

**LA URBANA, SOCIEDAD MUTUA DE CONSTRUCCION Y PRESTAMOS,
PLAINTIFF AND APPELLANT, VS. SIMEON BERNARDO ET AL.,
DEFENDANTS AND APPELLEES. THE INSULAR TREASURER,
APPELLANT.**

G. R. No. 41915. January 08, 1936

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In the complaints filed in the two cases which were jointly heard and in which only one decision was rendered, the plaintiff alleged two causes of action against the defendants. In the first, it stated that 16 transfer certificates of title had been illegally issued over lands of which it was the sole and absolute owner and for which it had, in turn, obtained a transfer certificate of title, and prayed that said 16 titles be declared null and void and cancelled. In the second, it prayed that, should cancellation be not in order, judgment be rendered in its favor and against all the defendants and the assurance fund, in particular, for damages to it resulting from the loss of the portions of land included in the aforesaid titles.

The court rendered judgment declaring the validity of the 9 titles included in the first case, and, consequently, the absolute ownership by the persons to whom they were issued, and allowed the plaintiff an indemnity of P7,297.26, either from the assurance fund or from Juan T. Tabien and his wife. The judgment in the second case found the 7 titles there in question null and void, and, consequently, declared the plaintiff the owner of the portions of land covered thereby, and awarded indemnity from the assurance fund to the persons to whom they were issued in the following proportion: to Mateo Buenaventura, P238.60; to Sebastian Gutierrez, P316.78; to Donato Lazaro, P769.16; to Liberato Alejandro, P426.80; to Anicia Cruz, P2,808.22, and to Valentina de Jesus, P836.50. Antonina Rodriguez, one of the defendants, was not allowed any compensation, without prejudice to the right of action for warranty which she announced she would bring against her vendor, named Emilia Esguerra. It was likewise ordered with respect to the plaintiff that no execution of the judgment be issued against the Insular Treasurer until it is shown that the indemnity allowed could not be paid partially or totally by the spouses Tabien. The defendants Baens, the husbands who were joined with the defendants of the same surname, and the register of deeds were absolved, without pronouncement as to costs.

The plaintiff, the Insular Treasurer, and Antonina Rodriguez appealed from the judgment.

The lands involved in the two cases, aside from others, originally belonged to Lazaro Baens, who obtained the owner's duplicate of the original certificate of title No. 322 on January 12, 1907. This title covered five lots described as parcel A, parcel B, parcel C, parcel D and parcel E. Their total area was 488 hectares, 66 ares, and 63 centiares.

In his lifetime he executed deeds of sale of many portions to no less than 60 different persons, but the deeds did not give an exact description of each portion because there was then no plan by parcels approved by the Director of Lands. Notwithstanding these defects, the register of deeds of the Province of Rizal accepted the deeds of sale

and proceeded to issue the following owner's duplicate: No. 170 in favor of Simeon Bernardo, on January 12, 1907; No. 171 in favor of Quiterio Victorino, on January 12, 1907; No. 251 in favor of Mauricio Gungon, on December 15, 1908; No. 252 in favor of Anastacio Laguerta, on December 15, 1908; No. 253 in favor of Cornelio Bautista y Luzano, on December 16, 1908; No. 254 in favor of Francisca Cabanas, on December 17, 1908; No. 255 in favor of Juan Cruz y de la Cruz, on December 17, 1908; No. 256 in favor of Juan Cruz y de la Cruz, on December 17, 1908; No. 257 in favor of Juan Cruz y de la Cruz, on December 17, 1908; No. 297 in favor of Arsenio Cruz Herrera, on June 13, 1909; No. 480 in favor of Sebastian Gutierrez Lazaro, on October 1, 1910; No. 481 in favor of Donato Lazaro Santiago, on October 1, 1910; No. 482 in favor of Lorenzo Reyes, on October 1, 1910; No. 483 in favor of Mateo Buenaventura Lazaro, on October 1, 1910; No. 484 in favor of Maximino Lazaro y Lazaro, on October 3, 1910; and No. 485 in favor of Liberato Alejandro Agapito, on October 3, 1910." Due to successive transfers, the following changes in the titles took place: Title No. 171 was cancelled and in lieu thereof Nos. 22492 and 22525 were issued, the latter in favor of Ambrosia Salao, married to Silvestre Pascual, on November 23, 1932; No. 251 was cancelled and in lieu thereof titles Nos. 3858 and 3859 were issued, the latter in favor of Sebastian Gutierrez, on December 20, 1917; No. 253 was cancelled and in lieu thereof title No. 3775 was issued in favor of Victoria Gono on September 20, 1917; No. 257 was cancelled and in lieu thereof titles Nos. 3776, 22411 and 22412 were successively issued the latter in favor of Moises Cruz, on October 24, 1932; No. 297 was cancelled and in lieu thereof titles Nos. 327, 776, 12423 and 12424 were issued, the latter in favor of Antonina Rodriguez, on July 16, 1927; No. 482 was cancelled and in lieu thereof titles Nos. 14187 and 14188 were issued, the latter in favor of Valentina de Jesus, on August 14, 1928, and No. 484 was cancelled and in lieu thereof titles Nos. 8551 and 8552 were issued, the latter in favor of Anicia Cruz, on June 25, 1924.

