

BENITO VALDEZ ET AL., APPLICANTS AND APPELLEES, VS. THE DIRECTOR OF LANDS, THE DIRECTOR OF FORESTRY AND PRIMITIVO ANTONIO ET AL., OPPOSITORS AND APPELLANTS.*G.R. No. 39765. October 24, 1935*

Ponente: BUTTE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-39765/>**BUTTE, J.:**

This is a land registration case which involves the title to a vast tract of unenclosed agricultural land, some twenty kilometers long by twelve and one-half kilometers wide, located at the southern tip of the island of Masbate. In their original application for registration of this, land, filed on May 19, 1931, the applicants, Benito Valdez et al., claimed 28,006.5959 hectares. On the day of the hearing, they moved that lot No. 5, covered by patent (Spanish titulo) No. 12, be eliminated from their application, leaving 26,227.1941 hectares claimed. We shall refer to this elimination of lot No. 5 later in this decision.

An association known as Muñoz y Cia. in the early eighties operated a cattle ranch (ganaderia) near Cataiñgan in the municipality of Palanas on the island of Masbate: They grazed several thousand head of cattle on the public domain which was covered with cogon grass and forests. After the enactment of the Royal Decrees (Decretos Reales) of June 25, 1880, and January 19, 1883, which made possible the purchase of public lands, the company undertook to acquire title to the public lands which constituted their hacienda. Between the years 1883 and 1886 (see Table A, post) twenty-two individuals applied for the purchase of twenty-two tracts of said public lands. After the sales were consummated the land patents (Spanish titulos) were transferred by the purchasers to Munoz and Company. Three of these titulos were registered in the name of Mauro Prieto in 1926 and are not involved here. It is from the remaining nineteen titulos that the present applicants for registration deraign their title.

The total area sold by the Spanish government and purchased by the grantees in these nineteen titulos is 2,225.9194 hectares. The applicants assert that these patents contain errors in the description of the land and that all of them are grossly wrong as to the area. They assert that the correct area should be 28,006.5959 hectares, an error of 25,780.6765 hectares. The basic question of this case, therefore, is whether or not by the said nineteen titulos the Spanish government sold to the several grantees named therein an aggregate of 28,006.5959 hectares which the applicants, as their successors in title, now claim.

The petition for registration alleges, first, absolute ownership by title from the Spanish government and, in the alternative, continuous and exclusive possession and occupation since July 26, 1894, from which a grant is presumed under section 45 (b) of the Public Land Law (Act No. 2874). The petition was opposed by the Director of Lands who claims that all of said lands are public lands and by the Director of Forestry who claims that a large portion thereof is public forest lands and by nine hundred ninetythree private oppositors, settlers and homestead applicants, who deny the alleged title and possession of the applicants. To establish their claim of title, the applicants introduced in evidence the original nineteen titulos above referred to (Exhibits D-1 to D-19) with the subsequent transfers thereof by the grantees to Munoz and Company endorsed on the back. Further to substantiate

their claims and more particularly to prove the alleged errors .in all of the nineteen titulos, the applicants have put in evidence a topographical map made in 1885 by surveyor Felipe Diaz (Exhibit C) and a sketch prepared in 1932 by surveyor C. N. Francisco (Exhibit K). As these two exhibits constitute the very foundation of the applicants' case, it is proper to consider them carefully.

Exhibit C.—This exhibit, presented by the applicants, is a topographical map of the cattle ranch of Muñoz y Cia., prepared by a qualified Spanish surveyor, Felipe Diaz, and dated "Salamanca, November 24, 1885." It is an unofficial map because it was not made or approved by any authority of the Spanish government. It was made for Jose Mufioz who kept it in his house in a frame. It was always in the possession of Mufioz and Company until this concern went into receivership when it was delivered to the receiver. From him it passed to the hands of Prieto & Co. of which the applicants are the principal owners. Exhibit C bears on its face the following certificate:

"Limites: N. Montes de Uson y Palanas, Tetas de Cataingan, Camino de Palanas a Cataingan, Rio Labangui y Divisoria de aguas entre la Ensenada de Cataingan y Mar del Estrecho.

"E. Bosque de Punta Matayon, Puerto de Cataingan, y Bosques de Mentac, Limbujan y Alegria. "S. Manglares del Mar de la Contracosta y terreno solicitado al Estado por D. Juan Acuesta.

"O. Rio Nainday.

"Estension: Determinada por los anteriores linderos: 2,090 hectareas."

The map is drawn on the lineal scale of 1:50,000. The map shows no fences, enclosures or other improvements except one casa del encargado de la ganaderia near the poblacion of Cataingan and one toril in the sitio of Bairan. The precise location and extent of the toril is not shown. The map shows no bearings true or declinations, no points, angles or monuments and is not accompanied by any surveyor's notes. That Munoz and Company allowed their cattle to roam and graze over the wide expanse of unenclosed land shown on Exhibit C when it was made, is a reasonable inference from the testimony of witnesses presented by the applicants. But that Exhibit C is a document proving title and binding on the Government is a wholly different matter. It is not based on the nineteen patents (titulos) which Munoz y Cia, acquired, for they are neither shown nor mentioned. Indeed, at least eight of these titulos were not in existence when Exhibit C was made. It is at most a pictorial representation of Munoz y Ciasclaim of ownership.

It is not the land shown on Exhibit C which is the subject matter of this registration proceeding. The applicants have no one single land patent (titulo) from the Spanish government coinciding with Exhibit C. They offer instead nineteen individual titulos. They claim that these titulos which embrace a total area of 2,225 hectares, are each and every one of them wrong; that they should show a total area of 32,113 hectares (see Exhibit K). With this inflated area, the nineteen titulos, it is alleged, would cover the area of Exhibit C, as corrected by surveyor Francisco.

But, in order that the nineteen titulos should coincide with Exhibit C, the applicants have undertaken to prove that not only are all the titulos wrong but that surveyor Diaz's certificate as to the area of Exhibit C is also wrong. Diaz certifies that area to be 2,090 hectares, which approximates the total area shown on the face of the nineteen titulos. Surveyor Francisco testified in substance that the Spanish surveyors were guilty of many inaccuracies in their work, and that the certificate on Exhibit C should state the area to be not 2,090 hectares but 20,900 hectares. He explains this as follows:

"En la mayor parte de las veces, por la derivation de la escala, el agrimensor confunde el numero de metros que debe apreciarse en la escala y de ahi resulta la diferencia en la extensi6n. A lo mejor, el agrimensor levanta el piano al 1 por 50,000 para luego apreciar la superficie del piano bajo la escala de 1 por 5,000 * * * pero la superficie (consignada en la reseia del mismo) se computo bajo la escala de 1 por 5,000. Si se computara la

superficie del terreno a la escala de 1 por 50,000, la extension no seria 2,090 hectareas como consta en el piano Exhibit C, sino 20,900 hectareas." (Pg. 112, deposition, Exhibit JJ.)

Francisco's hypothesis will not bear analysis and does great injustice to surveyor Diaz. The fallacy of his deduction is plain even to a layman. Two times two equals four but twenty times twenty is not equal to forty but to 400. So, in this instance, if, on the scale of 1:5,000, the area, which is the product of the length multiplied by the width, is 2,090 hectares, the area on the scale of 1: 50,000 L e. ten times the length and ten times the width, would not be 20,900 but 209,000 hectares. It is incredible that the Spanish surveyors en la mayor parte de las veces would commit such an egregious blunder of simple arithmetic.[1]

In his deposition, page 106, Francisco testified as follows:

"P. iSegun entiendo de usted, corrigiendo los errores de computaci6n del terreno objeto del piano Exhibit C, arrojaría una extension de unos 40,000 hectareas?—R. Sf, serior." and on page 112 of the same deposition, Francisco testified as follows:

"P. Teniendo usted la verdadera extensi6n de esos lados, puede usted darnos la verdadera extension que puede arrojar el piano del Sr. Diaz ?—R. Mas de 52,000 hectareas.

°P. Ahora los solicitantes pretenden el registro de un terreno de 24,000 hectareas menos de la verdadera extensi6n de ese terreno, segun el piano del Sr. Diaz, computado correctamente * * *—iR. Si, senor."

From the foregoing, it will be noted that Francisco gives to Exhibit C three irreconcilable areas: 20,900 hectares, 40,000 hectares, and 52,000 hectares. The first is 7,106 hectares less, the second is 11,994 hectares more and the third is 23,994 hectares more than the area the applicants swore they own (28,006 hectares). It is by such loose and inexpert testimony of surveyor Francisco that the applicants attempt to impeach their own Exhibit C.

The trial court accepted Francisco's sketch, Exhibit K, without question or reserve and held that the nineteen titulos issued by the Spanish government are all wrong. Indeed, the applicants' claim of title to this vast tract of the public lands rests upon a foundation of errors—i. e. upon proof of a series of errors in the very titles upon which their claim rests. The area of Exhibit C is inflated ten times and then each of the nineteen titulos must be inflated to correspond. How Francisco accomplishes this inflation will appear from an examination of his sketch, Exhibit K.

Exhibit K.—This exhibit is not a technical survey or plan in any sense. The certificate on Exhibit K speaks for itself. It is as follows:

"Plano de los terrenos situados en Cataingan, Masbate, propiedad de los Sres. Don Benito Valdez, Don Benito Legarda y de la Paz y btros, levantado por Ceferino Cacnio, agrimensor, y anotado por C. N. Francisco, agrimensor. Manila, abril 5, 1932."

Under the guise of "annotations", Francisco has produced a sketch that makes irreconcilable changes in Cacnio's map, Exhibit I of the applicants, as may be seen at a glance by comparing the two. Exhibit K was prepared long after this suit was filed and it appears that it was made to elucidate the applicants' theory that all of the nineteen Spanish titulos, which are the origin of their title, are wrong in that, instead of showing a total area of 2,226 hectares, they should show the total area which Francisco gives to them on Exhibit K, namely, 32,113 hectares.

Exhibit K is in itself no evidence of title. It varies materially from the sketches of the equally qualified surveyors Cacnio (Exhibit I), Almonte (Exhibit 46) and Aguinaldo (Exhibits 1, 3 and 4). But it does serve as a graphic presentation of the applicants' theory and as such, it merits careful examination.

I

There is no sufficient warrant for the many alterations which surveyor Francisco made of the boundaries in the nineteen titulos, with the double object of making them fit together into one block (after the manner of a jig-saw puzzle) and of inflating their area so as to coincide with Francisco's corrected area of Exhibit C. It is significant that the supposed errors which he discovers in the titulos always result in an enormous increase in the area. To illustrate Francisco's methods, we will examine a few instances.

