

JOAQUIN V. BASS, PLAINTIFF AND APPELLANT, VS. ESTEBAN DE LA RAMA AND HIJOS DE I. DE LA RAMA, DEFENDANTS AND APPELLEES.*G.R. No. 47662. September 30, 1942*

Ponente: OZAETA, J.

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Pedro Ferrer was the owner of an undivided one-fourth of a parcel of land of 5,047,014 square meters situated in the municipality of Escalante, Province of Occidental Negros, under transfer certificate of title No. 2112. On July 16, 1920, he conveyed his interest and participation in said land to Hijos de I. de la Rama by way of mortgage to secure the payment of P12,500, with interest thereon at 12 per cent per annum. The mortgage was duly recorded in the office of the register of deeds and annotated on the certificate of title on July 27, 1920.

On December 18, 1923, the provincial sheriff of Occidental Neaxos, at the instance of the herein plaintiff Joaquin V. Bass, levied execution on the one-fourth interest of Pedro Ferrer in the said land by virtue of a writ of execution issued by the Court of First Instance of Manila in civil case No. 19816, entitled "Joaquin V. Bass vs. Pedro Ferrer." Notice of the levy was presented to the office of the register of deeds and entered in the day book on December 18, 1923, but was not annotated on the certificate of title. Pursuant to that levy, the provincial sheriff advertised and sold at public auction the said one-fourth interest of Pedro Ferrer in the land above mentioned, adjudicating¹ it to the judgment creditor Joaquin V. Bass for the sum of P4,811.35, which was the amount of the judgment plus interest, costs, and expenses of the sale. The certificate of sale was presented to the office of the register of deeds and entered in the day book on April 9, 1924; but, like the notice of levy, it was not annotated on the corresponding certificate of title. It does not appear that the sheriff ever issued a final deed of sale in favor of Joaquin V. Bass after the lapse of one year. Neither does it appear whether or not the execution debtor Pedro Ferrer exercised the right of redemption within the said statutory period.

In or before 1924 Juliana Fuentebella Vda. de Ferrer, Pedro Ferrer, and Francisco Ferrer instituted civil case No. 2911 in the Court of First Instance of Occidental Negros against the Negros Coal Co., Ltd., Esteban de la Rama, and Hijos de I. de la Rama; and by way of cross-complaint filed in said case on July 30, 1924, the defendant Hijos de I. de la Rama foreclosed the mortgage executed by Pedro Ferrer as well as those executed separately by his co-owners Juliana Fuentebella and Francisco Ferrer on the land described in transfer certificate of title No. 2112. By virtue of the judgment obtained in said case by Hijos de I. de la Rama against Pedro Ferrer and his co-owners, the provincial sheriff advertised and sold at public auction on January 5, 1929, the land described in transfer certificate of title No. 2112, adjudicating it to the judgment creditor Hijos de I. de la Rama for the sum of P50,000. Upon presentation of the certificate of sale to the register of deeds of Occidental Negros, the latter, on January 7, 1929, cancelled transfer certificate of title No. 2112 in the name of Juliana Fuentebella, Francisco Ferrer, and Pedro Ferrer and issued transfer certificate of title No. 11411 in the name of Hijos de I. de la Rama. Subsequently the sheriff's sale was confirmed by the court in an order dated July 27, 1929.

On the last-mentioned certificate of title are noted the following as subsisting encumbrances on the land in question: (1) A mortgage of P400,000 in favor of the Philippine National Bank, recorded October 24, 1935; (2)

another mortgage in favor of the Philippine National Bank to secure credit of P1,000,000 to P2,000,000, recorded February 25, 1938; and (3) notice of lis pendens by the plaintiff in this case, recorded April 21, 1939.

The present action was instituted in or about April, 1939, by Joaquin V. Bass against Esteban de la Rama and Hijos de I. de la Rama to obtain judgment ordering the defendants "to deliver the land in question to the plaintiff and to pay to the latter damages in the sum of P1,220,700" claimed to be the value of the sugar realized from the produce of one-fourth of the said land during the time it has been in the possession of the defendants. That amount has been reduced in the prayer of appellant's brief to P353,365.98.