Lazaro Baens died in 1909, and his widow Ramona Roque was appointed judicial administratrix and guardian of their minor children. As a result of the judgment rendered in the case for the revision of the final decree obtained by Lazaro Baens, his title No. 322 was cancelled and No. 7678 was issued in lieu thereof. In the intestate instituted relative to the estate left by the deceased Lazaro Baens, his widow as administratrix, filed a motion alleging that due to a number of transfers made by the deceased in his lifetime, only five (5) lots of the five (5) parcels described in the title were left, and that it was necessary to amend the title so as to include only the lands left belonging to the intestate. The petition was favorably acted upon, and after the segregations were made, the register of deeds issued transfer certificate of title No. 8509 upon cancellation of No. 7678. In title No. 8509, all the lands that had remained in the ownership of the intestate, excluding the portions that had already been sold, were described as parcel A and lot No. 3 only. On November 10, 1928, the register of deeds noted on the books the sale executed on October 12, 1928, by the widow Ramona Roque and her children of parcel A and lot No. 3 in favor of Juan T. Tabien and Ms wife Asuncion Noscail, and the order of adjudication entered in the intestate on August 20, 1917, and on the same date cancelled title No. 8509 and issued in lieu thereof in favor of the heirs of Lazaro Baens title No. 14621, which was likewise cancelled and in lieu thereof title No. 14626 was issued in the name of the vendees, the spouses Tabien.

On December 8, 1928, the spouses Tabien, as registered owners, mortgaged parcel A and lot No. 3 to the plaintiff to secure the sum of P23,000 which it had loaned to them. This mortgage was noted on the title No. 14625 of the Tabiens, which showed no other transfer or lien of any kind. The Tabiens paid neither the loan nor its interest and violated the other conditions of the mortgage, where upon the plaintiff brought a foreclosure suit and after obtaining a judgment in its favor and upon failure of the Tabiens to satisfy its amount, the properties were sold at public auction to the plaintiff for P24,540. This sale was later approved and after the registration thereof, the register of deeds issued transfer certificate of title No. 17950 in favor of the plaintiff.

Independently of these two cases and prior to their commencement, several persons who had purchased lands covered by parcel A and lot No. 3 which were mortgaged and later sold at public auction to the plaintiff, brought

