of Bayambang; the third, in the same barrio of Poponto; the fourth, in the sitios known as Guteb na Mananzan and Benlag of the same municipality; the fifth, in the barrio of Tococ; and the sixth, in the same barrio of Tococ. Taking into account the boundaries of each of those six parcels as described in the informacion posesoria, it is clear, and the court so finds, that the six parcels of land described in said informacion posesoria cannot form one mass of property and have never formed one piece of land. The explanation of the star witness Marciano Fajardo tried to give us to why the informacion posesoria recites the boundary men, such as Lucio Galsim, Josefa Iglesias, Estefania Junio, Abundio Minerva, Manuel Insua, Ambrosio Daluag, Pedro Perez and Honorato Carungay, but who do not now appear as such boundary men, is simply ridiculous, to say the least.

"The court also finds that the municipality of Bautista was, prior to the year 1901, a barrio of the municipality of Bayambang, but in 1901 it became an independent municipality and the barrio of Poponto, which was also formerly of the municipality of Bayambang, became in its entirety a part of the municipality of Bautista. Such is the testimony of reliable and competent witnesses presented by the municipality of Bayambang. The testimony of Marciano Fajardo on this point is wholly unreliable, taking into account the many flagrant contradictions characterizing his testimony and his apparent tendency to ignore the truth on the several occasions that he testified before this court in connection with this cadastral proceeding. The court has seen this witness testify not only in these claims of Gomez and Macaraeg, but also in the claims of Bernabe B. Aquino and Carmen Sackerman Macleod and the record of this entire cadastre fully demonstrates that Marciano Fajardo does not deserve any credit from the court. As the *informacion posesoria* clearly states that the land therein described is situated in the barrios of Bautista and Poponto and inasmuch as Bautista in 1901 became an independent municipality and the barrio of Poponto in its entirety was annexed to it in said year, the conclusion seems inevitable that the land covered by the said *informacion posesoria* Exhibit C—Gomez-Macaraeg is now and has been since 1901 situated in the municipality of Bautista, Province of Pangasinan, if such land has ever existed. The land in question being: situated in the municipality of Bayambang, it is clear that claimants Gomez and Macaraeg have completely failed to prove and establish that the land in question is the same land covered by the said *informacion posesoria*.

* * * * *

"Again, the witnesses of claimants Gomez and Macaraeg have contradicted each other in giving the boundaries of the supposed land formerly belonging to Juan Fajardo y Torres. One of them, Primitivo Artacho, assured the court that lots 60, 51, and 50 and portions of lots 49, 56, 7, 8, 9, 10, 11 and 12 were the property of his brother Isabelo Artacho who is recited in the *informacion posesoria* as a boundary man. The said *informacion posesoria*, however, states that Isabelo Artacho was the boundary man on the north of parcel 1. But even admitting that the aforesaid lots were the property of Isabelo Artacho, it is indeed significant to note that neither Isabelo Artacho nor any of his heirs or successors in interest has ever claimed the said lots west of Psu-54793 alleging rights derived from Isabelo Artacho. Marciano de Guzman, who also pretends to know a great deal about the land in question, stated that the entire mass of property formerly belonging to Juan Fajardo y Torres and now being claimed by Gomez and Macaraeg, is bounded on the south by fishery Tubor. This is false, as the fishery Tubor is not situated anywhere on the boundary line between the municipalities of Bayambang and Moncada. Primitivo Artacho further stated that he is a boundary man on the north of the entire land formerly belonging to Juan Fajardo y Torres and that that land of his on the north contains 100 hectares and is a good rice land. His testimony on this point merits no credit whatsoever in view of his admission in open court that since 1914 he has never occupied his supposed land of 100 hectares, has never declared it for taxation purposes nor paid the taxes thereon notwithstanding the fact that he owns no other land anywhere and that he has four children. Moreover, Primitivo Artacho has never presented any claim in this proceeding for any of the lots north of Psu-54793.