By Titulo No. 9 the Spanish government, on May 31, 1833, sold to Honorio Maria Ysidro 168 hectares, 11 ares and 20 centiares. The description in the titulo recites: un terreno baldio realengo, enclavado en el Sitio Nadauisan * * * siendo sus Kmites, al norte, terrenos medidos a D. Manuel Gonejero; al este, sur y oeste, cogonales del Estado. Francisco places the land conveyed in Titulo No. 9 adjacent to Titulo No. 5 in a different sitio, some ten kilometers distant from Nadauisan. He changes the east and south boundaries of Titulo No. 9 to read as follows: Al este, terrenos medidos a Anacleto Solano; al sur, terrenos medidos a Nicolas Aceneta; al oeste, cogonales del Estado. As to the eastern boundary, the Spanish surveyors were clearly right and Francisco is clearly wrong because, so far as this record shows, Anacleto Solano acquired no land until three years after Titulo No. 9 was prepared and issued. For the western boundary of Titulo No. 9, cogonales del Estado, Francisco draws an arbitrary straight line, without the slightest evidence to support it, which enables him to make an incursion upon the public domain for any inflation desired.

But these alleged errors which Francisco finds in Titulo No. 9 compel him to find an error in the description given in Titulo No. 5 which recites: al este, terrenos medidos a Don Juan Alvarez. Francisco says this is wrong, that Titulo No. 5 should read: al este, terrenos medidos a Anacleto Solano. Solano did not acquire any land till three years after Titulo No. 5 was prepared and issued.

These alleged errors in Titulo No. 5 compel Francisco to alter the description given in Titulo No. 15 which recites: Al oeste, cogonales del Estado so as to read: al oeste, terrenos medidos a Honorio Maria Ysidro y Nicolas Aceneta and to alter the south and east boundaries given in Titulo No. 15 which recites: al sur y este, Rio Nauco so as to read: al sur y este, Rio Dwnagas. The Rio Danagas is six kilometers from Rio Nauco.

With these alterations, Francisco locates Titulo No. 15 in the sitio of Alegria. But that makes it impossible for Titulo No. 15 to have Titulos Nos. 5 and 9 as a western boundary because Titulos Nos. 5 and 9 recite that the lands therein sold by the Spanish government are in the sitios of Bacacay and Nadauisan respectively which are more than ten kilometers from the sitio of Alegria.

To take another example, Titulo No. 12. In their original petition for registration, the applicants swore that they had title to lot No. 5 shown on plan G-4 attached to their petition. This plan was prepared by surveyor Cacnio, on May 17, 1919, and approved by the Director of Lands on March 25, 1920. Cacnio testified on behalf of the applicants that when he surveyed lot No. 5 he carried with him Exhibit C. He testified that he knew all of the lands of the applicants and the locations of all the nineteen titulos; that lot No. 5 (plan G-4) is covered by Titulo No. 12, as shown on his plan, applicants' Exhibit I. Plan G-4 and Exhibit I both show that lot No. 5 lies in the sitio Guion (as is recited in the titulo) which is several kilometers outside the area shown on Exhibit K. Francisco ignores this evidence and locates Titulo No. 12 inside the area shown on Exhibit K.

Nor can we reconcile the placing of Titulo No. 12 within Exhibit K with the fact that the applicants themselves, on the opening of the trial below, moved in open court that lot No. 5 (plan G-4) be eliminated from their petition for registration, stating that they had already sold said land and would leave the vendees to obtain registration of the title (t. s. n. Nava, page 4).

But that is not all. To suit his purposes, Francisco had to alter radically the description of the land as given in Titulo No. 12. The titulo recites that the land is located in sitio Guion. Francisco puts it in an entirely different sitio. The titulo conveys 73 hectares, 50 ares siendo sus limites al norte, bosque del Estado; al sur, manglar Guidn; al oeste, Rio Manajao y al este, Rio Matubinao. Francisco says that all these boundaries are wrong except the northern. He says that the western boundary could not be the River Manajao because this river lies east of the River Matubinao; and that from this error it results that the eastern boundary which is recited in the titulo to be River Matubinao, is likewise wrong and said river, he assumes, must be the western boundary of Titulo No. 12. But he assumes some river must be the eastern boundary, and finding no other river east of the Matubinao River except River Daraga, he arbitrarily alters the titulo so as to make the Daraga River the eastern boundary of Titulo No. 12 (naturally resulting in an enormous extension of the area). But the assumption from which Francisco starts is wrong. The Spanish surveyors were right in placing the River Matubinao east of the River Manajao and Francisco is wrong in assuming the contrary. (See map of Masbate, Bureau of Coast and Geodetic Survey, 1932.) By thus rewriting Titulo No. 12, Francisco is enabled to inflate the area of the land sold by the Spanish government from 63.5 hectares to 1,650 hectares as shown on his Exhibit K.

In all of the foregoing titulos and several more, Francisco has left one boundary open and undefined for arbitrary inflation of the area, i. e. one side bounded by terrenos del Estado. To complete the inclosure of each of such titulos he arbitrarily draws a straight line taking in as much of the public domain as suits his purpose. This enables him to inflate the area of Titulo No. 4 from hectares to 1,200 hectares; Titulo No. 5 from 191 hectares to 1,180 hectares; Titulo No. 6 from 164 hectares to 1,249 hectares; Titulo No. 7 from 130 hectares to 922 hectares; Titulo No. 9 from 168 hectares to 1,240 hectares; Titulo No. 10 from 146 hectares to 930 hectares; Titulo No. 15 from 70 hectares to 739 hectares, and so on,

Francisco's alterations in Titulo No. 8 are illuminating. This titulo, dated July 10, 1885, describes the land sold to Jose M. Ceballos, as follows: al norte, este y sur, cogonales del Estado y al oeste el Rio Domorog in the sitio Bairan. For the north and east boundaries, Francisco would substitute the following: terrenos del Estado "ocupados ahora" (1932) por los Senores Fermin Santiago, Sabino Alvarado, Mdquiades Ariban y otros. (See his deposition, page 94.) This is too absurd to require comment. For the southern boundary instead of cogonales del estado Francisco substitutes terreno de Jose Munoz, hijo, Titulo No. 2. But that cannot be correct because Titulo No. 2 recites: al norte el Rio Dumurog y al este terreno denunciado por D. Jose M. Ceballos.

Titulo No. 8 names the River Domorog as its western boundary. Francisco says this is wrong because the sitio Bairan lies west of the Domorog River. His own sketch, Exhibit K, shows that Bairan lies southeast (not west) of that part of the Domorog River which touches Titulo No. 8. Having discovered this supposed error, he assumes he must find some other river for the western boundary of Titulo No. 8. It did not suit his purpose to take the Bagacay River, the first one to the west. He crosses that and arbitrarily substitutes the Daraga River as the western boundary of Titulo No. 8, some three kilometers distant from the River Domorog named in the titulo.

With these alterations, Francisco inflates the area of Titulo No. 8 from 180 hectares to 1,714 hectares; and he would have this court find that the Spanish government intended to sell 1,714 hectares of the public lands for the paltry sum of P198, in the face of the Royal Decree of February 4, 1862, fixing the tipo minimo de cincuenta centimos de peso por cada quinon de terreno baldio y realengo que se adjudique por el Estado.

Titulo No. 2 conveys to Jose Munoz 158 hectares 67 ares 36 centiares described as follows: Al norte el Rio Domorog, al este terreno denunciado por D. Jose M. Ceballos, al sur terrenos baldios realengos y al oeste el Monte Nadaingan * * * enclavado en el sitio denominado Tetas de Cataingan o Bairan. Trenching upon the terrenos baldios realengos lying to the south, Francisco, instead of confining the land to the one sitio named in the titulo, extends the area of Titulo No. 2 so as to embrace eight sitios, Bairan, Caburutan, Catambuan, Matungao,

Matagantang, Carabasa, Bagacay and Caidian, arbitrarily inflating the area from 158 hectares to 4,922 hectares.

It is unnecessary to burden this opinion with the exposition of similar liberties which Francisco took with all the remaining titulos in order to inflate their areas. Suffice it to say that it is inconceivable that such jugglery with solemn public documents should succeed in a court of justice in securing to the applicants some 24,000 hectares of the public lands for which neither they nor their predecessors have paid one single centavo.

II

There is another fundamental reason for rejecting Francisco's vast inflations. Under the Spanish laws, in force in the Philippines, by which these nineteen titulos were acquired, public lands were sold exclusively by the unit of measure (hectare, quinon) and not in the mass, the area being the essence of the contract.

Article 1469 of the Spanish Civil Code provides as follows:

"If a sale of real property should be made with a statement of its area, at a certain price for each unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that which has been specified in the contract; but should this not be possible, the vendee may choose between a proportional reduction in the price or the rescission of the contract, provided that in the latter case the deficiency be not less than onetenth of the stated area of the property."

Article 1470 is as follows:

"If in the case mentioned in the next preceding article the area of the realty should be greater than that specified in the contract, the vendee shall be obliged to pay the price of the excess if the greater area should not exceed onetwentieth of that specified in the contract; but should it be more than one-twentieth, the vendee may choose between paying the greater value of the property or withdrawing from the contract"

That the principle or rule of construction enacted in these articles of the Civil Code was followed and applied by the Spanish government in the sale of public lands is asserted by Manresa and was recognized by this court in the case of Barretto vs. Director of Lands (G. R. No. 29717, promulgated December 29, 1928[1]). In that case this court construed a Spanish titulo conveying a tract of land in the Province of Zambales to Barretto. The titulo described the land by natural boundaries as follows: baldios y realengos unos terrenos situados en la Provincia de Zambales, jurisdiction del Pueblo de Cabangan, Sitio de Balintagac, lindando al sur, con el monte del Carmen; al norte, el Rio Anonang; al este, el rincdn de Balintagac y al oeste el monte de Tictic. The area was stated in the titulo to be two hundred quinones and the price four reales per quinon. This court, speaking through Justice Romualdez, construed said titulo in the following language:

"Dado que, excepto el rio Anonang al lado norte, los demas linderos consignados en este ttulo no son puntos o lineas especificas por no constar claramente ni en tal documento ni en las pruebas aportadas donde empiezan determinadamente el monte del Carmen, el rincon de Balintagac o el monte de Tictic, y teniendo en cuenta que la venta ef ectuada por el Gobierno espanol a favor de D. Antonio Lorenzo Barretto causante del aqui solicitante, no fue a cuerpo cierto toda vez que los linderos son inciertos sino de 200 quiflones a razon de cuatro reales cada quifion, es decir, a un tanto por unidad de medida, entendemos acertada la alegacion de los abogados del apelante de que la verdadera intenci6n del Estado como vendedor y del referido D. Antonio Lorenzo Barretto como comprador fue transferir a este 200 quifiones de terreno en aquel sitio de Balintagac extendiendose desde el rio Anonang hacia el sur, este y oeste. Y tal intencion del Estado de celebrar la venta, no a cuerpo cierto, sino a un tanto por unidad de medida y que, antes del 7 de abril de 1869, todavia daba lugar a incertidumbres en casos dudosos, qued6 desde dicha fecha definitivamente reconocida por la orden del Poder Ejecutivo, a la cual se refiere Manresa en el parrafo que trascribimos a continuation :

" 'Desde esta fecha de 7 de abril de 1869 es, por lo tanto, indudable que las ventas de bienes del Estado no se hacen a cuerpo cierto sino a razon de un tanto por unidad de medida o numero. Por otra parte, las sentencias

del Tribunal Supremo de 5 de mayo de 1870 y de 11 de febrero de 1877, y el Real decreto sentencia de 20 de marzo de 1885, coinciden en afirmar que la doctrina de los cuerpos ciertos no pueden tener aplicacion a las ventas de bienes del Estado, sea cual fuere su fecha. (10 Manresa, Comentarios al Código Civil Español, pag. 164, edition de 1908.)"