six separate actions for the annulment of the deed of sale in favor of the Tabiens, of their title and of the mortgage which the latter executed in favor of the plaintiff La Urbana. The said six (6) cases were entitled and docketed in the office of the clerk of this court as follows: G. R. No. 34599, Potenciano Gabriel, plaintiff and appellee, vs. Alfredo Baens et al., defendants, La Urbana et al., appellants; G. R. No. 34600, Benigno Gofio et al., plaintiffs and appellees, vs. Daniel T. Piamonte et al., defendants, La Urbana et al., appellants; G. R. No. 34601, Exequiel Bautista, plaintiff and appellee, vs. Daniel T. Piamonte et al., defendants, La Urbana et al., appellants; G. R. No. 34602, Pantaleon Gutierrez, plaintiff and appellee, vs. Ramona Roque et al., defendants, La Urbana et al., appellants; G. R. No. 34603, Marcelino Siochi, plaintiff and appellee, vs. Ramona Roque et al., defendants, La Urbana et al., appellants; and G. R. No. 34604, Anicia Cruz et al., plaintiffs and appellees, vs. Ramona Roque et al., defendants, La Urbana et al., appellants.[1] It will be noted that La Urbana was joined as defendant-appellant in all of them. Final judgment was rendered in those cases declaring the validity of the mortgage executed and registered in favor of La Urbana, after and as a result of which the parties who had possession of lands covered by the mortgage had to redeem them by paying La Urbana the total sum of P41,780.70. (Exhibit O.)

The plaintiff appealed contending (1) That the court should not have cancelled the portion of its title affected by the titles involved in the first case which were declared valid and subsisting; (2) that should its theory not prosper, the court should have assessed the lands at the rate of P3 instead of P2 a square meter; and (3) that the court should have awarded it the costs.

The Insular Treasurer imputes the following errors to the appealed judgment: "(I) The lower court erred in overruling the demurrer of the defendant Insular Treasurer; (II) The lower court erred in not holding that the assurance fund is not liable for alleged loss or damage because the same has not resulted from any perversion of the process of the original registration; (III) The lower court erred in not holding that the plaintiff has not suffered any damage, and if it had, the same has been compensated; (IV) The lower court erred in finding that the value of the lands, for which the alleged loss or damage was awarded to the plaintiff, is two pesos per square meter; (V) The lower court erred in not holding that the assurance fund is not liable for alleged loss or damage because the same was occasioned by a breach of trust; (VI) The lower court erred in not finding that the plaintiff was negligent; (VII) The lower court erred in not finding that the cross-plaintiffs Mateo Buenaventura, Sebastian Gutierrez, Donato Lazaro, Liberate Alejandro, Anicia Cruz, and Valentina de Jesus are negligent, and in absolving the defendants Baens from the complaints; (VIII) The lower court erred in not holding that the result in the former suits cannot have any bearing on the present cases as far as the liability of the assurance fund is concerned; (IX) The lower court erred in sentencing the Insular Treasurer to pay to the plaintiff the sum of P7,297.26, jointly and severally with the defendants Juan T. Tabien and Asuncion Noscal; and in sentencing the Insular Treasurer to pay to the defendants Mateo Buenaventura, Sebastian Gutierrez, Donato Lazaro, Liberate Alejandro, Anicia Cruz, and Valentina de Jesus the sums of P238.60, P316.78, P769.16, P426.80, P2,808.22, and P836.50, respectively; (X) The lower court erred in not dismissing the complaints and cross-complaints, and in denying the motion for a new trial of the defendant Insular Treasurer."

Antonina Rodriguez, in turn, imputes the following errors to the judgment: "(I) The lower court erred in declaring null and void the certificate of title No. 12424, Exhibit L-14, issued by the register of deeds of Rizal in favor of the defendant-appellant Antonina Rodriguez, and in ordering said official to cancel said certificate de oficio; (II) The trial court erred in holding that the plaintiff La Urbana acquired the lands described in the transfer certificate of title No. 17950 in good faith; (III) The trial court erred in not ordering the defendant Emilia Esguerra to pay the sum of P10,000 to the defendant Antonina Rodriguez under the latter's complaint for eviction, and in taking the view that the complaint for eviction had better been determined in a separate action; (IV) The trial court erred in not absolving said defendant Antonina Rodriguez from the complaint, with the costs to the plaintiff La Urbana, and in not granting her motion for a new trial."

In our opinion all the questions at issue may be simplified and reduced to a determination of which of the titles issued are valid and should be respected, and whether the plaintiff is entitled to the indemnity claimed by it from the assurance fund. In viewing the question thus, we assume, of course, the validity of the mortgage executed in favor of the plaintiff in connection with the portions of land not affected by the sixteen titles, which has already been acknowledged and approved by the final judgment rendered in the aforesaid six cases, wherein it was affected by the lands then in litigation.