"Another decisive evidence why the land in question is not and cannot be the one described in the *informacion posesoria* Exhibit C—Gomez-Macaraeg is the fact that in 1911 when Marciano Fajardo was municipal president of Bayambang, it was he who gave to the surveyors all the necessary data for the survey of the entire land represented in Exhibit A—Gomez-Macaraeg, which survey was made at the instance of the municipality of Bayambang for the purpose of registering the entire land in its name. It was Marciano Fajardo who indicated to the surveyors all the points as well as the entire land in question that was surveyed for the municipality and that the plan made of the entire land as a result of such survey marked Exhibit U- Bayambang and attached to the record of the case No. 2981, Record No. 2506 is exactly the same as the plan Exhibit A—Gomez-Macaraeg. If it be true that the land in question was the original property of his father Juan Fajardo, the court fails to see any reason why this witness Marciano Fajardo included the land in question in the survey that was made at the instance of the

municipality of Bayambang. Again, this same witness, during his incumbency as municipal president of Bayambang, on February 17, 1911, proposed an ordinance which was approved by the municipal council which provides in section 5 thereof as follows:

" 'Se declara como sitios de prohibicion de esta Ordenanza en particular todas las bajuras comprendidas en los sitios denominados Manambong y Mangabol que son de la propiedad de. este Municipio conocidos por pesquerias municipales, cuya posesion abierta, continua y no interrumpida data desde en tiempo de Espana y que se describe de la manera siguiente: Linda al norte, con limite o divisorio de Bautista con Bayambang y propiedades del difunto Isabelo Artacho hasta el punto divisorio de Bautista, Bayambang y Moncada; por el este, limite divisorio de Moncada con Bayambang; por el sur, limite divisorio de Camiling con Bayambang; y por el oeste, con terrenos particulares y Rio Agno.' (See Exhibit 6-Bayambang.)

"The description of the property in the said ordinance as the property of the municipality of Bayambang known as its municipal fisheries of which the said municipality, according to said ordinance proposed by said witness, has been in the open, public, continuous and uninterrupted possession since the Spanish regime, gives the same boundaries which appear in the plan Exhibit 4-Bayambang and the land comprised in said Exhibit k-Bayambang is the same mass of land comprised in this cadastre No. 31 as shown in Exhibit A—Gomez-Macaraeg. Again Marciano Fajardo stated, in his cross-examination by the court, that in 1910 he did not know the exact status of the land in question and for that reason he was looking for some data for the municipality of Bayambang relative to this land and he went to the office of the executive secretary in Manila to look for some data for the use and benefit of the municipality of Bayambang and in his search for such data he found the original of Exhibit B—Gomez-Macaraeg. Furthermore, in July, 1915, Marciano Fajardo surveyed for Claudio Galsim lot 153, and in the plan Two-10893 prepared by said witness, he placed as boundary men on the south of said lot Juan Benebe and Atanasio Rico. Why did he not place Getulio Pitco as boundary man on the south, if it is true, as he claims, the entire land south of lot 153 was property of Getulio Pitco from 1910 to 1919? But what is most remarkable in the testimony of Fajardo is his story of the 50 hectares comprising lots 18, 19, 20 and 21 included in the claims of Gomez-Macaraeg. He stated that when Pitco bought in 1910 the entire land, he asked the latter to allow him to keep possession of said 50 hectares on condition that he would pay the same as soon as he could make use of them; that in 1919 when he learned that Pitco had sold the entire property to Agustin V. Gomez, he made the same proposition to Gomez, so he continued to possess the same until the night before he testified in this case, when he went to Gomez to return the possession thereof. In his sworn answers or claims for these lots filed long before he testified, he, however, states that he has acquired those lots by inheritance from his father and in his affidavit Exhibit 8-Bayambang attached to his complaint in civil case No. 4711 of the Court of First Instance of Pangasinan (Exhibit 7-Bayambang) filed by him on August 9, 1926, against the municipality of Bayambang relative to the said 50 hectares or lots 18, 19, 20 and 21, he states that he has been in possession of the same as owner, peacefully, adversely and continuously since the year 1895. The above facts prove once more how highly unreliable this witness Fajardo is.