This principle that the Spanish government never sold public lands in the Philippines in the mass (cuerpos ciertos) but only by units of measurement, that is to say, at a fixed price per hectare or per quiñon, was again clearly asserted in the Royal Decree of November 27, 1880, in force when the nineteen títulos here involved were issued, published in the Gaceta de Manila, No. 65, of March 6, 1881, which states in part:

"Acreditado por los mismos títulos que presenta Ramirez, que lo que verdaderamente adquirió del Estado o mejor sus causantes D. Mariano Albea y D. Felix Guiano, se reduce solo a 2438 hectareas, poco mas o menos, es evidente que la pretension de que se le reconozca como legitimo poseedor de 16,000, a pretexto de lo que adjudicado ha de entenderse como cuerpo cierto, ni se apoya en disposición alguna positiva, ni en doctrina, ni principios atendibles bajo ningun conepto, pues la teoria de cuerpos ciertos, desechada ya en la Peninsula absolutamente, segun se declara en varias disposiciones del Gobierno, no ha regido nunca en Filipinas, ni aun cuando hubiera estado en vigor, seria aplicable a este caso dados los términos en que se hicieron las respectivas adjudicaciones. Otro tanto puede decirse de las demas pretensiones formuladas por el recurrente Ramirez, invocando los principios de equidad porque esta no puede ser decisiva cuando se perjudican los intereses de una de las partes; y es notorio que aqui se perjudicarfan notablemente los del Estado, tolerando una usurpación tan considerable o recibiendo como precio muchísimo menos del que realmente tienen los terrenos que al mismo Estado pertenecen."

The same principle by which decisive effect is given to the area stated in the título, is recognized and enacted in the Decree of June 22, 1882 (before any of the nineteen títulos here involved was issued) relating to the sales of public lands in the Philippines appraised at more than ₱200. Paragraph 3 of this decree is as follows:

"Si se entablase reclamación sobre exceso o falta de cabida del terreno subastado y del expediente resultase que dicha falta o exceso iguala a la quinta parte de la expresada en el anuncio, sera nula la ventaj quedando en caso contrario, firme y subsistente y sin derecho a indemnización la Hacienda ni el comprador."

Again, in the Royal Decree of January 19, 1883, in force when the nineteen títulos here involved were issued, which regulated the sale of public lands in the Philippine Islands, the conclusiveness of the area is recognized. Article 27 of said decree is as follows:

"El error tolerable en las mediciones de baldios realengos sera el de cinco por ciento de la cabida total. Cuando exceda de dicha cantidad y no pase del quince por ciento, el mismo poseedor del terreno tendra derecho a la composicion de la parte sobrante por el precio de la tasacion que corresponda considerado como baldio; pero si el exceso fuese mayor del quince por ciento se sacara a subasta con obligación por parte del rematante de indemnizar al poseedor el importe de las mejoras se hara por un perito nombrado por cada parte y por un tercero nombrado por la Administracion en caso de discordia. Cuando el error de la medición exceda del quince por ciento, se instruira expedierite para exigir a los peritos la responsabilidad que corresponda"

In two recent decisions of this court (Rosado vs. Director of Lands, 58 Phil., 833, and Martinez vs. Director of Lands, G. R. No. 37303, January 19, 1934 [59 Phil., 908]), both involving public lands in the province of Masbate, this court gave effect to the principle governing the sale of public lands by the Spanish government and refused to sanction the inflation of the area beyond that shown in the títulos. In the former case, the título described the land as follows: Al norte y oeste, terrenos del Estado; al este, playa, y al sur bosque y terrenos del Estado. The título stated the area to be 144 hectares, 89 ares and 76 centiares. The applicant claimed that the título was wrong as to the area which, it was alleged, should be 966 hectares, 50 ares and 95 centiares. In the latter case

of Martinez against the Director of Lands, the titulo described the land as bounded on the north by the Boracay River and public land; on the east, by the sea; on the south, by the Bangad River and public land; and on the west by public cogon land, containing an area of 80 hectares, 71 ares and 30 centiares. The applicant claimed that the titulo was wrong and that the area should be 866 hectares, 54 ares and 17 centiares.

In both of these recent cases this court approved the following doctrine:

"It is doubtless true that when a deed describes a tract of land by definite and ascertainable boundaries, an additional statement as to the area included is of secondary importance, because it is presumed that the parties to the deed contracted with reference to the land specifically delimited in the description. But this rule, has no application in the present case for two reasons: First, because the land is not specifically delimited by definite and ascertainable boundaries; and, second, because the record shows, as above set out, that the Spanish government and Alejandro Danao contracted with reference to a definite area, because the minimum acceptable bid was based on an area of 144 hectares, 89 ares and 70 centiares."

In the Martinez case, after stating the rule as quoted above, the court said:

"In the case before us the price was estimated on the basis of two pesos per hectare and the price paid for 80 hectares, 71 ares and 30 centiares amounted to only P161. This does not show a right to the 866 hectares and a fraction claimed by the appellant."

Under the Royal Decree of October 28, 1869, the decisions of the Intendencia General de Hacienda adjudicating titles to public lands were required to be published in the Gaceta de Manila of which we take judicial notice. (Director of Lands vs. Absolo, 46 Phil., 282, 307.) From these decisions as well as from the recitals in the nineteen titulos themselves, which are the origin of the claimants' title in the case before us, it appears that each of the nineteen tracts was sold to the purchaser at a fixed price per hectare, that is to say, both the Government and the purchaser contracted specifically with reference to the area stated in the titulos. For each title the Government was paid by the hectare for the number of hectares indicated in the title and no more. Any area granted to these applicants in excess of the percentage of permissible error would be a pure gift without consideration whatever to the State.

The following table is a graphic representation of the facts relating to each of the nineteen titles, as shown by the decisions of the Intendencia and the titulos themselves, as compared with the pretensions of the applicants as shown by their Exhibit K:

Purchaser
Title number
Hectares
Price fixed
Amount paid
Hectares
Hectares
and date
in title
per hectare

government

shown on

not paid for

Exhibit K

1

Domingo Gonzalez

May 31, 1883

131.9125

P1.40

P184.68

1,242.20

1,110.2875

2

Jose Muñoz Hijo

May 31, 1883

158.6736

1.20

190.40

4,922.50

4,763.8264

3

Jose Maria Ceballos

Aug 20, 1883

129.9576

1.30

168.94

3,136.75

3,006.7924

4

Juan Alvares

May 31, 1883

144.6710

1.36

196.94

1.200.00

1,055.3290

5

Nicolas Aceneta

Jan 31, 1884

191.6849

1.03

197.43

1,180.00

988.3151

6

Manuel Conejero

Aug 20, 1883

164.8881

1.20

197.87

1,249.2

1,084.3119

7

Hipolito Lanuza

May 31, 1883

130.16

1.40

182.22

922.00

79.84

8

Jose Maria Ceballos

July 10, 1885

180.74

1.10

198.81

1,714.02

1,533.28

9

Lonorio Maria Ysidro

May 31, 1883

168.1120

1.15

193.33

1,240.88

1,072.7680

10

Do

July 10, 1885

146.28

1.20

175.53

930.00

783.72

11

Jose Verdote

July 10, 1885

133.9837

1.25

167.48

2,657.60

2,523.6163

12

Pio Balana

Feb 9, 1886

63.50

1.95

123.82

1,650.00

1,586.50

13

Yldefonso Torralba

Feb 9, 1886

76.20

1.95

148.59

1,250.00

1,173.80

14

Do

Feb 9, 1886

101.5

1.90

192.00

4,000.00

3,898.5

15

Anacleto Solano

Aug 13, 1886

70.60

2.00

141.20

810.00

739.40

16

Do

Aug 13, 1886

66.0060

3.00

199.80

149.31

83.3040

17

Manuel Conejero

Aug 13, 1886

74.50

2.00

149.00

3,210.00

3,135.50

18

Florentino Marvella

Aug 13, 1886

46.60

3.00

189.80

269.00

222.40

19

Nicolas Losentales

Aug 13, 1886

45.95

3.00

137.85

379.75

333.80

Total

2,225.9194

32,113.21

29,887.2906

We think the case of Prieto vs. Director of Lands (50 Phil., 971), in which these same applicants, represented by Prieto, obtained 2,138 hectares in Masbate on three titulos which recited an area of only 557 hectares, can be distinguished. It is to be noted that the same justice who penned that decision penned the later decision of Barretto vs. Director of Lands, supra. The record, briefs and the opinion itself in the Prieto case reveal that the principal—indeed the only issue presented and decided—was whether the natural boundaries given in the titulos sufficiently corresponded to the plans submitted by the petitioners. The opinion is brief and not documented. It does not touch upon the principles discussed at length and adopted in the later case -o-f Barretto vs. Director of Lands, supra, which were followed in the recent cases of Rosado vs. Director of Lands, supra, and Martinez vs. Director of Lands, supra, and which we are applying here. Moreover, in »the Prieto case this court sustained the Director of Forestry and the twenty-nine private oppositors. Nor did the court approve the extension of any titulo to more than 1,000 hectares {see Royal Decrees of November 25, 1880, and October 26, 1881, post, paragraph III).

The decisions of this court, including the Prieto case, relied on by the applicants, in which variations from the area stated in the iitulos were allowed because the description given in the titulos clearly identified the tracts by fixed natural boundaries, are inapplicable here because none of the nineteen tittikQ presented by the applicants contains such a description. It is well settled that "in order that natural boundaries of land may be accepted for the purpose of varying the extent of the land included in a deed of conveyance, the evidence as to such natural boundaries must be clear and convincing. Such natural boundaries must be of such a character as to definitely and accurately segregate the land in question from the adjoining property. There must be no doubt left that the land included within the natural boundaries is the same land which was intended to be sold by the deed of .conveyance." (Waldroop vs. Castaiieda, 25 Phil., 50, 56; Sales vs. Director of Lands, 61 Phil., 759.)