To begin with we shall state that the lands in question are registered under the Torrens system and the titles thereto issued under its provisions, consequently, all the rights arising therefrom should be governed by the Land Registration Act (No. 496) and its amendments. Section 38 proclaims the indefeasibility of the original title registered as a direct result of the final decree issued in a case after determining and decreeing title in favor of a person, and section 39 provides that every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith shall be deemed the indisputable owners thereof and shall hold the same free from all incumbrance except those noted on the certificate and those which are understood and enumerated in the said section. Applying these provisions to the state of the titles involved in the two cases, except title No. 17950 issued to the plaintiff, the inevitable legal conclusion is that all of them are valid notwithstanding the fact that there were irregularities in their issuance which would possibly have justified the register of deeds in refusing to issue them until the defects had been corrected. (Great Western Telegraph Co. vs. Burnham, 162 U. S., 339; Manila Railroad Co. vs. Rodriguez, 29 Phil., 336; Legarda and Prieto vs. Saleeby, 31 Phil., 590; De la Cruz vs. Fabie, 35 Phil., 144; Bias vs. De la Cruz and Melendres, 37 Phil., 1; Quimson vs. Suarez, 45 Phil., 901; Roman Catholic Bishop of Nueva Caceres vs. Municipality of Tabaco, 46 Phil., 271; Reyes and Nadres vs. Borbon and. Director of Lands, 50 Phil., 791.) The fundamental reason in support of our conclusion is, that those registered owners were purchasers in good faith and for value, and in the duplicates for the owner which they accepted from the grantors it did not appear that the lands were registered in the name of other persons, under which circumstances they had a right to rely entirely on what appeared in the aforesaid titles. We have excepted the title issued to the plaintiff because, as we shall hereafter show, it was not an innocent purchaser in the sense that the phrase is used by the law. It is true that some of the titles which we hold valid were issued subsequently to that of the plaintiff, but this circumstance alone is not sufficient to vitiate them inasmuch as they came directly from former titles and the persons who conveyed the lands were registered owners prior to the plaintiff.

We, therefore, conclude and hold that the sixteen titles, subject matter of the two cases, are valid and that the defendants in whose name they were issued are their registered owners under the Land Registration Law and cannot be deprived of the property therein described. As to title No. 14625 issued to the spouses Tabien, we likewise hold that the same is invalid as to those portions affected by the sixteen titles formerly issued, although we are of the opinion that there was really no need to pass on its validity inasmuch as whatever right they had acquired had been lost by virtue of the mortgage which they executed and the public sale, judicially approved, which subsequently took place.

We now pass to consider the claim of the plaintiff against the assurance fund. Its claim is based on the provisions of sections 101 and 102 of Act No. 496, reading:

"SEC. 101. Any person who without negligence on his part sustains loss or damage through any omission, mistake, or misfeasance of the clerk, or register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, and any person who is wrongfully deprived of any land or any interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner's duplicate, or in any

entry or memorandum in the register or of her official book, or by any cancellation, and who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same, may bring in any court of competent jurisdiction an action against the Treasurer of the Philippine Archipelago, for the recovery of damages to be paid out of the assurance fund.

"SEC. 102. If such action be for recovery for loss or damage arising only through any omission, mistake, or misfeasance of the clerk, or of the register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, then the Treasurer of the Philippine Archipelago shall be the sole defendant to such action. But if such action be brought for loss or damage arising only through the fraud or willful act of some person or persons other than the clerk, the register of deeds, the examiners of titles, deputies, and clerks, or arising jointly through the fraud or wrongful act of such other person or persons and the omission, mistake, or misfeasance of the clerk, the register of deeds, the examiners of titles, deputies, or clerks, then such action shall be brought against both the Treasurer of the Philippine Archipelago and such person or persons aforesaid. In all such actions where there are defendants other than the Treasurer of the Philippine Archipelago and damages shall have been recovered, no final judgment shall be entered against the Treasurer of the Philippine Archipelago until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution can not be collected except by application to the assurance fund. Thereupon the court having jurisdiction of the action, being satisfied as to the truth of such return, may, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the Treasurer of the Philippine Archipelago out of the assurance fund. It shall be the duty of the Attorney-General in person or by deputy to appear and defend all such suits with the aid of the fiscal of the province in which the land lies or the city attorney of the City of Manila as the case may be: Provided, however, That nothing in this Act shall be construed to deprive the plaintiff of any action which he may have against any person for such loss or damage or deprivation of land or of any estate or interest therein without joining the Treasurer of the Philippine Archipelago as a defendant therein."