"Probably, because the land described in the informacion posesoria has been abandoned for a long time by Juan Fajardo y Torres, the mistake was committed by these private claimants and their witnesses in now believing and declaring that the land described in said informacion poseoria is within the cadastral plan involved in this proceeding. That the witnesses of these private claimants Gomez and Macaraeg has lost all notion as to the identity and location of the land described in the informacion posesoria is fully shown by the testimony of Eladio Ramos on behalf of the municipality of Bayambang who testified that he heard the conversation had between Teodoro Gomez and Juan Benebe, father-in-law of Eladio Ramos, in 1920 in the barrio of Villanueva, municipality of Bautista. Be it remembered that Teodoro Gomez is a brother of Agustin V. Gomez; that Rev. Domingo de Vera is an uncle of Agustin V. Gomez; and that Julian Macaraeg is a brother-in-law of Agustin

Gomez. In said conversation Teodoro Gomez said to Juan Benebe: 'I have here a document (referring to a document from Juan Fajardo y Torres according to witness Ramos) and I ask you where we could place it.' To this, Juan Benebe answered: 'In Mangabol. And it would be better if we take a lease of the fishery Tubor so that when we order the survey of the land nobody would oppose the same.' Teodoro Gomez then said, 'From this land we can obtain about 1,000 hectares and we could divide them among ourselves, part for Father Domingo de Vera, another for Agustin Gomez, another for Bernabe B. Aquino and we shall give you 100 hectares.' This testimony of Eladio Ramos is corroborated by Exhibit 27-Bayambang, which is a sketch prepared by Alejandro Castaneda, draftsman of surveyor Francisco Licuanan, showing the four divisions made of the land among Agustin Gomez, Teodoro Gomez, Domingo de Vera and Bernabe Aquino. The alleged sale by Agustin V. Gomez in favor of Consolacion M. Gomez represented by her guardian ad litem Teodoro Gomez was executed only on December 14, 1929, after the hearing of this cadastral proceeding was commenced and yet, when the survey of Psu-54746 was made by private land surveyor Francisco Licuanan on August 24, 1926, it was so surveyed in the name of Teodoro Gomez (see Exhibit D-1—Gomez-Macaraeg). Eladio Ramos testified that the survey of the land was made in the year 1926 and the entire land was surveyed into four parcels and this fact is fully corroborated by the private land survey of Bernabe B. Aquino, Psu-53722 and Psu- 54793—Agustin Gomez, Psu-54746—Teodoro Gomez, Psu-54794—Domingo de Vera. (See Exhibits D, D-1, D-2— Gomez-Macaraeg.) This testimony of Eladio Ramos is also corroborated by the fact that the information posesoria Exhibit C—Gomez-Macaraeg was presented for registration in the office of the register of deeds for the Province of Pangasinan only on February 17, 1920, and inscribed therein on March 1, 1920, and successively thereafter the alleged deed of sale executed by Juan Fajardo in favor of Getulio Pitco on April 26, 1910, which was registered only on March 30, 1920, and the alleged transfer made by Pitco in favor of Agustin Gomez on March 10, 1919, which was registered only on March 4, 1920. This is further corroborated by Teodoro Ilumin Payaoan, rebuttal witness for claimants Gomez and Macaraeg, who admitted that he leased for P12,000 the fishery Tubor in 1926 and 1927 and that his partner was one Miguel de Vera and that his bondsmen in favor of the municipality of Bayambang on account of such lease were Teodoro Gomez and Juan Benebe. (See Exhibits 31 and 31-A—Bayambang.) Teodoro Ilumin Payaoan was only a tenant of a piece of land consisting of two hectares and receiving as his participation therefrom only 15 cavanes of palay, just barely enough for his family consumption and yet he took the lease of fishery Tubor at a considerable sum. This witness stated that he knew Teodoro Gomez when his partner Miguel de Vera brought him (witness) to Teodoro Gomez and that was presumably before the lease of the Tubor fishery was taken from the municipality in the year 1926. Marciano de Guzman, witness for claimants Gomez and Macaraeg in his cross-examination, has unconsciously, perhaps, corroborated this testimony of Eladio Ramos when he said that in 1926 Agustin V. Gomez told him (witness) that he had subdivided the land he bought from Juan Fajardo and that it was subdivided among Agustin Gomez, Teodoro Gomez, Father Domingo de Vera and Bernabe B. Aquino (s. t., p. 238). Damian Tolentino, witness for Gomez and Macaraeg, has also unconsciously perhaps, corroborated the testimony of Eladio Ramos when, in his cross-examination, he stated that from 1914 up to the present he has been encargado of Agustin V. Gomez of the entire piece of land consisting of 1,000 hectares less a portion which they gave to Governor Aquino. Agustin V. Gomez, who was called to the witness-stand by the court, also corroborated Eladio Ramos when he testified that after he had bought the land from Getulio Pitco, he subdivided it, giving a portion to his uncle Father Domingo de Vera, another portion to his brother Teodoro Gomez, another portion to his brother-in-law and another portion to Bernabe B. Aquino, but the portion ceded by him to Father De Vera was subsequently purchased by his brother-in-law Julian Macaraeg.