Eight of the nineteen titulos presented by the applicants (Nos. 1, 4, 5, 6, 7, 9, 10 and 11) do not give any natural boundaries at all. Three titulos (Nos. 8, 17 and 18) give only one natural boundary. Two titulos (Nos. 2 and 16) give only two natural boundaries. Three titudos (Nos. 3, 15 and 19) give only three natural boundaries. Titles Nos. 12, 13, and 14 give four natural boundaries but applicants own experts (Cacnio and Francisco) are in conflict as to their contours, area and location. (Compare Exhibits I and K.)

We hold, therefore, upon the authority of the decisions of this court in the cases of Barretto vs. Director of Lands, supra; Rosado vs. Director of Lands, supra; Martinez vs. Director of Lands, supra, and the plain and mandatory provisions of the Spanish land laws, supra, which are directly in point and controlling in the present case, that the applicants may register the area shown in their nineteen titulos, but no more. By what rule of law or logic should this court ignore or reverse the Royal Decrees and the sound principles of the Spanish land laws under which these nineteen titulos were obtained and by which they are conditioned? By what rule of equity or good conscience should this court adjudicate to the applicants some 24,000 hectares of-the public lands for which neither they nor their predecessors have paid one single centavo, when it was precisely the object of the Spanish laws to prevent such abuses?

III

The foregoing conclusions are reinforced by another fundamental reason for rejecting the inflations made by

Francisco. In his zeal to stretch the nineteen títulos over the area shown on his sketch, Exhibit K, he has made thirteen of the títulos void on their face. The Spanish surveyors may have known less about the science of surveying than Francisco (according to his testimony) but they certainly knew more about law. They did not violate the Royal Decrees of November 25, 1880, and October 26, 1881, which were in full force and effect in the Philippines when the said títulos were granted.

The Royal Decree of November 25, 1880, recites the following:

"Considerando que la naturaleza e importancia del asunto aconsejan adoptar algunas precauciones para evitar ciertos abusos de trascendencia, que al amparo de disposiciones transitorias pudieran cometerse y que redundarian en perjuicio del Tesoro publico y de los particulares que se dedican a cultivar y no a especular con la venta a otros, de los terrenos que se les conceden: considerando por ultimo que deben exigirse por el Estado ciertas garantias para aceptar las mediciones y tasaciones que practiquen los agrimensores particulares en terrenos que son de su pertenencia: S. M. el Rey (q. D. g.) ha tenido a bien aprobar el decreto de ese Gobierno General de 28 de agosto ultimo con las modificaciones siguientes:

"La extensión de los terrenos a los cuales se refiere dicho decreto, no podra exceder de mil hectareas para los terrenos de secano: quinientas para los de igual clase poblados de arbolado maderable, y ciento para los clasificados en el artículo 6.º del mismo decreto con la frase 'que a poca costa puedan hacerse de regadio'"

The Royal Decree of October 26, 1881, repeats the same in stronger terms. It recites:

"Es asimismo preciso, que para favorecer la división de la propiedad territorial y el fomento del cultivo intensivo y el de las producciones como el tabaco, la caña de azúcar, el café y otros semejantes, que se atiendan con mas interés a las solicitudes en demanda de pequenas extensiones de terreno para dedicarlos a los cultivos citados, que a las que no se hallen en ese caso y se comprenda que no sólo no han de ponerse desde luego en condiciones de producción, sino que lo que se busca es acaparar los mejores terrenos para poderse despues lucrar con su venta.—En su consecuencia S. M. el Rey (q. D. g.) ha tenido a bien disponer lo siguiente:—1. Que a fin de favorecer la division de la propiedad, en las ventas de terrenos se tenga en cuenta lo prevenido en el parrafo 1.º de la Real Orden de 25 de noviembre de 1880, para que no se verifique ninguna concesión que exceda de mil hectareas en terrenos de secano, de quinientas cuando esten poblados de arbolado y de ciento cuando sean tierras que a poca costa puedan hacerse de regadio."

In the face of the mandatory language of these Royal Decrees and in violation of the sound policy of the Spanish government clearly set forth therein, Francisco has inflated (see his Exhibit K) the following thirteen títulos so that they are void on their face because each exceeds one thousand hectares in area:

Titulo No. 1-131 hectares inflated to 1,242 hectares
Titulo No. 2-158 hectares inflated to 4,922 hectares
Titulo No. 3-129 hectares inflated to 3,136 hectares
Titulo No. 4-144 hectares inflated to 1,200 hectares
Titulo No. 5-191 hectares inflated to 1,180 hectares
Titulo No. 6-164 hectares inflated to 1,249 hectares
Titulo No. 8-180 hectares inflated to 1,714 hectares
Titulo No. 9-168 hectares inflated to 1,240 hectares
Titulo No. 11-138 hectares inflated to 2,657 hectares
Titulo No. 12-163 hectares inflated to 1,650 hectares
Titulo No. 13-176 hectares inflated to 1,250 hectares
Titulo No. 14-101 hectares inflated to 4,000 hectares
Titulo No. 17-174 hectares inflated to 3,210 hectares

(Compare Table A, *supra*.)

The applicants cite the decision of this court in *Regner vs. Rafols* (G. R. No. 34948, September 24, 1932, 57 Phil., 893). The 1,186 hectares therein granted were covered by four *titulos* from the Spanish government, each in accord with the Royal Decrees of November 25, 1880, and October 26, 1881, *supra*. This case therefore is no authority for Francisco's inflations. These utterly illegal and void inflations destroy the probative value of Exhibit K and Francisco's testimony in support thereof.

Taxes.—"Before closing this discussion of the applicants' claim of title from the Spanish government, we call attention to the tax declarations appearing in the record. Exhibit L is a verified tax declaration, No. 706, filed by Muñoz and Company on the 20th of August, 1906. This states the area of the hacienda to be 2,783 hectares, 74 ares and 8 centiares, having an annual rental value of P400. The next tax declarations (Exhibits 24-42) were filed and sworn to by Prieto and Company on November 32, 1918. Instead of one tax declaration covering the entire hacienda, Prieto and Company on said date filed nineteen separate declarations following verbatim the nineteen *titulos* above discussed both as to description and area. These declarations superseded the declaration of Munoz and Company, No. 706, and show a total area of 2,226 hectares. Exhibits M, N, O and P, tax declarations, filed by Prieto and Company for the assessment year of 1930, for the first time in the history of the hacienda show the inflation of the area which the applicants seek to register in this proceeding.

Up to the year 1930, the maximum taxable value reported by the applicants and their predecessors was P62,422. In 1930, this was increased to P679,210, corresponding to the inflated area then reported for the first time. These figures completely refute the applicants' assertion that they, and their predecessors had always paid taxes on the inflated area.

Title by possession.—The trial court paid scant attention to the issue of title by possession. Being convinced that the nineteen *titulos* made the applicants the absolute owners of 26,227.1941 hectares, the court regarded the evidence relating to the issue of possession as of secondary importance (*valor secundario*—decision, B. of E., page 116). The court, therefore, made no declaration as to the applicants' claim of title based on continuous and exclusive possession since July 26, 1894 (sec. 45, Act No. 2874). In the course of the trial and consistently with the court's view that the applicants had already proven their ownership by title from the Spanish government, the court refused to allow the Director of Lands, the Director of Forestry and the hundreds of private oppositors to introduce any evidence to rebut the evidence of the applicants that their possession of the entire tract has been adverse and exclusive since the year 1885. In the face of this refusal, the court, nevertheless, from applicants' evidence alone (B. of E., p. 97), made the specific finding in its decision (B. of E., p. 98) :

"Que la posesion por parte de los Munoz de toda la hacienda ha sido en concepto de dueños y de una manera pacifica, publica, sin interruption y adversamente a todos, desde el año 1885, por lo menos, en que aparece levantado el plano Exhibit C, hasta el agosto de 1912, en que fue vendida la hacienda por D. M. Fleming en su expresado concepto, a los aquí solicitantes.

"Que desde entonces hasta ahora * * *. Tal posesion de los solicitantes ha sido en concepto de dueños y de un modo pacifico, publico, continuado y adversamente a todos."

After repeated efforts to get their evidence in the record and a manifestation of impatience on the part of the trial judge, the oppositors, finding it impracticable to present the hundreds of settlers, homesteaders and cattle raisers as witnesses, had to content themselves with making an offer of their evidence in the record. (T. s. n., Lacsina, pp. 38-78.) In summing up this offer counsel for the oppositors stated (t. s. n., Lacsina, pp. 95, 96) :

"Quisieramos hacer constar que en Cataingan, Masbate, hay unas 500 personas entre homesteaders y pequenos agricultores que tienen interes directo y positivo en el presente expediente de registro, por cuanto que ellos han poseido y estan poseyendo parcelas de terrenos que estan dentro del perimetro de los lotes objetos de este asunto; que la posesion de estos data desde hace mas de 5 años algunos, y en otros casos, desde hace mas de 10

o 15 anos, y en todo este tiempo han vivido en sus chozas levantadas en sus respectivas parcelas, labrando y cultivando los terrenos que así poseen low que no son homesteaders, y los que no poseen parcelas de terreno dentro de los lotes de este expediente de registro tienen, sin embargo, cada uno carabaos, vacunos y caballos que han estado pastando en los cogonales publicos, dentro del perimetro de los lotes cuya titulacion se solicita, y han estado asi pastando a sus animales en los cogonales de terrenos publicos abarcados hoy en la presente solicitud de registro por mas de 15 o 20 aflos continuos y, en algunos casos desde el tiempo espanol contando el apasentamiento de animales de sus antecesores en sus mismos sitios; que tanto la posesion como el apasentamiento que acabamos de apuntar han sido de una manera publica, continua, pacifica y adversa a los aqui solicitantes por un periodo indefinido y largo en calidad de terrenos piiblicos; y en todo este tiempo no han sido inquietados p perturbados en su posesi6n y apasentamiento por los aqui solicitantes o sus administradores y encargados."

All of this evidence excluded by the court is plainly relevant both as to the construction which the applicants and their predecessors had placed on their nineteen titulos and also as to the claim of title by continuous and adverse possession under the Public Land Law (Act No. 2874) which applicants set up in their amended petition for registration (B. of E., p. 15).

We find it necessary, therefore, to reverse the judgment appealed from and, in the interest of all parties, to remand the cause for new trial on the issue of title by possession under section 45 of the Public Land Law (Act No. 2874). Let the evidence already taken on that issue be preserved, subject to the exceptions noted, and a judgment be rendered on that and the supplemental evidence taken on the new trial.

The record shows that the testimony of the principal witnesses of the applicants was taken by deposition in Manila where they reside. On the other hand, the hundreds of homestead claimants and settlers residing on the land, mostly poor people, were compelled to travel at great inconvenience and much sacrifice to the capital of the Province of Masbate (at one time the town ran out of provisions), not knowing when they would be called. The trial lasted from July 5 to July 29, 1932. The Government prayed for an ocular inspection but this was denied. We suggest the expediency of holding hearings at Cataingan either by the court or by a referee duly appointed, so that the great number of witnesses may return to their homes at night. The administration of justice is a practical matter.