The Solicitor-General, in behalf of the Insular Treasurer, interposed demurrers to the complaints on the ground that under the law the plaintiff could not maintain at the same time the actions which it commenced because they were incompatible. He likewise contended that it could not ask for alternative reliefs because section 101 requires as a condition precedent to the bringing of an action for indemnity, in case of deprivation or loss of registered property, that the aggrieved party had not been negligent and had no other legal remedy to recover the property to which it alleges to have an indefeasible title. In view of the conclusions we have reached, we do not believe it necessary to pass on the question of law thus raised although the overruling of the demurrers by the court has been assigned as one of the errors of the appealed decision.

It should first of all be noted that the action for indemnity is based not on the rights which the plaintiff acquired by virtue of the mortgage executed in its favor, but on those which it could have acquired by virtue of title No. 17950 executed in its favor wherein it appears as the registered owner. According to the principles underlying our Torrens system, it is a condition sine qua non that the person who brings an action for damages against the assurance fund be the registered owner, and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value. Our inquiry, therefore, shall first be to ascertain if the plaintiff had all these conditions when it acquired the lands at public sale and obtained its transfer certificate of title. It may be unhesitatingly conceded that it purchased the land for value because it cannot be denied that it paid the price above-mentioned which, in turn, represented the amount of the judgment in the foreclosure of the mortgage obtained by it. Is it an innocent purchaser in good faith as contemplated by law? The facts which we shall presently mention answer the question in the negative. The complaints, some original and others amended for the third time, which gave rise to the six cases heretofore referred to, were filed and docketed in the office of the clerk of the Court of First Instance of Rizal on March 18, 1929, on October 5 and 12, of the same year, and on March

18 and 19, 1930, respectively. Immediately after the commencement of those cases, the plaintiffs succeeded in noting on transfer certificate of title No. 14625 of the spouses Tabien notices of *Us pendens* on the following dates: February 23, 1929; April 2, 1929; July 9, 1929; September 12, 1929; September 16, 1929; November 2, 1929; February 6, 1930, and March 27, 1930. The decision of the Court of First Instance of Rizal rendered in the six cases, holding that the conveyance made by the Baens in favor of the Tabiens and the mortgage executed by the latter in favor of the plaintiff were null and void, was promulgated on March 3, 1930. The plaintiff purchased the lands involved in these two cases at public sale on April 10, 1930, and the sale thus made was confirmed by the court on July 19, 1930; and the transfer certificate of title No. 17950 was finally issued in favor of the plaintiff on August 30, 1930. It appears from these data that when the plaintiff purchased the lands at public auction, it had already direct notice or advice that the property was in litigation and that the title held by the Tabiens was judicially questioned. In view of this knowledge, it is legally impossible to hold that the plaintiff acted as an innocent purchaser in good faith in acquiring the property. (*Tuazon vs. Reyes and Siochi*, 48 Phil., 844; *Ignacio vs. Chua Hong*, 52 Phil., 940.) Consequently, not being the registered owner of the portions included in the sixteen titles and not having acquired any right which may be protected in connection with said lands, it is evident that the plaintiff is not entitled to any indemnity for damages from the assurance fund. (*Leung Yee vs. F. L. Strong Machinery Co. and Williamson*, 37 Phil., 644; *Martinez de Gomez vs. Jugo and Lopez de Jesus*, 48 Phil., 118; *Rivera vs. Moran*, 48 Phil., 836; *Angelo vs. Director of Lands*, 49 Phil., 833; *Government of the Philippine Islands vs. Tombis Trino*, 50 Phil., 708; *Cui and Joven vs. Henson*, 51 Phil., 606.)