"Another significant fact is that Filemon Fajardo is claiming lot 122 distant from the claims of Gomez, Macaraeg and Aquino and in support of his claim he presented a portion of an information posesoria Exhibit 10-Bayambang giving a similar description as that given for parcel 1 mentioned in Exhibit C—Gomez-Macaraeg instituted by Juan Fajardo y Torres. Marciano Fajardo admitted that Filemon Fajardo is his brother. Certainly, this shows that the

very sons of Juan Fajardo y Torres do not know where to locate the lands described in the information posesoria instituted by their said father.

"It seems clear from all the above circumstances that, although the lease of the Tubor fishery in 1926 and 1927 was taken in the name of Teodoro Ilumin Payaoan, the real parties back of it and acting behind the curtain, so to speak, were Teodoro Gomez, Juan Benebe and others, in order to carry out, as they in fact did, the plan conceived by them as disclosed in their conversation above testified to by Eladio Ramos. Ramos testified to the above facts only in the course of his cross-examination by the court and if there was discrepancy as to the date when his father-in-law Juan Benebe died and the date of the alleged survey, the court would attribute such discrepancy to the spontaneous, sincere and extemporaneous manner he testified to those facts.

"In the mind of the court, the evidence abundantly shows that the land described in the information posesoria Exhibit C—Gomez-Macaraeg, which is the basis of the claims of Agustin Gomez, Consolacion Gomez and Julian Macaraeg, is not and cannot be within the cadastral plan expedients No. 31, G. L. R. O. Record No. 861, of the municipality of Bayambang and the land described in said informatidn poaesoria Exhibit C—Gomez-Macaraeg is not and cannot be the same identical land indicated as Psu-54794, Psu-54746, Psu-54794 and Psu-53122 on Exhibit A—Gomez-Macaraeg.

"We next come to the question of the alleged successive and continuous possession of the land in question by Juan Fajardo y Torres, Getulio Pitco and Agustin Gomez. We discuss this point under the supposition, for the sake of argument only, that the land claimed by Agustin V. Gomez, Gonsolacion Gomez and Julian Macaraeg in this proceeding is the same land described in the information posesoria Exhibit C—Gomez-Macaraeg. Marciano Fajardo tried to prove that from 1888 to 1910 his father was in the peaceful and uninterrupted possession of the land in question and that he and his father used to go to the land every year from 1888 to 1910, staying on the land at least one month each year. The falsity of this testimony is shown by the fact that the witness himself has admitted that from the age of nine till he was twelve years old, he attended his classes regularly in the public school of Bayambang and that upon reaching the age of fourteen he attended school in Manila until he finished his course in surveying at the age of twenty-five and that he attended his classes in Manila regularly which classes ended the later part of December of each year and that during the revolution of 1896 he enlisted as volunteer and was stationed in Manila and Cavite, rendering continuous service outside of Pangasinan up to the surrender of the City of Manila in 1898 and that from that year on to February, 1899 he was also continuously away from the municipality of Bayambang, Pangasinan.

