

## CIRILO MAPA, PETITIONER AND APPELLEE, VS. THE INSULAR GOVERNMENT, RESPONDENT AND APPELLANT.

*G.R. No. 3793. February 19, 1908*

Ponente: WILLARD, J.

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### WILLARD, J.:

This case comes from the Court of Land Registration. The petitioner sought to have registered a tract of land of about 16 hectares in extent, situated in the barrio of Han Antonio, in the district of Mandurriao, in the municipality of Iloilo. Judgment was rendered in favor of the petitioner and the Government has appealed. A motion for a new trial was made and denied in the court below, but no exception was taken to the order denying it, and we therefore can not review the evidence.

The decision of that court was based upon Act No. 926, section 54, paragraph 6, which is as follows:

"All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war or force majeure, shall be conclusively presumed to have performed all the conditions essential to a Government grant and to have received the same, and shall be entitled to & certificate of title to such land under the provisions of this chapter."

The only question submitted to the court below or to this court by the Attorney-General is the question whether the land in controversy is agricultural land within the meaning of the section above quoted. The findings of the court below upon that point are as follows:

"From the evidence adduced it appears that the land in question is lowland, and has been uninterruptedly, for more than twenty years, in the possession of the petitioner and his ancestors as owners and the same has been used during the said period, and up to the present, as fish ponds, nipa lands, and salt deposits. The witnesses declare that the land is far from the sea, the town of Molo being between the sea and the said land."

The question is an important one because the phrase "agricultural public lands" as defined by said act of Congress of July 1 is found not only in section 54 above quoted but in other parts of Act No. 926, and it seems that the same construction must be given to the phrase wherever it occurs in any part of that law.

The claim of the Attorney-General seems to be that no lands can be called agricultural lands unless they are such by their nature. If the contention of the Attorney-General is correct, and this land because of its nature is not agricultural land, it is difficult to see how it could be disposed of or what the Government could do with it if it should be decided that the Government is the owner thereof. It could not allow the land to be entered as a homestead, for Chapter I of Act No. 926 allows the entry of homesteads only upon "agricultural public lands" in the Philippine Islands, as denned by the act of Congress of July 1, 1902. It could not sell it in accordance with the provisions of Chapter II of Act No. 920, for section 10 only authorizes the sale of "unreserved nonmineral

agricultural public land in the Philippine Islands, as defined in the act of Congress of July first, nineteen hundred and two." It could not lease it in accordance with the provisions of Chapter III of the said act, for section 22 relating to leases limits them to "nonmineral public lands, as defined by sections eighteen and twenty of the act of Congress approved July first, nineteen hundred and two." It may be noted in passing that there? is perhaps some typographical or other error in this reference to sections 18 and 20, because neither one of these sections mentions agricultural lands. The Government could not give a free patent to this land to a native settler, in accordance with the provisions of Chapter IV, for that relates only to "agricultural public land, as defined by act of Congress of July first, nineteen hundred and two."

In fact, by virtue of the provisions of Act No. 926, the Government could do nothing with this land except to lay out a town site thereon in accordance with the provisions of Chapter V, for section 36, relating to that matter, says nothing about agricultural land.

The question before us is not what is agricultural land, but what definition has been given to that phrase by the act of Congress. An examination of that act will show that the only sections thereof wherein can be found anything which could be called a definition of the phrase are sections 13 and 15. Those sections are as follows:

"SEC. 13. That the Government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they, shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent"

"SEC. 15. That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons: Provided, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents."

It is seen that neither one of these sections gives any express definition of the phrase "agricultural land." In fact, in section 15 the word "agricultural" does not occur.

There seem to be only three possible ways of deciding this question. The first is to say that no definition of the phrase "agricultural land" can be found in the act of Congress; the second, that there is a definition of that phrase in the act and that it means land which in its nature is agricultural; and, third, that there is a definition in the act and that the phrase means all of the public lands acquired from Spain except those which are mineral or timber lands. The court below adopted this view, and held that the land, not being timber or mineral land, came within the definition of agricultural land, and that therefore section 54, paragraph 6, of Act No. 926 was applicable thereto.