To obtain a judgment for damages against the assurance fund, by reason of the deprivation or loss of registered land, section 101 requires that the person who claims damages should not have been negligent in acquiring the property or in obtaining the registration thereof in his name. (*Heirs of Enriquez and Villanueva vs. Enriquez and Treasurer of the Philippine Islands*, 44 Phil., 885; *De la Cruz vs. Fabie*, *supra*.) Plaintiff's negligence is manifest in the instant case because with its knowledge of the pending litigations and of the notices of *Us pendens* it should not have taken the risk of purchasing the property if it had acted prudently. As it chose to run the risk, it must suffer the consequences of its own acts.

The case presents another aspect the solution of which leads us to the same result. Under section 101 the damages given are for the deprivation or loss of registered lands or of real rights over them. Generally speaking the assurance fund has not been established to enrich the registered owners. There are cases, of course, where the registered owner might suffer damages, besides compensable injury, but the case before us is different. Plaintiff claims damages because it has been deprived of certain portions of land which were included in the title obtained by it. But it has been established that by virtue of the favorable judgment obtained by it from this court in those six cases, the parties affected were compelled to redeem their property by paying the plaintiff the sum of P41,780.70. As its capital was P23,000 only, and the price it paid for the land at the auction sale did not exceed P24,540, it is evident that it obtained a profit amounting to P17,240.70. In view of this notoriously lucrative transaction for the plaintiff, we do not feel inclined to hold that it still has the right to claim damages from the assurance fund.

We would have closed the discussion on the rights of the plaintiff as mortgagee were it not for the argument, which might be advanced, that as such mortgagee it should have some right under the law to recover the loan which it made in good faith to the Tabiens in view of the fact that the latter's duplicate title was clear and free from any encumbrance. However, it should not be forgotten that the sixteen titles of the other defendants being valid, the title of the Tabiens was without any legal value as to the portions affected, and, consequently, did not transmit any right founded on the mortgage guaranteeing the loan. Moreover, as we have stated, its mortgage credit had been paid by the former litigants who were compelled to redeem their property. Under these circumstances, if it still has any right of action, this should have been directed against the Tabiens to recover its

credit, with interest, of against the assurance fund in case this action should prosper, to be indemnified for damages suffered resulting from the register of deeds having issued the duplicate title of the Tabiens, while the lands were registered in the name of other persons as free from all liens and having subsequently registered its mortgage. At first blush it would seem that the solution thus set out is unjust, but its legality will be easily understood by considering that in this jurisdiction the maxim prior in tempore, potior in jure prevails in registration matters. Inasmuch as the titles of the other defendants, with the exception already stated, were of prior dates, the same must prevail with all their effects. (Legarda and Prieto vs. Saleeby, supra; Acantilado vs. De Santos, 32 Phil., 350.)

In view of the foregoing, the appealed judgment is reversed, and the two causes of action in plaintiffs complaints, as well as the cross-complaints of the defendants, are dismissed, without express pronouncement as to costs. We reiterate the validity of the sixteen titles involved in the cases and more particularly mentioned above. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, Abad Santos, Hull, Vickers, and Recto, JJ., concur.

1. Gabriel vs. Baens, 56 Phil., 314.

DISSENTING OPINION

GOODARD, J. :

Under section 101 of the Land Registration Law (Act No. 496) recourse may be had to the assurance fund by "* * * Any person who without negligence on his part sustains loss or damage through any omission, mistake, or misfeasance of the clerk, or register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act," and

"Any person who is wrongfully deprived of any land or any interest therein without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner's duplicate, or in any entry or memorandum in the register or other official book, or by any cancellation, and who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same, * * *."

Sections 51 and 56 of Act No. 496 read as follows:

"SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering * * *."