"Damian Tolentino, who said that he was encargado of Agustin Gomez from the time Agustin Gomez acquired the ownership of the land in question by purchase from Ge- tulio Pitco in 1919, stated that he was encargado of the entire land in question for Marciano Fajardo in 1914, and from 1915 up to the present, he has been encargado of the entire land in question minus the portion given to Bernabe B. Aquino, working the land and giving Gomez his annual share of the products. This is palpably false. Marciano Fajardo never claimed he owned the land in question in 1914 or before or after. Agustin V. Gomez claimed he became owner of the land only in 1919. How could Damian Tolentino be the encargado for Marciano Fajardo and Agustin V. Gomez during 1914 and 1915-1919 respectively, when during those years neither Marciano Fajardo nor Go- mez was owner of the land in question? Damian Tolentino went further and said that Primitivo Artacho, the owner of the land west of the entire land in question, was seen by him on said land in December, 1929, whereas Primitivo Artacho said that the last time he had been on the land, which he said bounds the land of Fajardo, was in 1914. Marciano Fajardo said that when he made the survey of the land in question in 1894, some of the data used by him in the survey were the pildpiles existing on the land. Damian Tolentino, however, stated that there were no pimpiles on the land. Besides the testimony of the witnesses for the municipality of Bayambang and the Insular Government that neither any

person named Getulio Pitco nor Mang Kiko was ever seen on the land in question or worked the same; that neither the two Gomez brothers nor Julian Macaraeg nor Damian Tolentino ever worked the land in question nor any portion thereof, the testimony of the witnesses for Gomez and Macaraeg with respect to the alleged cultivation of the land by Pitco and Gomez through their encargados is so unreliable that the court does not hesitate in concluding, that even granting that the land in question is the same land described in the informacion posesoria Exhibit C—Gomez-Macaraeg, not one of said persons, Juan Fajardo y Torres, Getulio Pitco and Agustin Gomez personally or through encargados, has ever been in possession of the same.

"Another significant fact is that the land in question was never declared for taxation purposes either in the name of Juan Fajardo y Torres or in that of Getulio Pitco. It was declared for taxation purposes only in 1926 by and in the name of Agustin Gomez but under the protest of the municipal president of Bayambang. And the story given by Julian Macaraeg as to how this entire land was declared in 1926 by Agustin Gomez in his name, notwithstanding the fact that in 1924 a portion of the same is alleged to have been sold by Agustin Gomez to Bernabe B. Aquino, is another significant and striking fact. Add to this, the fact that up to the date of this hearing, not one of the alleged owners has ever paid tax on the property in question.

"On the other hand, the preponderance of the evidence shows that the municipality of Bayambang has been in the open, public, continuous and uninterrupted possession of the entire land in question since 1894 up to the present; that the municipality of Bayambang has been dedicating the land to the exploitation of fisheries from which it derives considerable income annually. The evidence shows that the land in question is under water every year for six months and that during that period of time fishes, such as paltat, dalag and araro appear in abundant quantity; that these fishes spring up naturally in the creeks, ponds and bodies of water over the land during the rainy season; that they are not at all raised and that if any planting at all can be made on the land in question, it is only during the months of February, March, April and May and only short-term crops, such as sesame, mongo, etc., can be planted. The court finds that while the Bureau of Lands has been parceling the land in question into lots and giving them as homesteads, the homestead applicants, however, did not actually occupy and take possession of their homesteads. All these homesteaders are living in the municipality of Alcala and have not established any home in their respective homesteads. They work their homesteads only during the dry season, because according to them during June to October, the entire land is covered with water and they cannot work the same. The municipality of Bayambang has been leasing to private parties since 1894 the fisheries on the land and the lessees have occupied not only the marginal ponds, creeks and rivers but also the entire land, inasmuch as when the rainy season comes, the entire land is covered with water and becomes a veritable fishpond. At the ocular inspection made by the court, several fish traps were found all over the land specially towards the eastern part of the cadastral plan and such fish traps had been placed thereon by private parties who have leased the same from the municipality of Bayambang. Inasmuch as these fisheries and the land abutting the fisheries were leased by the municipality and inasmuch as the lessees during the dry season take care only of the fishponds, rivers and creeks where fishes are deposited, it is not at all impossible or improbable that these homesteaders during such dry season would cultivate portions of the land which are left dry without the knowledge and consent of the municipality of Bayambang or the lessees. And the municipality of Bayambang has been administering this land as part of its municipal fisheries since 1893 under the authority of the Royal Decree No. 618 dated May 19, 1893, and published in the Gaceta de Manila on July 9, 1898, and later under section 43 of the Municipal Code (Act No. 82) and its amendments and lastly under the authority of section 2321 of Act No. 2711."