- There are serious objections to holding that there is no definition in the act of the phrase "agricultural land." The

Commission in enacting Act No. 926 expressly declared that such a definition could be found therein. The President approved this act and it might be said that Congress, by failing to reject or amend it, tacitly approved it. Moreover, if it should be said that there is no definition in the act of Congress of the phrase "agricultural land," we do not see how any effect could be given to the provisions of Act No. 926, to which we have referred. If the phrase is not defined in the act of Congress, then the lands upon which homesteads can be granted can not be determined. Nor can it be known what land the Government has the right to sell in accordance with the provisions of Chapter II, nor what lands it can lease in accordance with the provisions of Chapter III, nor the lands for which it can give free patents to native settlers in accordance with the provisions of Chapter IV, and it would seem to follow, necessarily, that none of those chapters could be put into force and that all that had up to this time been done by virtue thereof would be void.

- The second way of disposing of the question is by saying that Congress has defined agricultural lands as those lands which are, as the Attorney-General says, by their nature agricultural. As has been said before, the word "agricultural" does not occur in section 15. Section 13 says that the Government "shall classify according to its agricultural character and productiveness and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral land." This is the same thing as saying that the Government shall classify the public lands other than timber or mineral lands, according to its agricultural character and productiveness; in other words, that it shall classify all the public lands acquired from Spain, and that this classification shall be made according to the agricultural character of the land and according to its productiveness.

One objection to adopting this view is that it is so vague and indefinite that it would be very difficult to apply it in practice. What lands are agricultural in their nature? The Attorney-General himself in his brief in this case says:

"The most arid mountain and the poorest soil are susceptible of cultivation by the hand of man."

The land in question in this case, which is used as a fishery, could be filled up and any kind of crops raised thereon. Mineral and timber lands are expressly excluded, but it would be difficult to say that any other particular tract of land was not agricultural in its nature. Such lands may be found within the limits of any city. There is within the city of Manila, and within a thickly inhabited part thereof, an experimental farm. This land m in its nature agricultural. Adjoining the Luneta, in the same city, is a large tract of land, Camp Wallace, devoted to sports. The land surrounding the city walls of Manila, between them and the Malecon Drive on the west, the Luneta on the south, and Bagumbayan Drive on the south and east, is of many hectares in extent and is in nature agricultural. The Luneta itself could at any time be devoted to the growing of crops.

The objection to adopting this construction on account of its uncertainty is emphasized when we consider that whether certain land was or was not agricultural land, as defined by the act of Congress, and therefore subject to homestead entry, to sale, or to lease in accordance with the provisions of Act No. 926, would be a question that would finally have to be determined by the courts, unless there is some express provision of the law authorizing the administrative officers to determine this question for themselves. Section 2 of Act No. 926 relating to homesteads provides that the Chief of the Bureau of Public Lands shall summarily determine whether the land described is prima facie under the law subject to homestead settlement. Section 13, relating to the sale of public lands, provides simply that the Chief of the Bureau of Public Lands shall determine from the certificate of the Chief of the Bureau of Forestry whether the land applied for is more valuable for agricultural than for timber purposes, but it says nothing about his decision as to whether it is or is not agricultural land in its nature. Section 20 relating to the lease of public lands provides that the Chief of the Bureau of Public Lands shall determine from the certificate of the Chief of the-Bureau of Forestry whether the land applied for is more valuable for agricultural than for timber purposes and further summarily determine from available records whether the land is or is not

mineral and does not contain deposits of coal or salts. Section 34 relating to free patents to native settlers makes no provision for any determination by the Chief of the Bureau of Public Lands in regard to the character of the land applied for.

After homesteads have been entered, lands sold, and leases made by the administrative officers on the theory that the lands were agricultural lands by their nature, to leave the matter of their true character open for subsequent action by the courts would be to produce an evil that should, if possible, be avoided.