The judgment is reversed and the cause remanded for new trial in accordance with this opinion, without special pronouncement as to costs in this instance.

Avanceña, C.J., Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

[1] The real truth may be this: that surveyor Diaz actually wrote 20,900 hectares and that Exhibit C has been tampered with.

[1] Not reported.

DISSENTING

MALCOLM, J.,

In 1918 Mauro Prieto began action in the Court of First Instance of Masbate to have a considerable tract of land registered in his name. The decision denied registration. On appeal in 1926, after excluding portions of land claimed by certain oppositors, the registration of the remainder was ordered in the name of the applicant. The decision of the Supreme Court was based on the sufficiency of the evidence identifying the land and establishing possession. (Prieto vs. Director of Lands, 50 Phil., 971.)

In 1931 Benito Valdez and others asked the Court of First Instance of Masbate to order the registration in their names of a large tract of land situated in the vicinity of the Prieto land and having practically the same documentary and testimonial evidence to support it. After an extended hearing the registration of the land in the names of the applicant? was ordered in the trial court. From this judgment the Director of Lands and nineteen private oppositor? perfected appeals. The decision of this court now reverses this judgment and remands the cause for a new trial.

The deduction is inescapable that, if the decision in the Prieto case was right, the decision in the instant case is wrong.

After having to wait more than four years for an authoritative pronouncement, the applicants will now have to go through the ordeal of additional and expensive litigation and wait other years before knowing if they have or have not a title to the property. It would be preferable for private parties who have to contest with the Government for the adjudication of title to land to forego such contests entirely as more economical and less burdensome.

Justice Goddard, in his dissenting opinion, with which I am in complete agreement, has proved beyond cavil that the titles on which applicants rely form one contiguous parcel of land capable of identification by means of natural boundaries. Add to this, possession of this land for close to fifty years, except as to portions which private oppositors have usurped to their own benefit, and the nature of the case for the applicants can best be understood. According to my way of thinking, the facts set forth so carefully in the dissenting opinion of Justice Goddard and addressed to the issues as developed at the trial, can not be explained away and his deductions therefrom are unanswerable.

I agree with the statement in the majority opinion that "the administration of justice is a practical matter." But I cannot conceive of how justice will be administered practically by deviating from a previous decision of this court, by setting at naught the findings of fact made in the trial court, and by putting the parties to the trouble of a new trial.

For the foregoing reasons, I am compelled to dissent and to make of record my vote as being in favor of affirmance of the judgment, except as to certain of the appellants who have established title but whose cases it would be unprofitable to discuss under present conditions.

DISSENTING

GODDARD, J.,:

I dissent.

The majority opinion in this case violates and practically sets aside two important rules which the courts of the United States, the Philippines and probably of all other countries have laid down for their decisions, which are founded on reason, experience and observation and which pertain not to the admissibility but to the weight of evidence. They have generally agreed upon a classification of and gradation of calls in a grant, survey or entry of land, by which their relative importance and weight are to be determined. The theory on which one call is given preference over another is that the one which is most certain and least liable to mistake should prevail.

In applying the general rule which refers to the relative importance and weight to be given evidence as to boundaries in locating lands the following are resorted to in the order stated: (1) Natural boundaries; (2) artificial objects; (3) adjacent boundaries; (4) courses and distances. Included in the first class are natural objects such as rivers, creeks, mountains, etc.; in the second are artificial objects, such as marks on trees, marked lines, etc., and therefore, generally speaking, a natural object prevails over a marked line and a marked line over course and

distance. Under this rule it has been held that a statement of the quantity of land supposed to be conveyed must yield to natural or permanent objects called for in the conveyance; and it is immaterial that the boundary so ascertained embraces a much larger area than that called for. As Chief Justice Marshall said: "All lands are supposed to be actually surveyed, and the intention of the grant is to convey the land according to that actual survey; consequently if marked trees and marked corners be found conformably to the calls of the patent, or if water-courses be called for in the patent or mountains or any other natural objects, distances must be lengthened or shortened, and courses varied so as to conform to those objects." (*M'lver's Lessee vs. Walker and Another*, 9 Cranch [U. S.], 173, 177; 3 Law. ed., 694 [quot. with approval *Wiley vs. Hatcher*, 70 W. Va., 92; 73 S. E., 245]. To same effect *Hall vs. Eaton*, 139 Mass., 217; 29 N. E., 660.)

I think it advisable to quote from a few of the many authorities and decisions of the courts of several states and of this court which adopt and apply the above rule.

"Under the principle that where some particulars of the description in a deed do not agree, those which are uncertain and more liable to error and mistake must be governed by those which are more certain, various rules for the interpretation of descriptions of the location and boundary of lands have been evolved and are now frequently referred to in interpreting grants and deeds. Accordingly an order of precedence has been established among different calls for the location of boundaries of land, and, other things being equal, resort is to be had first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries, and thereafter to courses and distances. Natural objects include mountains, lakes, rivers, creeks and rocks; while artificial objects and monuments consist of marked lines, stakes, roads and similar matters marked or placed on the ground by the hand of man. Whenever a natural object is distinctly called for, and satisfactorily proved, it becomes a landmark to which preference must be given, because the certainty which it affords excludes the probability of mistake. Thus a call for courses and distances will yield to one for a natural object or permanent monument in case of a conflict, no matter how wide may be the discrepancy shown by courses and distances." (4 R. C. L., 100, 101.)

"In determining boundaries, natural and permanent objects control courses and distances." (*Wisconsin Chair Co. vs. Columbia Finance & Trust Co.*, 60 S. W., 717; 22 Ky. Law Rep., 1374.)

"Where there is a conflict in the description in a deed between monuments, natural and artificial, and the courses and distances, the monuments prevail; and where there is a conflict between these on one side and the quantity of the land designated, the former prevail." (*Kendrick vs. Burchett*, 89 S. W., 239; 28 Ky. Law Rep., 342.)

"It is only in the absence of monuments, courses, and distances that the quantity of land named in the deed will govern." (*Silver Creek Cement Corp. vs. Union Lime & Cement Co.*, 35 N. E., 125; 37 N. E., 721; 138 Ind., 297.)

"'Quantity', though less reliable, and last to be resorted to of all descriptions of boundaries, may be used to ascertain the premises granted, when they are not described by known and established boundaries, and the description is not otherwise sufficiently certain to define the parcel of land intended." (*O'Brien vs. Clark*, 64 A., 53; 104 Md., 30.)

"Quantity is regarded merely as a part of the description, and is rejected if it be inconsistent with the actual area as indicated by ascertained boundaries." (*Chapman & Dewey Lumber Co. vs. St. Francis Levee Dist.*, 34 S. Ct., 297; 232 U. S., 186; 58 Law. ed., 564; 34 S. Ct., 906; 324 U. S., 667; 58 Law. ed., 1526.)

"Specific descriptions in a deed held to control a designation of amount." (*Busbee vs. Thomas*, 57 So., 587; 175 Ala., 423.)

"A description of land by giving the number of acres is considered the weakest method of identification."

(Bender vs. Chew, 56 So., 1023; 129 La., 849.)

"A statement of quantity in a description of land does not control defined and reliable calls by monuments, courses, and distances, but all other elements of description must lose their superior value through ambiguities and uncertainties before resort can be had to quantity." (South Penn. Oil Co. vs. Knox, 69 S. E., 1020; 68 W. Va., 362.)

"Recitals in deed as to quantity conveyed are not necessarily conclusive, and monuments, if named, control, and, after monuments, courses and distances; and only in absence of monuments, courses, and distances will quantity govern." (Gesaman vs. Minton, 132 N. E., 654; 77 Ind. App., 407.)

PHILIPPINE DECISIONS

"Discrepancies in the superficial extent of land may and must be accounted for and explained by the fact that ancient documents, describing lands in these Islands by metes and bounds, frequently set out extremely inaccurate estimated areas of the lands thus described, the superficial extent never having been ascertained by a formal survey." (Consunji vs. Tison, 15 Phil., 81.)

"An erroneous statement relative to the area of a parcel of land, where it appears that the land is so described by boundaries as to clearly identify it, will not vitiate adjudication. That which really defines a piece of land is not the area, calculated with more or less certainty, but the boundaries laid down in the description as enclosing the land and indicating its limits." (Loyola vs. Bartolome, 39 Phil., 544; Escudero and Marasigan vs. Director of Lands, 44 Phil., 83.)

"In regard to boundaries and extent of lands in dispute, the general rule is that courses and distances will yield to known, visible, and definite objects, whether natural or artificial, such as monuments or landmarks, but will control a call of quantity or area." (Government of the Philippine Islands vs. Abad, 47 Phil., 573.)

"According to the repeated doctrine laid down by this court, when the boundaries are certain and no alteration thereof has been proven, the area included within such boundaries shall prevail over that which the title shows." (Government of the Philippine Islands vs. Abaja, 52 Phil., 261.)

"In determining the extent of a tract of land in litigation, the area stated in the complaint is not necessarily controlling ; areas must yield to boundaries sufficiently described in the pleadings." (Beltran vs. Reyes, 55 Phil., 1004.)

"The rule that visible and well established boundaries control incorrect estimates of area is applicable to land registered under the Torrens system." (Domingo vs. Santos, Ongsiako, Lim y Cia., 55 Phil., 361.)

In the case of Prieto vs. Director of Lands (50 Phil., 971974), in which these same applicants, represented by Prieto, registered 2,138 hectares in Masbate on three Spanish titles, of the same character as those relied upon in this case, which recite an area of only 557 hectares, this court said:

"Upon examining the record it is found that there is sufficient data therein to conclude that the lands described in the documents Exhibits A (pp. 123 and 124 of the original record) and B (p. 147 of the original record) presented by the applicant, are the lands described in his application which initiated the present proceedings and the corresponding plans, because natural boundaries exist which correspond with those noted on the plans and in the documents referred to. "The difference in area between the former and the latter is, indeed, considerable; but, taking into consideration that the measurement of lands today is made with much greater accuracy than during the period when the applicant's original documents were drawn up, we are of the opinion that, the said mentioned natural boundaries being fixed as they are, the conclusion must follow that they are the same lands."

"The reason for this rule consists in the greater certainty which natural objects afford. Such land-marks should not be disregarded because that certainty excludes the probability of mistake while course and distance,

depending for their correctness on a great variety of circumstances, are constantly liable to be incorrect. The difference in the instruments used, and in the care of surveyors and their assistants, must lead to different results. Hence it is, that rule has been established." (McCoy vs. Galloway, 3 Oh., 282; 17 Am. Dec, 591.)