It may, perhaps, seem that the judge of the court below has criticized the principal witness, Marciano Fajardo, too vigorously, but considering the untrue statements of that witness, it is not too much to say that the judge did his duty and did it well. In any event, he made a thorough ocular inspection of the territory in which the land in question was situated, and as a consequence, he was especially competent to determine the unreliability of the

appellants' witnesses in regard to the location of the land.

In addition to what has been said by the judge of the court below, I shall as briefly as possible mention a few matters which, in my opinion, are of decisive importance:

(1) The appellants rely on the so-called *informacion posesoria* and insist that the land now in question is the same as the six parcels described in that document. That is not true. The tract claimed by the appellants forms a solid mass of land embracing about 1,375 hectares; with one exception, all of the parcels described in the *informacion posesoria* are separated and have separate boundaries. Parcel No. 1 in the *informacion posesoria*, is bounded on the north by the land of the Artachos, and it is said to include 280 hectares. The Artacho land is close to the western boundary of the municipality of Bautista as it appears in Exhibit A—Gomez-Macaraeg. Parcel No. 2 is located in Poponto and embraces 320 hectares. Now it appears from the official maps that the distance between the barrio of Poponto and the town of Bautista is about 10 kilometers, and it stands to reason that the two parcels referred to are far apart.

No. 3 of the parcels is also said to be within Poponto and must also have been a considerable distance from the first parcel. The fourth parcel is said to be within the sitios of Guteb na Mananzan and Benlag; the location of these sitios has not been satisfactorily determined, but it appears clearly that they are not in any connection with the first three parcels. The fifth and sixth parcels are only about 4 or 5 hectares each and are in the barrio of Tococ, which is far away from land now claimed by the appellants. That land is situated close to Mangabol and is far from Poponto. Marciano has made an effort to extend Poponto to a more southern location, but that is not, and cannot, be true. The main part of the barrio Poponto is close to the boundary between Moncada and Bautista and the greater part of it is north of the railroad from Manila to Dagupan.

(2) In 1892 Juan Fajardo instituted the *informacin posesoria*, but the document was not inscribed in the registry of property. Two years later, the Maura Law or Royal Decree of February 13, 1894, was published on April 17. The principal articles in that decree are as follows:

"ARTICLE 1. All uncultivated lands, soil, earth, and mountains not included in the following exceptions shall be considered alienable public lands: First, those which have become subjected to private ownership and have a legitimate owner. Second, those which belong to the forest zones which the State deems wise to reserve for reasons of public utility. * * *"

"ART. 19. Possessors of alienable public lands under cultivation who have not obtained nor applied for composition on the date this decree shall be published in the *Gaceta de Manila*, may obtain a gratuitous title of property, by means of a possessory information in conformity with the law of civil procedure and the mortgage law whenever they establish any of the following conditions:

"First. Having, or having had, them under cultivation without interruption during the preceding six years.

"Second. Having had possession of them for twelve consecutive years, and having had then under cultivation until the date of the information, and for three years before that date.

"Third. Having had them in possession ostensibly and without interruption, for thirty or more years, although the land is not under cultivation."

"Art. 21. A term of one year, without grace, is granted in order to perfect the informations referred to in articles 19 and 20."