- We hold that there is to be found in the act of Congress a definition of the phrase "agricultural public lands," and after a careful consideration of the question we are satisfied that the only definition which exists in said act is the definition adopted by the court below. Section 13 says that the Government shall "make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands." To our minds that is the only definition that can be said to be given to agricultural lands. In other words, that the phrase "agricultural land" as used in Act No. 920 means those public lands acquired from Spain which are not timber or mineral lands. As was said in the case of *Jones vs. The Insular Government* (Phil, Itep., 122, 133), where these same sections of the act of Congress were under discussion:

"The meaning of these sections is not clear and it is difficult to give to them a construction that would be entirely free from objection."

But the construction we have adopted, to our minds, is less objectionable than any other one that has been suggested.

There is nothing in this case of *Jones vs. The Insular Government* which at all conflicts with the result here arrived at. The question as to whether the lands there involved were or Were not agricultural lands within the meaning of the sections was neither discussed nor decided. In fact, it appears from the decision that those lands, which were in the Province of Benguet, were within the strictest definition of the phrase "agricultural lands." It appears that such lands had been cultivated for more than twelve years. What that case decided was, not that the lands therein involved and other lands referred to in the decision by way of illustration were not agricultural lands but that the law there in question and the other laws mentioned therein were not rules and regulations within the meaning of section 13.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., and Torres, J., concur.

Johnson, J., concurs in the result.

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### CONCURRING

TRACEY, J. with whom concurs CARSON, J.,

By its title as well as throughout its text Act No. 920 is restricted to the "public domain of the Philippine Islands" and to "public lands" in said Islands. This act, drawn in furtherance of an act of Congress, must be interpreted according to the American understanding of the words employed and the meaning of these terms as definitely fixed by decisions of the United States Supreme Court.

"Public domain" and "public lands" are equivalent terms. (*Barker vs. Harvey*, 181 U. S., 481, 490.)

"The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws." (*Newhall vs. Sanger*, 02 U. S., 761.)

"A grant of public lands applies only to lands which at the time are free from existing claims." (Bardon vs. Northern Pacific R.R. Co., 145 U. S., 535, 543.)

These words do not include land reserved for the use of certain Indian tribes, although still the property of the United States (Leavenworth, etc., vs. United States, 92 U. S., 733), nor lands covered and uncovered by the ebb and flow of the tide. (Mann vs. Tacoma Land Co., 153 U. S., 273.) And the same was held of the words "unoccupied and unappropriated public lands." (Shively vs. Bowlby, 152 U. S., 1.)

In Wilcox vs. Jackson (13 Peters, 498, 513) it was held that whenever a tract of land has been legally appropriated to any purpose, from that moment it becomes severed from the mass of public lands and no subsequent law will be construed to embrace it, although no express reservation is made. There have been similar rulings in regard to reservations for military purposes, for town sites, educational purposes, and for mineral and forest uses. Consequently Act No. 926 applies only to lands of the United States in these Islands not already devoted to public use or subject to private right, and this construction necessarily excludes from its scope lands devoted to the use of municipalities, including public buildings and such tracts as Wallace Field and the strip surrounding the walls of the city of Manila. As the act has no application to them, they are not public lands in this sense, and can not be included within the term "agricultural public lands."

In referring to agricultural lands as being defined in the act of Congress of July 1, 1902, the Philippine Commission must have had in mind this well-settled meaning of the terms employed and have used the word "agricultural" to distinguish and include such public lands, not otherwise appropriated, as were not devoted to forestry and mining, which is consistent with the direction of section 13 of the act of Congress that public lands, other than timber or mineral lands, should be classified according to their agricultural character and productiveness.

In view of the restricted scope of these statutes under the decisions of the United States Supreme Court, this direction as to the classification of all remaining lands not forest or mineral in character, "according to their agricultural nature and productiveness," may fairly be considered a definition of them as agricultural lands, with the result of freeing the act of the Commission from ambiguity.

It was apparently the intention of Congress that such classification, in a general way, should be immediately made, but the fact that it has been delayed does not prevent the designation of any particular parcel of land, upon being granted by the Government, as coming under one of these heads.

For these reasons I concur in the interpretation put upon this act in the majority opinion.

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