* * * * *

"SEC. 56. Each register of deeds shall keep an entry book in which, upon payment of the filing fee, he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of writs or other process filed with him relating to registered land. He shall note in such book the year, month, day, hour, and minute of reception of all instruments, in the order in which they are received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date."

The plaintiff, La Urbana, loaned the spouses Juan T. Tabien and Asuncion Noscal the sum of 723,000, who, in

turn, executed a deed of mortgage, in favor of La Urbana, on land covered by a Torrens certificate of title No. 14625, issued in the name of said spouses, for the purpose of guaranteeing the payment of the above-mentioned sum. This mortgage was duly noted on that certificate of title, on which, at that time, there was nothing to show that anyone, aside from the mortgagors, had any right or title to the land described therein. La Urbana was obliged to foreclose its mortgage and at the foreclosure sale it, in order to recover the loan, bought the mortgaged land notwithstanding the fact that on the date of the foreclosure sale it appeared that certain notices of lis pendens had been noted on the certificate of title No. 14625, subsequent to the date of the notation thereon of the La Urbana mortgage.

In view of the above facts the majority opinion holds that La Urbana acted negligently in purchasing, at said foreclosure sale, the property which was covered by its mortgage because at the time of the purchase it had notice that certain suits were pending in which portions of said property were involved and that, as a consequence of such negligence, La Urbana cannot now recover damages against the assurance fund, notwithstanding the fact that this court now holds valid certain sales of portions of the mortgaged land, executed prior to plaintiff's mortgage, but which were not noted on certificate of title No. 14625 when its mortgage was executed and noted thereon.

I most emphatically dissent from such a holding.

It appears to me that the outstanding flaw in the reasoning of the majority opinion in considering La Urbana as a negligent purchaser, in spite of the fact that it considers it a mortgagee in good faith, lies in the fact that it views the act of purchase by that company, at the foreclosure sale, as a transaction entirely independent from the mortgage, when, as a matter of fact, La Urbana in buying the mortgaged property at that sale merely exercised a right flowing from its mortgage, which was, as seen above, granted on a clean title. What other action could La Urbana have taken to protect its acquired interest in the questioned land?

The above-mentioned notices of lis pendens referred to suits filed by persons to whom the original owners had previously sold portions of the mortgaged land, but which sales, due to the negligence of the register of deeds of the Province of Rizal, had not been noted on either the original or duplicate certificate of title covering said land, at the time the mortgage was executed in favor of La Urbana. Furthermore, as stated above, the majority opinion admits that La Urbana was a mortgagee in good faith for value.

The theory of the majority might be good law if a person, with no prior right, had purchased the land in question at an ordinary execution sale with full knowledge of the notices of lis pendens.

However, in order to protect the prior vested rights of a mortgagee in good faith, a different rule should govern foreclosure sales.

Let us assume that the notices of lis pendens, noted on certificate of title No. 14625, had covered all of the land mortgaged to La Urbana and described in that certificate, instead of only certain portions thereof. It is not improbable that such a situation may be brought before this court at some future time. Under such circumstances, according to the majority opinion, a mortgagee would be held negligent if he bought the mortgaged land at a foreclosure sale and by reason of that alleged negligence he would be barred from recovering damages from the assurance fund if and when the court before which the suits were pending decided that the plaintiffs in those suits were the owners of the mortgaged land, even though the loss suffered by the mortgagee was due to the gross negligence of a register of deeds.

In view of the ruling enunciated by the majority a mortgagee in good faith cannot risk buying at a foreclosure sale, the property mortgaged to him when notices of lis pendens, regardless of their subsequent dates, are noted on the certificate of title on which he relied and, naturally, if a third party buys the mortgaged property at such a sale

it will be at a wholly inadequate price. Furthermore, the mortgagee, after receiving the insignificant amount that a third party might pay under such circumstances, would not be entitled to recover the balance, still due him, from the assurance fund and should he wait for the final determination of the pending actions before filing a foreclosure suit, his right of action might prescribe, or the accumulated interest might so increase the total indebtedness that the value of the mortgaged property would be insufficient to cover the full amount thereof.