The theory of the plaintiff, as may be gathered from his complaint, is that by virtue of the certificate of sale issued in his favor by the sheriff on February 15, 1924, which was entered in the day book of the register of deeds on April 9 of the same year, he became the Absolute owner of one-fourth of the land described in transfer certificate of title No. 2112, equivalent to 127.9271 hectares, but that "the defendants illegally and in bad faith and without the consent of the plaintiff appropriated and took possession of the whole land described in said certificate of title from January 5, 1929, up to the present time, including the one-fourth of the same which is the exclusive property of the plaintiff."

The defendants set up the following: special defenses: (1) That the defendant Hijos de I. de la Rama acquired a valid title to the land in question thru the fore-closure of its mortgages thereon and the subsequent issuance to it of transfer certificate of title No. 11411; (2) that the plaintiff has no right or interest in the land in question, for, if he ever had it, he transferred such right and interest to Gaspar Oliver, who in turn sold it to Alejandro Gamboa, and the latter in turn donated it to his brother Antonio Gamboa; and (3) that the plaintiff has lost whatever right and interest he may have had in said land by extinctive prescription.

The trial court dismissed plaintiff's complaint on the ground that whatever right he might have acquired by virtue of the sheriff's sale had been lost thru his failure to redeem Pedro Ferrer's mortgage in favor of Hijo de I. de la Rama before it was foreclosed. Plaintiff appealed.

Appellant acquired Pedro Ferrer's interest and participation in the land in question thru the sheriff's sale of February 15, 1924, subject to the right of redemption of the execution debtor or his redemptioner within one year and to the mortgage of P12,500, with interest at 12 per cent per annum, in favor of Hijo de I. de la Rama. In order to establish his claim of absolute ownership of one-fourth of the land in question, it was incumbent upon appellant to establish that the title thereof had been consolidated in him. That he could show only by proving (a) that Pedro Ferrer had failed to exercise the right of redemption and (6) that he (appellant) had satisfied the pre-existing mortgage in favor of Hijos de I. de la Rama. But that he did not even attempt to do.

Thus we find that the equity of right acquired by the plaintiff in the land in question did not mature into ownership. Does that equity still subsist? In order to determine that question it is necessary to pass upon defendants' special defenses.

1. Anent the first special defense, appellant assigns as error the failure of the trial court to hold that appellees should have made him a party in the foreclosure proceeding. It is intimated that by virtue of the sheriff's sale of February 15, 1924, appellant became a junior encumbrancer and as such should have been impleaded as cross-defendant in the cross-complaint of foreclosure of mortgage interposed by Hijos de I. de la Rama in case No. 2911, as required by section 255 of Act No. 190. In this connection the trial court held that the levy on execution and the subsequent sale at public auction in favor of appellant, not having been noted on the certificate of title, could not serve as notice to the whole world of appellant's equity in the land in question; in other words, they were not binding against appellees. That holding of the trial court is also assigned as error by appellant.

In *Government of the Philippine Islands vs. Aballe* ([1934], 60 Phil., 986), this Court interpreting sections 51 and 56 of Act No. 49G, held that the notation of a writ of attachment in the entry book of the register of deeds is effective although no corresponding notation is made on the certificate of title. That doctrine was followed in *Director of Lands vs. Abad* ([1935J, 61 Phil., 479). In the last-mentioned case, *Levy Hermanos, Inc.*, attached the right, title, and interest of one Crecenciano M. Torres in a parcel of registered land situated in Bacolod, Occidental Negros. The notice of attachment was presented to the register of deeds on January 14, 1931, and noted in the entry book but not on the certificate of title. On August 14, 1931, Crecenciano M. Torres mortgaged the said parcel of land to La Urbana, which registered the mortgage and caused it to be noted on the certificate of title. On April 9, 1932, the register of deeds discovered his failure, through oversight, to annotate the attachment on the certificate of title, and petitioned the court for authority to do so and for an order to La Urbana to surrender the said certificate of title. That motion was denied, but subsequently *Levy Hermanos, Inc.*, renewed it after having bought the property at public auction, and the court granted the motion and ordered the annotation of the attachment with precedence over La Urbana's mortgage. Following the decision in the *Aballe* case, this Court affirmed that order, declaring:

"When *Levy Hermanos, Inc.*, delivered its notice of attachment to the register of deeds of Occidental Negtoa and paid the corresponding fees, it had a right to presume that that official would perform his duty properly. When its attachment was entered upon the entry book it was duly registered according to section 56."