If there are differences in modern surveying instruments and in the care of surveyors and their assistants, in this day and age, which lead to different results, what shall we conclude as to surveys made in the eighties? This court in the Prieto case said, as stated above, "that the measurement of lands today is made with much greater accuracy than during the period when the applicant's original documents were drawn up." Carlos N. Francisco, who has been a surveyor since the year 1907 and was formerly connected with the Government as assistant chief of the Division of Surveys of the former Land Registration Court and later as assistant chief of the Division of Surveys of the Bureau of Lands, testified upon this point as follows:

"* * * Hay que tener en cuenta las mediciones que se hacfan antes; el procedimiento de calcular la extensi6n superficial de cada parcela medida se hacia graficamente, mientras que hoy dia el calculo que se hace es el numerico, o bien por medios trigonometricos. Por eso la comparaci6n entre la extensi6n superficial de un terreno medido antes y el de hoy dia, volviendole a medir resultaria mucho mayor, por aquello de que el proeedimiento que se seguia en los calculos son diferentes. El de antes, como ya lo he dicho, es el grafico mientras que el de hoy dia es el numerico." (Dep. Exh. FF, p. 95.)

The second rule that the majority opinion not only ignores, but practically sets aside, and which is of almost universal application, is that questions of whatever nature not raised and properly preserved for review in the trial court will not be noticed on appeal. The reason for this general rule is usually placed upon the ground that the opposite party should have the opportunity to avoid the effect of a proper objection by supplying any defects in his proof.

The following are some of the many authorities and decisions which adopt and apply this rule:

"The authorities are agreed on the proposition that the case on appeal must be decided on the same theory on which it was tried in the court below. Thus issues which were treated in the lower court by the appellant as not involved cannot be raised on the appeal. And after both parties have assumed that there was a certain issue, and the trial and judgment have proceeded on that assumption, neither can question the fact as to such issue on appeal. Following out the rule as respects the theory of the case it is held that if a case is tried on the theory that the burden of proving a certain issue is' on one party, he will not be heard on appeal to assert that the burden was on the other party." (2 R. C. L., 183, 184.)

"The question whether the sale under execution of two tracts as ,one parcel was void because one of the tracts was a homestead, not having been raised in the trial court, cannot be considered on appeal." (Brown vs. O'Donnell, 81 N. W., 961; 123 Mich., 100.)

"A contention by mortgagees that a mortgage was invalid because it was executed on land settled on by the mortgagors as a homestead under the laws of the United States, prior to final proof under such law, could not be made for the first time on appeal." (Deindorfer vs. Bachmor, 81 N. W., 297; 12 S. D., 285.)

"A suit to recover certain land having proceeded on the assumption of a valid platting, plaintiff was not entitled to claim for the first time on appeal that the plat was void." (Ehmen vs. City of Gotemburg, Neb., 200 Fed., 564; 119 C. C. A., 310.)

"A party is restricted on appeal to the theory adopted at trial, so that, where appellant's attorney stated at the trial that there was no question about the validity and force of the ordinance, appellant cannot first attack the ordinance on appeal." (Horace F. Wood Transfer Co. vs. Shelton, 101 N. E., 718; 180 Ind., 273.)

"Where, in the trial of a case involving the construction of a deed, the validity of the deed was not questioned, the parties cannot on appeal question its validity." (Buxton vs. Kroeger, 117 S. W., 1147; 219 Mo., 224;

Buxton vs. Lauman, 117 S. W., 1162; 219 Mo., 276, 277; Buxton vs. Dunn, 117 S. W., 1163; 219 Mo., 278.)

"Where a suit to quiet title to real property was based on Pub. Acts 1909, No. 123, and the validity thereof was not questioned at the trial, it could not be considered on appeal." (Walker vs. Schultz, 141 N. W., 543; 175 Mich., 280.)

"The object of requiring the parties to present all questions and issues to the lower court before they can be presented to this court is to have the lower court pass thereon, so that this court upon appeal may determine whether or not such ruling was erroneous. The purpose is also in furtherance of justice to require the party to first present the question he contends for in the lower court, so that the other party may not be taken by surprise." (Jones vs. Seymour, 95 Ark., 593, 597; 130 S. W., 560.)

"It would be manifestly unjust to a litigant to reverse his judgment on a question which he was not called upon to contest in the lower court by either pleadings or objections, when it might easily happen that, if it had been an issue at the time, he could have successfully met it." (Collins vs. Fidelity Trust Co., 33 Wash., 136, 141; 73 Pac, 1121.)

The authorities are practically unanimous in holding that the theory of the case pursued in the lower court must be adhered to on appeal. If a party on appeal cannot raise a question not submitted and considered in the lower court, much less should this court decide this case on a theory not even raised on appeal by the herein appellants.

The majority opinion adopts the following assertions as the subject of its "theme song": The original sales were made by unit of measure; the area sold could in no instance exceed more than 1,000 hectares and, if there was an excess over that area, the sales as to such excess would be null and void.

Evidently neither the Government nor the private oppositors ever dreamed of these propositions as they were not mentioned during the hearing before the trial court nor are they discussed in the briefs filed in this court. Yet the majority opinion raises, discusses and practically decides this case on the three above mentioned propositions, thereby disregarding the facts established by the evidence of record upon which the trial court gave judgment in favor of the applicants.

The attention of the trial court was not directed to the "Royal Decrees", unearthed by the industry of the writer of the majority opinion. Said decrees were not mentioned in the briefs of the appellants. Consequently neither the trial judge nor the herein applicants had a chance to prepare themselves to meet the specter of ancient decrees which now springs forth full panoplied from the majority opinion.

This is borne out by the following statement in the decision of the trial court:

"Por ultimo la representation del Director de Terrenos llamo al banquillo testifical a algunas personas que decian poseer unos cuantos vacunos o carabaos para declarar que vienen apacentando sus ganados en (Jistintas porciones del terreno en cuestion, hace muchos anos, en la creencia de que el mismo era del Estado. Se objeto a esta prueba, por el fundamento, de que la misma era incompetente para demostrar que el terreno en cuestion era publico, y que habiendo los solicitantes presentado titulos de composicion con el Estado para demostrar su propiedad, la unica prueba competente para el Gobierno, si es que insistia en sostener que el terreno era del Estado, es la de que dichos titulos son nulos o que fueron cancelados por tin tribunal competente." (B. of E., pp. 200, 201.)

It is evident from a reading of the above comment of the trial judge that this court has not decided this case on the same theory on which it was tried in the court below and that issues which were not considered by that court have been made the basis of the majority opinion. The appellees, therefore, have had no opportunity to meet the arguments set forth in that opinion.

I therefore maintain that this court should have confined itself to the questions and issues which were before the

trial court and the questions properly raised on appeal. I propose to do just that and to go into the facts that were before the lower court as briefly as possible considering the voluminous record.

The following facts, as found by the trial court, are fully supported by the evidence:

"Consta de autos que en o hacia el ano 1884 formose en el Municipio de Cataingan, Provincia de Masbate, una sociedad regular colectiva denominada Munoz y Compania, la cual estaba constituida por los hermanos Jose Muñoz y Francisco Munoz, por el hi jo del primero llamado tambien Jose Munoz, y por Jose Ma. Ceballos y Antonio Sanchez, sobrinos estos dos ultimos de Jose Muioz (padre), y de Francisco Munoz. Uno de los fines de la sociedad era la explotacion de una ganaderia en Masbate y, a este ef ecto, la aociedad aludida adquirio terrenos en los Municipios de Cataingan y Milagros. Cataingan era entonces un barrio del Municipio de Palanas. Los terrenos asi adquiridos eran objeto de veintidos titulos de composicion con el Estado y formaban una sola masa. Para la mejor delimitaci6n de estos terrenos, la Sociedad Munoz, Hermanos y Sobrinos hizo que fueran medidos en globo por un agrimensor del Gobierno Espanol, el Sr. Felipe Diaz, siendo el Exhibit C el piano de los mismos, levantado por dicho agrimensor el ano 1885.

"En virtud de esta medicion verificada por Diaz, la Hacienda de Cataingan quedo, segun el piano exhibit C, definitivamente delimitada en sus. cuatro lados por los siguientes linderos naturales: al norte, los montes de Uson y Palanas, Tetas de Cataingan, Camino de Palanas que va a Cataingan, Rio Nabangui y la divisoria de aguas entre la ensenada de Cataingan y el mar del Estrecho; al este, los bosques de Mintac, Limbujan y Alegria; al sur, los manglares del mar de la contracosta y el terreno solicitado por Dn. Juan Acuesta; y al oeste, el Rio Nainday.

"Fijados ya asi los limites y los linderos de los terrenos de los Muioz, estos los denomino 'Hacienda de Cataingan' o 'Terrenos de Cataingan de Munoz, Hermanos y \$obrinos.' La hacienda era totalmente cogonal y fue dedicada por los Muioz a la ganaderia.

"El 12 de julio de 1907, Munoz y Cia. obtuvo un prestamo de catorce mil pesos de la corporation extranjera Royal Insurance Company of Liverpool, dando en garantia del prestamo la hacienda de Cataingan (Exhibit B). Como Muioz y Compaiia no pudieron solventar su deuda, a su vencimiento instituyose una accion por el acreedor contra dicha sociedad y se ordeno la liquidation de la misma, nombrandose a un tal D. M. Fleming depositario de la hacienda Cataingan y de los demas bienes de la citada entidad deudora. En 31 de enero de 1920, el referido depositario, con el consentimiento y aprobacion del Juzgado y al objeto de pagar la deuda de Muioz y Compania a la Royal Insurance Company of Liverpool, venditf, cedio y traspaso al Sr. Mauro Prieto la Hacienda de Cataingan, por la cantidad en que la misma estaba hipotecada, o sea, por catorce mil pesos y los iritereses devengados y no pagados de doce por ciento al ano, desde el 12 de Julio de 1907. Como parte integrante de la escritura de venta, el Sr. Prieto recibio del depositario Sr. Fleming los veintidos titulos de composici6n con el estado y el piano antiguo de la hacienda (Exhibit C).