As a result of the majority ruling we have here a case in which the mortgagee, through no fault, or negligence for that matter, on his part loses a portion of its security through the fault and negligence of a register of deeds, yet without recourse to a fund which was provided by law to meet just such a case.

I am also of the opinion that as the notices of *Us pendent* were noted on the certificate of title subsequent to the notation of the *La Urbana* mortgage, they may be termed, as to it, subsequent encumbrances. This being so how can it be said that the plaintiff acted negligently in purchasing the mortgaged property at the foreclosure sale? Surely no one will seriously contend that a person acts negligently if he buys mortgaged property at a foreclosure sale knowing that an attachment has been levied on that property subsequent to the date of the mortgage under which it is sold, as such a purchaser acquires the property free from all encumbrances subsequent to that mortgage. Yet this appears to be the purport of the majority opinion.

The majority further holds' that *La Urbana* did not suffer any damage by reason of the fact that it bought the mortgaged property for P24,540, the amount of its judgment, and later realized the sum of P41,780.70 from the sale of that portion of the land not covered by the notices of *lis pendens* thus making a profit and, therefore, concludes that *La Urbana* is not entitled to recover any amount from the assurance fund. The fact that *La Urbana* realized, from a subsequent transaction, a profit on its investment in the purchase of the mortgaged property, not included in the prior unregistered sales, is immaterial. It is equivalent to holding that, if a person loses, say, two-thirds of his land due to the negligence of a register of deeds and later sells the other one-third for the same price he originally paid for the whole parcel, he would not be entitled to recover from the assurance fund the value of the two-thirds, which he lost by reason of the negligence of that official, on the ground that he did not lose at all as he was able to sell one-third for an amount equal to the price he paid for the whole parcel. Such a conclusion is, I was about to say absurd, to say the least untenable. One who buys land at a low price and is able to sell it at a higher price is entitled to the profit resulting either from his luck or foresight.

Quære, What would the majority have held had *La Urbana* sold that portion of the land, not covered by the notices of *lis pendens*, at a loss ?

When *La Urbana* loaned its money to the *Tabiens* and had its mortgage noted on the clean certificate of title No. 14625 issued in their favor, it had a perfect right to rely upon the presumption that the official duty of the register of deeds of Rizal, as set forth in Act No. 496, had been regularly performed. The un-excusable negligence of that official in failing to perform that duty by omitting to note on that title prior sales of portions of the land covered by it has most certainly damaged that company by depriving it of a portion of the land which it bought at the foreclosure sale held under its mortgage.

In the case of *Director of Lands vs. Abad* (61 Phil., 479), this court stated:

*** A person who in good faith acquires any right or title to land registered under the provisions of Act No. 496 would not need to go behind the certificate of title if the register of deeds of the province in which such land is situated performs his legal duty. If a certificate of title cannot be taken at its face value the owner of land registered under the Torrens System will be greatly handicapped in making sales thereof or borrowing money thereon.

*** Certainly negligence should not be imputed to one who does not go behind a certificate of title in view of

the fact that if the register of deeds performs his legal duty such a certificate will show all incumbrances on the land described therein. This court stated in the case of Quimson vs. Suarez (45 Phil., 901, 906), that:

" *One of the principal features of the Torrens System of registration is that all incumbrances on the land or special estates therein shall be shown, or, at least, intimated upon the certificate of title and a person dealing with the owner of the registered land is not bound to go behind the certificate and inquire into transactions, the existence of which is not there intimated. * * *"

The evidence of record shows that due to the un-excusable negligence of the register of deeds of Rizal La Urbana was deprived of 3,648.63 square meters of the land covered by its mortgage and bought by it at foreclosure sale. Under section 106 of Act No. 496 the fair market value of this land constitutes the damage suffered by La Urbana. The evidence also shows that such fair market value cannot be less than P2 per square meter and therefore the plaintiff is entitled to a judgment in its favor against the assurance fund for, at least, the sum of P7,297,26.

Judgment reversed, complaints and cross-complaints dismissed.

The People of the Philippine Islands, plaintiff and appellee, vs. Pedro Salcedo, defendant and appellant.

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