Article 80 of the regulations for the carrying out of the Royal Decree above mentioned provided:

"ART. 80. By virtue of the provision of article 21 of the Royal Decree of February 13, 1894, the inextensible period for carrying out the informations referred to in the two preceding articles, shall be counted as closed on the 17th day of April, 1895.

"Upon the expiration of this period the right of cultivators and possessors to the obtainment of free title shall lapse, and the full property right in the land shall revert to the State or, in a proper case, to the public domain. *

* *"

Notwithstanding the fact that the Royal Decree was sufficiently published, Juan Fajardo made no effort to take advantage of it, and as a consequence, the land "reverted to the state or, in a proper case, to the public domain."

It follows, of course, that Fajardo could not obtain any title on the strength of the information; after the 17th day of April, 1895, the parcels referred to belonged to the Government. (Baltazar vs. Insular Government, 40 Phil., 267, 270.)

(3) The appellants assert that the possessory information is an imperfect title, and that notwithstanding the provisions of the Maura Law, a title may be granted subsequent to the 17th of April, 1895. That is not so in the present case. In section 45 of Act No. 2874 the following rules are laid down:

"SEC. 45. The following-described citizens of the Philippine Islands and the United States, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

"(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decree then in force and have instituted and prosecuted the proceedings in connection therewith, but have, with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

" (b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under, the provisions of this chapter."

These rules are now the only means to acquire judicial confirmation of imperfect or incomplete titles, but the possessory information in question does not constitute an imperfect or incomplete title; by virtue of the Maura Law, the land described in that possessory information reverted to the State on April 17, 1895. As may be seen, the appellants or their predecessors in interest have not applied "for purchase, composition, or other forms of grants of lands of the public domain under the laws and Royal Decree in force" before the transfer of sovereignty from Spain to the United States; neither have they been "in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain under a bona fide claim of acquisition of ownership, except as against the Government since July 26, 1894." On the contrary, the municipality of Bayambang has been in possession of the land and administered its municipal fisheries since 1893 under the authority of Royal Decree No. 618 published in the *Gaceta de Manila* on July 9, 1893, and later under section 43 of the Municipal Code (Act No. 82) and its amendments, and lastly under the authority of section 2321 of the Administrative Code. Taking this into consideration, it is clear that neither Juan Fajardo nor his alleged successors in interest have held possession of the land administered by the municipality; the land claimed by the appellants is precisely one of the best parts of the fisheries.

It is not disputed that Juan Fajardo and his successors never paid any taxes on the land, and none of them, until recently, have made any objection to the leasing of the land by the municipality to other persons at high rents. The land claimed by the appellants embraces about 1,375 hectares. Now, would the municipality allow them, or their

predecessors, to be in "open, continuous, exclusive, and notorious possession and occupation of the land" since 1902 without requiring them to pay taxes for that large tract? To my mind, there can be no reasonable doubt that only the municipality has had possession of the tract on behalf of the Government since 1894.

(4) The appellants cite the case of *Cariño vs. Insular Government* (212 U. S., 449), and assert that it is similar to the present case. That is a mistake. Carino was a Benguet Igorrote and his land had been in possession of his and his forebears from time immemorial, and the courts, under such circumstances, might well regard the property as a grant from the Government. In his decision, Justice Holmes said:

"Prescription is mentioned again in the Royal Cedula of October 15, 1754, cited in 3 Phil., 546; 'Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession, as a valid title by prescription. '"

Considering that Cariño's land was in the hands of his ancestors even before the year 1700, a valid title by prescription would properly give him the right to the ownership of the land.

A possessory information is not a title but only a prima facie proof and is not conclusive neither with possession nor ownership (*Geraldo vs. Arpon*, 22 Phil., 407; *Alcala vs. Alcala*, 35 Phil., 679). In the present case it is practically useless; article 80 of the Maura Law was absolute and the land described in the possessory information reverted to the State, and it has nothing in common with the Carino case. To grant the claims of the appellants will necessarily reverse the case of *Baltazar vs. Insular Government* (40 Phil., 267).

In my humble opinion, the decision of the court below should be affirmed.

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