"El Sr. Prieto tomo posesion de la Hacienda Cataingan y la dedico a la industria ganadera. No era, sin embargo, el Sr. Prieto el unico dueno de la Hacienda Cataingan y de la ganaderia que alli se establecio, sino que eran, aderaas de el, el Dr. Arist6n Bautista, Dr. Benito Valdez y su esposa Rita Legarda, Augusto Tuason, Mariano Tuason, Benito Legarda y de la Paz, Natividad Zaragoza y Jose Alemany. En el transcurso del tiempo, hubo cesion y traspaso de la participation de algunos de los socios a favor de los otros, resultando en la actualidad duenos de dicha hacienda en la proportion que a continuation se especifica, las siguientes personas:

Dr. Benito Valdez 19.98 avas partes

Rita Legarda 67.62 avas partes

Petrona Nakpil Vda. de Bautista 2.30 avas partes

Natividad Zaragoza Vda. de Tuason 1.19 avas partes

Benito Legarda y de la Paz 7.14 avas partes

Augusto Tuason 1.77 avas partes

"Hacia el año 1921, el Sr. Prieto solicitó el registro de la porción nordeste de la hacienda, separada del resto de la misma por el Río Dumorog y por el camino de Palanas que se dirige a Cataingan. De los veintidós títulos de composición con el Estado de la Hacienda Cataingan, se utilizaron tres de ellos en el referido expediente. El resto de la hacienda, excluida la porción objeto de la anterior solicitud de registro, quedó constituido por los lotes 1, 2, 3, 4 y 5, que son el objeto de la presente titulación. Este resto de la hacienda, con exclusión del lote 5 tiene la siguiente descripción : al norte, Río Dumorog y los bosques del Estado que constituyen las Cordilleras de Masbate; al sur, el mar de la contracosta y los manglares del mar de la contracosta; al este, los bosques de Alegria, Limbujan, Mintac, manglar de Macalipong y ensenada de la bahía de Cataingan; y al oeste, el mar de la contracosta y el Río Nainday. (Véase exhibits C y K.)"

The registration of the above parcel of land with an area of 26,227.1941 hectares, as delimited by the above-mentioned natural boundaries, was applied for by the applicants. The Director of Lands, the Director of Forestry and numerous private persons filed oppositions to the application for registration presented by the applicants. The private oppositors originally numbered 993 which was reduced to 300 after the trial court had ordered them to specify and identify the portions claimed by each one of them. In this appeal, aside from the appeal of the Director of Lands and the Director of Forestry, only nineteen of the private oppositors have appealed. The rest either withdrew their opposition voluntarily or failed to present any evidence in support of their claims after several continuances had been granted by the trial court in order to give them an opportunity to present their proofs. In view of these facts it really seems unnecessary to shed any tears over the fate of these private oppositors.

In support of their application for registration the applicants presented the remaining 19 Spanish titles, issued in favor of different people by the Spanish government between April 16, 1883, and February 12, 1886. These titles on their face cover a total area of 2,225.9194 hectares, but the land actually applied for and which is included within the natural boundaries mentioned in said titles has an actual area of 26,227.1941 hectares.

If, as claimed by the applicants, the land covered by the above-mentioned 19 titles is contiguous we have in fact one vast parcel of land bounded on all sides by natural boundaries. This being so, this court should disregard the area stated in the titles and order the registration of the area embraced within the natural boundaries mentioned therein. In order to ascertain whether or not this claim of the applicants is correct it has been necessary to make a careful examination of the descriptions appearing in the titles relied upon by the applicants. As a convenient starting point I wish to call attention to titles Nos. 2 and 3, which adjoin each other and, taken together, constitute one parcel of land with natural boundaries on all sides. Title No. 2 was issued in favor of Jose Munoz and Title No. 3 in favor of Jose Ma. Ceballos.

Title No. 3 has the following boundaries:

North: Sementeras de Pedro Aparilla, Venancio Aluguin, Eulalio Anselmo, Inocencio Olbejuela, Angel Anayan, Ignacio Aluguin, Apolonio Bulalaqui, Mateo Atavelo, Domorog River and Manglar Macalipon.

East: Bosque Mintac, Lampoyang.

South: Cerro de Lampoyang.

West: Terrenos denunciados por Jose Munoz (Title No. 2).

From the above it will be seen that there are natural boundaries on all sides of the land covered by Title No. 3, except on the west. The boundary on the west is the land declared by Jose Munoz. The land declared by Jose Munoz is covered by Title No. 2, which has the following boundaries :

North: Rio Domorog.

East: Terrenos denunciados por Jose Ma. Ceballos (Title No. 3).

South: Terrenos baldios realengos.

West: Monte Nadauizan.

Taking the above two adjoining titles together it appears that the land covered by them extends from the forests of Mintac and Lampoyang on the east to the Nadauizan Mountains on the west, and from the Domorog River and the mangroves of Macalipong on the north to the Lampoyang hills (cerro) on the south.

It is true that the area actually included within the above-mentioned boundaries is much greater than that stated in said titles but if the greater area be accepted it will not be the first time that this court has held that the area within the natural boundaries should prevail over the stated area and it will merely be a reassertion of a doctrine which has, as shown above, consistently been upheld by the courts of other jurisdictions.

That the area stated in the titles cannot be relied upon for the proper consideration of this case is amply shown by the instance just cited. In an effort of the government and the nineteen private oppositors to show that the area stated in Titles Nos. 2 and 3 could be platted in such a way as to include the natural boundaries mentioned in said titles, they have ignored several privately owned parcels of land mentioned as bounding Title No. 3 on the north and have platted on plan Exhibit 3-Cordoba a ridiculously narrow and long strip purporting to represent the land described in that title. But in so doing they have separated Titles Nos. 2 and 3 which cover parcels of land adjoining each other for several kilometers!

It is clear from the above that Titles Nos. 2 and 3 adjoin each other. Examining the boundaries of Title No. 1 it will be noted that the boundary of the land covered by this title on the north is the land granted to Jose Ma. Ceballos which is described in Title No. 3. It must therefore be concluded that Titles Nos. 3 and 1 also adjoin each other. Examining further the boundaries of Title No. 1 it will be noted that the land covered by this title is bounded on the south by the land of Manuel Conejero, Titles Nos. 6 and 17 were both issued to Manuel Conejero. But Title No. 17 covers land situated in sitio Caburutan. On the other hand Title No. 6 covers land situated in sitio Nadauizan and Title No. 1 covers land also situated in sitio Nadauizan. Examining the boundaries of Title No. 6 we find that the land of Domingo Gonzales is mentioned as the boundary on the north. Title No. 1 was issued in the name of Domingo Gonzales. Therefore the land of Manuel Conejero referred to in Title No. 1 as the adjoining land on the south is Title No. 6. Consequently Titles Nos. 1 and 6 also adjoin each other. Examining Title No. 9, issued to Honorio Ma. Isidro, it will be noted that the land of Manuel Conejero is mentioned as the boundary on the north of that title. However, as has been seen, there are two titles, Nos. 6 and 17, issued in favor of Manuel Conejero and it remains to determine which of these two titles is referred to in Title No. 9. The land covered by Title No. 9 is situated in sitio Nadauizan. As stated above, the lands covered by Titles Nos. 6 and 17 are respectively situated in sitios Nadauizan and Caburutan. It is evident therefore that the land of Manuel Conejero referred to in Title No. 9 as its northern boundary is that described in Title No. 6. Therefore Titles Nos. 6 and 9 adjoin each other. Examining Title No. 5, issued to Nicolas Aceneta, it will be noted that the land of Honorio Ma. Isidro (Title No. 9) is mentioned as the boundary on the north. Therefore Titles Nos. 9 and 5 adjoin each other. Examining the other boundaries of Title No. 5, it will be noted that the land it covers is bounded on the east by the land of Juan Alvarez. Title No. 4 is issued in the name of Juan Alvarez and has for its boundaries on the north the land of Nicolas Aceneta, on the east the land of Hipolito Lanuza and on the south and west Cogonales del Estado. It will therefore be seen that there must have been an error either in Title No. 5 in designating the land of Juan Alvarez as the boundary on the east instead of on the south, or an error in Title No. 4 in designating the land of Nicolas Aceneta as the boundary on the north instead of on the west. However we do know that Titles Nos. 4 and 5 adjoin each other as there are no other titles, among the 19 involved in this case, issued either to Juan Alvarez or

Nicolas Aceneta.

The record however shows that the error was committed in Title No. 5 in designating the land of Juan Alvarez (Title No. 4) as the boundary on the east instead of on the south. It has been seen that Title No. 4 mentions the land of Hipolito Eanuzas as the adjoining land on the east. Title No. 7, issued to Hipolito Lanuza, in turn mentions the land of Juan Alvarez (Title No. 4) as the adjoining land on the west. Both are situated in sitio Bagacay. It is clear therefore that the lands covered by these two titles adjoin each other. Examining the other boundaries of the land covered by Title No. 7 it will be noted that the land of Honorio Ma. Isidro is mentioned as the boundary on the south. Title No. 10 is one of the titles issued in the name of Honorio Ma. Isidro and has the following boundaries: on the east the land of Nicolas Aceneta; on the south the land of Hipolito Lanuza, and on the north and west, again cogonales del Estado. Title No. 9 was also issued to Honorio Ma. Isidro. Evidently the land of Honorio Ma. Isidro referred to as adjoining the land in Title No. 7 is that covered by Title No. 10, as the parcels of land described in both titles, Nos. 7 and 10, are situated in sitio Bagacay while the land described in Title No. 9, as stated above, is situated in sitio Nadauizan. Furthermore Title No. 9 does not make any mention of the land of Hipolito Lanuza (Title No. 7) as its boundary while Title No. 10 does. Consequently the land of Honorio Ma. Isidro referred to as bounding Title No. 7 is that described in Title No. 10. Therefore Titles Nos. 7 and 10 also adjoin each other.

Summarizing the above we find that Titles Nos. 2 and 3 adjoin each other; that Title No. 3 adjoins Title No. 1; that Title No. 1 adjoins Title No. 6; that Title No. 6 adjoins Title No. 9; that Title No. 9 adjoins Title No. 5; that Title No. 5 adjoins Title No. 4; that Title No. 4 adjoins Title No. 7; and that Title No. 7 adjoins Title No. 10. What has been said so far shows that Titles Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 form one contiguous parcel of land extending from Rio Domorog on the north to sitio Bagacay on the south, a distance of some twenty kilometers, the length of the land applied for in these proceedings as stated in the opening paragraph of the majority opinion.

I will now proceed to examine the other titles and show that the width of the land covered by the 19 titles is about twelve and a half kilometers as stated in the majority opinion.

Title No. 14 is bounded on the west by Rio Nainday, the western boundary of the tract of land applied for by the applicants in this case. On the east it is bounded by Rio Lanali. The evidence however shows that no such river exists and that the name of the first river east of Rio Nainday is Liong instead of Lanali. Therefore the trial court correctly concluded that the river referred to in Title No. 14 as its eastern boundary is Liong. This river is also mentioned as the boundary on the west of the land covered by Title No. 13, and therefore it is a common boundary of the lands covered by Titles Nos. 13 and 14. Consequently Titles Nos. 13 and 14 adjoin each other. Title No. 13 is bounded on the east by Rio Manahao. This river is also mentioned as the western boundary of the land covered by Title No. 12. Rio Manahao is therefore a common boundary of the lands covered by Titles Nos. 12 and 13. Consequently the lands covered by these titles adjoin each other. Title No. 12 is supposed to be bounded on the east by Rio Matubinao. The evidence however shows that there must have been a mistake in designating this river as a boundary on the east as Matubinao River is to the west of Rio Manahao, the western boundary of Title No. 12. The river which is to the east of Rio Manahao is Rio Daraga. The trial court therefore rightly concluded, in view of the other evidence of record, that this river (Daraga) is the one referred to in Title No. 12 as its boundary on the east. The evidence further shows that this river is known, halfway between its source and mouth, as Rio Caipitan. As such it is mentioned as a boundary of Title No. 17. Consequently Rio Daraga is a common boundary of Titles Nos. 12 and 17. Therefore it is evident that the lands covered by these two titles adjoin each other. Title No. 11 mentions the land of Manuel

Conejero as its western boundary. It has been seen that there are two titles issued in favor of Manuel Conejero and they are Titles Nos. 6 and 17. Title No. 6 has already been located between Titles Nos. 1 and 9 which are situated

in sitio Nadauizan, while the land covered by Title No. 11 is situated in the sitio of Mintac. It is evident that Title No. 11 refers to the land covered by Title No. 17 as its western boundary. It can therefore be concluded that Titles Nos. 11 and 17 adjoin each other.