However, the Court also observed that when La Urbana presented its mortgage for registration, it had a right to rely upon the presumption that the official duty of the register of deeds of Occidental Negros, as set forth in section 72 of Act No. 496, had been regularly performed. Continuing, the Court said:

"* * * 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. For instance, in the present case La Urbana would have had to examine over 29,000 day book entries before making the loan to Crecenciano M. Torres if it had been obliged to go behind the transfer certificate of title No. 13126."

Quoting from *Quimson vs. Suarez* (45 Phil., 901, 906), the Court further said:

"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."

It seems to us that these observations of the Court militate against the soundness of the ruling laid down in the *Aballe* case above cited, and we deem it necessary now to re-examine it. The ratio decidendi in that case is as follows:

"Neither is his opposition with respect to lot No. 762 founded, notwithstanding the fact that the notice of attachment had not been noted on the original certificate of title to this lot in the name of Gervasio Ignalaga and Petra Maderazo or on the transfer certificate of title which was later issued in his name, inasmuch as this notice of attachment was duly inscribed in the books of the registry of deeds. According to section 51 of Act No. 496, the registration of the instrument in the books of the registry of deeds is notice to all as regards such document. It does not provide that it is the notation thereof on the certificate of title. And section 66 of the same Act, in prescribing the form in which the registers of deeds should keep their entry books and directing the entry therein, in the order of their reception, of all deeds and other voluntary instruments and all copies of writs and other process filed with them relating to registered land, noting therein the year, month, day, hour

and minute when they received them, provides that inscription or registration shall be regarded as made from the time so noted. According to this, the notation of the attachment of this lot in the entry book of the register of deeds produces all the effects which the law gives to its registration or inscription." (60 Phil., 988.)

Section 51 of Act No. 496 reads as follows:

"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."

This Court interpreted that section to mean that the mere entry in the day book of a document affecting registered land is sufficient notice to the whole world. That would make it unnecessary for the register of deeds to make a brief memorandum of said document on the certificate of title. We think such interpretation disregards the provisions of section 52 of the same Act, which reads as follows:

"No new certificate shall be entered or issued upon any transfer of registered land which does not divest the land in fee simple from the owner or from some one of the registered owners. All interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title, signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner."

It will be noted that section 51 declares the effect of registration, while section 52 specifies the manner of registration. The two sections are complementary to each other and should be interpreted together. To hold that the mere entry of a document in the day or entry book, without noting it on the certificate of title, is sufficient, would render section 52 nugatory and destroy one of the principal features of the Torrens System of registration, namely, that all encumbrances on the land or special estates therein shall be shown or at least intimated upon the certificate of title so that a person dealing with the owner of the land need not go behind the certificate and inquire into transactions the existence of which is not there intimated. It will further be noted that section 114 of the Land Registration Act provides for separate fees for the entry of a document in the entry book and for the annotation thereof on the certificate of title. For each entry in the entry book, including indexing, a fee of only fifty centavos is provided; but for each registration and annotation on the certificate of title a fixed fee of one peso is charged plus an additional fee ranging from P3 to P100, depending upon the value of the property or right involved. If the mere entry of a document in the entry book were sufficient, no one would or should take the trouble of causing it to be annotated on the certificate of title and paying additional fees. But that is unavoidable because section 56 provides "that no registration, annotation, or memorandum on a certificate of title shall be made unless the fees prescribed therefor by this Act are paid within fifteen days' time after the date of the registration of the deed, instrument, order, or document in the entry book or day book, and in case said fee is not paid within the time above mentioned, such entry shall be null and void." It seems clear, therefore, that the mere entry in the day book is not sufficient. It is true that the same section 56 also provides that the register of deeds shall note in the entry book the year, month, day, hour, and minute of reception of all instruments, in the order in which they are received, and that "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. But this provision must be harmonized with the other provisions of the Act, particularly sections 52 and 114, which require the annotation of such instruments on the certificate of title as an indispensable requisite to accomplish registration. Only by so doing may the prime purpose of the Torrens System be fulfilled: to facilitate dealings on land by means of a certificate of title which shall show all encumbrances on the land or special estates therein so that a person dealing

on the land need not go behind that certificate. As a matter of fact, we find no ambiguity in this statement of section 56: "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 second clause of this sentence is explanatory of the first. It means that the effect of the annotation of an instrument on the certificate of title shall retroact to the moment of the entry of the same in the day book. (*Fidelity and Surety Co. vs. Conegero*, 41 Phil., 396, 400.)