From the foregoing we find that Titles Nos. 13 and 14 adjoin each other; that Title No. 13 adjoins Title No. 12; that Title No. 12 adjoins Title No. 17; and that Title No. 17 adjoins Title No. 11. It can therefore be concluded that Titles Nos. 11, 12, 13, 14 and 17 form one contiguous parcel of land extending from Rio Nainday on the west to sitio Caburutan on the east. Title No. 17 is situated in sitio Caburutan. The evidence shows that this sitio derives its name from Pico Caburutan, one of the hills or mountains forming the Nadauizan Range of Mountains. This range of mountains constitutes the western boundary of Title No. 2. It can, therefore, be concluded that Titles Nos. 2 and 17 adjoin each other. As these two titles adjoin each other it follows that Titles Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 17 form one vast tract of land extending from Rio Domorog on the north to sitio Bagacay on the south, a distance, as stated above, of twenty kilometers, and from Montes de Mintac and Lampoyan on the east (these mountains are mentioned as the eastern boundary of Title No. 3) to Rio Nainday on the west, a distance of about twelve and a half kilometers.

It will be noticed that Titles Nos. 8, 15, 16, 18 and 19 are not included in the above analysis. Title No. 8 is located on the northern rim of the plan Exhibit K, which covers the tract of land mentioned above. Title No. 15 is situated on the southeastern rim of Exhibit K and Titles Nos. 16, 18 and 19 are situated on the southern rim of that exhibit. These titles cover small areas and, as stated¹, are situated on the borders of the vast tract of land described above. An examination of the sitios in which they are situated and of their natural boundaries shows that they were correctly located in Exhibit K.

What has been said will show that the trial court did not err in declaring that the land covered by the 19 titles of the applicants embraced one single vast tract of land which was originally embodied in Exhibit C by the applicants' predecessor in interest, the Munoz Hermanos y Sobrinos. This conclusion is further strengthened by the following examination and comparison of the natural boundaries of Exhibit C and those of the 22 titles covering the land shown in that exhibit.

Exhibit C shows the following boundaries on the north:

"Montes de Uson y Palanas, Tetas de Cataingan, Camino de Palanas a Cataingan, Rio Labangui y Divisoria de Aguas entre la Ensenada de Cataingan y mar del Estrecho."

The land described in Title No. 14 is bounded on the north by Monte del Estddo which according to the testimony includes the Montes de Uson y Palanas, Title No. 13 is also bounded on the north by Monte del Estado which, as stated above, includes the Montes de Uson y Palanas. Title No. 12 is bounded on the north by Bosque del Estado which according to the testimony is the forest which exists at the foot of the Montes de Uson y Palanas. Lots Nos. 1, 2 and 3 of Expediente No. 14, already registered in the name of Mauro Prieto (Prieto vs. Director of Lands, supra) are situated on the northeast of the Hacienda Cataingan and are covered by three of the twenty-two titles of which the hacienda consists. Among the boundaries of these three lots are the Camino de Palanas a Cataingan, Rio Labangui and Divisoria de Aguas entre la Ensenada de Cataingan y mar del Estrecho. Title No. 2 is situated in the sitio known as Tetas de Cataingan.

Exhibit C shows the following boundaries on the east:

"Bosque de Punta Matayom, Puerto de Cataingan y Bosques de Mentac, Limbujan y Alegria."

Lot No. 1 of Expediente No. 14, mentioned above, is bounded on the southeast by barrio Matayom. Lot No. 2 of the same Expediente is bounded on the east by Puerto de Cataingan. Title No. 3 is bounded on the east by Bosque

de Mmtac. Title No. 19 is bounded on the east by Monies de Limbujan. Title No. 15, which is on the southeast of the hacienda is bounded on the northeast by Bosque de Alegria. Exhibit C shows the following boundaries on the south:

"Manglares del mar de la contracosta y terreno solicitado al Estado por D. Juan Acuesta."

None of the titles show the above boundaries on the south. However, the four parcels, as surveyed, allowed by the trial court to be registered do not extend to the Mar de la Contracosta and are limited on the south by Manglar Nainday, Rio Burabod, Rio Pasiagon and sitio Bagacay. These natural boundaries appear in the following titles: Title No. 14 is bounded¹ on the south by Manglar Nainday. Title No. 18 is bounded on the south by Rio Burabod. Title No. 16 is bounded on the northwest by Rio Pasiagon. Titles Nos. 4, 7 and 10 are situated in sitio Bagacay.

Exhibit C is bounded on the west by Rio Nainday. Title No. 14 is bounded on the west by Rio Nainday.

From the above it is clear that all the natural boundaries of the four lots ordered registered by the trial court in favor of the applicants are mentioned in the titles upon which the applicants have relied.

"If any of the abutments or calls of the deed are found they cannot be disregarded, although the others may not be found. Those which are found, if not inconsistent with each other, are elements in the rights of the parties and cannot be departed from to substitute the subordinate description by courses and distances given in the deed." (Talbot vs. Copeland, 32 Me., 251; Footnote 79 [6], 9 C. J., 208.)

The majority opinion states that, under the laws and royal decrees in force at the time the above titles were issued, the sale of public lands was not made in the mass but by units of measurement. Admitting this, the fact remains that, according to the natural boundaries mentioned above, the Government in fact sold a very much greater area. The evidence also shows that the herein applicants relied on those natural boundaries as before buying Mauro Prieto, who acted for himself and these applicants, was shown said boundaries having spent two weeks in making the trip around the land in question. Having relied on these boundaries they have a right to the land embraced within them. "That which really defines a piece of land is not the area, calculated with more or less certainty, but the boundaries laid down in the description as enclosing the land and indicating its limits." (Loyola vs. Bartolome, supra; Escudero and Marasigan vs. Director of Lands, supra.)

The fact that the area included in said boundaries was far in excess of that intended to be sold by the Government is not a ground for pronouncing said titles ineffective in so far as the excess is concerned, even if the sale was made by units of measurement and not in the mass. Article 1470 of the Civil Code, cited in the majority opinion, gives the vendee the option to either withdraw from the contract or pay the difference and it is for the Government, in proper cases, to demand the payment of that difference if the vendees or their successors in interest elect not to withdraw from the contract.

Absorbed in raising, discussing and deciding issues not raised before the trial court, nor for that matter on this appeal, the majority opinion not only disregards the facts mentioned above, but also completely ignores and disregards the appeals of the nineteen private oppositors which are before this court for decision. The only appeal considered in the majority opinion is that of the Government. I contend that this is another serious defect of that opinion. The dispositive part of the majority opinion reads as follows:

"The judgment is reversed and the cause remanded for new trial in accordance with this opinion."

The judgment of the trial court overruled all of the claims of these private oppositors, hence their appeal. Have they won or lost in this court? There will certainly be no decision against them if and when the judgment of the trial court is reversed. Each of these appeals should have been taken up and decided on their respective merits in order to avoid the confusion which will undoubtedly result upon the remanding of this case without any

pronouncement with regard to them.

The equities in this case are decidedly in favor of the applicants. The evidence of record establishes beyond a shadow of doubt that they and their predecessors in interest have been in possession of this vast tract of land, at least, since 1886, and have dedicated it to the cattle raising industry. From the brief of the Government it may be inferred that none of the applications of the alleged homesteaders mentioned therein have been approved and that, as a matter of fact, almost all of said applications have been rejected and the rest are pending approval. As to the private oppositors there are only 19 involved in this appeal and all the others have either voluntarily withdrawn their opposition or failed to offer any evidence in support of their claims.

In conclusion we quote the concluding remarks of counsel for the applicants-appellees:

"Somетemos que, tal como esta planteado este asunto, por justicia y equidad y en interes del orden publico en Cataingan, la decision apelada debe ser confirmada. De los 993 individuos que, al principio, se opusieron al registro del terreno objeto de la presente solicitud, solo 19 opositores— que son los apelantes particulares—no estan conformes con la decision del Juzgado Inferior. El resto, o sea 984, se han conformado con la misma, y actualmente reconocen el derecho de los solicitantes al terreno en cuestion y pagan el canon correspondiente. Si, por ventura, se ordenara la nueva vista del asunto, puede imaginarse los efectos que esto traeria consigo? En primer lugar, ¿como se quedaria la sentencia en cuanto respecta a los 19 opositores particulares que han apelado, en el supuesto de que la apelacion de estos fuera sobreseida * * * * Si se concediera nueva vista, ¿quedaria sin efecto la decision aun para dichos 984 opositores que se han conformado con la misma? De una cosa estamos seguros, y es que, en el caso remoto de que se otorgara nueva vista en este asunto, los 984 opositores se considerarían con derecho a reclamar de nuevo estos terrenos. Y otra vez surgiran las agitaciones y malquerencias contra los solicitahtes, y otra vez estaria amenazado el orden ptiblico en Cataingan, como ocurrio al principio de la vista de este asunto. De todos modos el Gobierno saldria mas beneficiado y ganancioso si se declara que el terreno en cuestion es de los solicitantes, porque los miles de pesos que estos pagan por contribucion territorial dejaria el Gobierno de percibirlos, si dichos terrenos fueran declarados terrenos publicos. * * * - pOr otro lado, ¿que terreno reclaman los solicitantes sino el mismo que el Gobierno ha declarado y reconocido como de aquellos y por el cual los mismos tienen pagado muchos miles de pesos al Gobierno, por contribuci6n territorial, desde 1906 hasta la fecha?"

It must be admitted that the majority opinion is an admirable and scholarly thesis which does credit to the learning and industry of its writer and would undoubtedly win him a diploma in any law school with the ever coveted phrase thereon *summa cum laude*, yet in view of the foregoing I am convinced that the facts established by the evidence of record overwhelmingly support the decision of the trial court.

In view of the above, the opposition of the Government should be overruled and its appeal dismissed and the judgment of the trial court, as to said opposition, should be affirmed.

DISSENTING

Villa-Real, J.,

I concur in the dissenting opinions of both Justice Goddard and Justice Malcolm.

Judgment reversed and case remanded with instructions.

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