In view of these considerations, we are constrained to abandon the ruling laid down in *Government of the Philippine Islands vs. Aballe*, 60 Phil., 986, which was followed in *Director of Lands vs. Abad*, 61 Phil., 479, and to hold that the entry of an instrument in the entry book of the register of deeds produces no legal effect unless a memorandum of such instrument is noted on the certificate of title. In the instant case the notice of levy on execution and the sheriff's sale in favor of appellant of Pedro Ferrer's participation in the land in question were never annotated on the certificate of title. Hence they were not binding against the mortgagee *Hijos de I. de la Rama* and it was not necessary for the latter to implead appellant as junior encumbrancer in the foreclosure of its mortgage. As a result, the equity or right acquired by appellant in Pedro Ferrer's participation in the land in question was wiped out by the foreclosure of the pre-existing mortgage thereon.

2. Aside from the foregoing considerations, it also appears from paragraph V of plaintiff's complaint that the defendant *Hijos de I. de la Rama*, which appears now to be the registered owner of the land in question, has been in the adverse and exclusive possession of said land since January 5, 1929. Nevertheless plaintiff commenced this action and filed notice of *lis pendens* only in April, 1939, that is to say, more than ten years after plaintiff's cause of action had accrued. Since, as we have shown, plaintiff's interest in said land has not been registered, he cannot invoke section 46 of the Land Registration Act in his favor. It is clear, therefore, that his action is barred by the statute of limitations.

In connection with plaintiff's laches, it may further be noted that previous to his filing of a notice of *lis pendens* on the land in question the Philippine National Bank had recorded two mortgages on said land, the first amounting to P400,000 and the second, at least P1,000,000. These encumbrances appellant cannot ignore. Yet he makes no offer to satisfy them, nor even, for that matter, *De la Rama's* original mortgage, which was anterior to appellant's notice of levy on execution. That only goes to emphasize how untenable is appellant's pretension.

3. We cannot close this decision without noting another phase of this case which affects the administration of justice. One of defendants' special defenses is that the plaintiff had no more right or interest in the land in question because he had transferred it to Gaspar Oliver. At the trial, defendants presented Exhibit 8, a signed carbon copy of the deed of sale executed on April 11, 1924, by Joaquin V. Bass in favor of Gaspar Oliver before Notary Public Thos. N. Powell, of Iloilo, in the presence of two witnesses, L. G. Thomas and Pedro Sandoval. To rebut that proof, the plaintiff presented Joaquin V. Bass, who swore in open court that he forged the signature of his uncle Joaquin V. Bass on Exhibit 8 because Gaspar Oliver gave him P400. He also swore that he copied his uncle's cedula number from another document, and that he did not appear before Notary Public Thos. N. Powell, nor did he sign his uncle's name on said document in the presence of said witnesses. On the other hand, Attorney Thos. N. Powell testified by deposition that Joaquin V. Bass signed said Exhibit 8 in his presence and personally showed him his (Joaquin's) cedula, the number of which Powell swore he copied on the corresponding blank space in the notarial acknowledgment in his own handwriting.

It is not necessary for us to determine whether or not Exhibit 8 is a forgery, in view of the conclusions we have reached above; but we cannot overlook the glaring fact that a crime was committed in connection with the trial of this case. If the witness Joaquin V. Bass really forged Exhibit 8, he committed the crime of forgery; and if he did not, he perjured himself when he testified that he did. In any event, this phase of the case should be investigated in

the interest of the administration of justice.

Wherefore, the judgment appealed from is affirmed, with costs.

Let copy of this decision be furnished the provincial fiscals of Iloilo and Occidental Negros, who are hereby directed to investigate Joaquin V. Bass in relation to Exhibit 8 and his testimony in this case and to take such action as the result of their investigation may warrant.

Yulo C. J., and Moran, J., concur.

CONCURRING AND DISSENTING

PARAS, J.,

I concur in the result. The plaintiff-petitioner has lost title to the land in question after the registration of his rights in the day book became a nullity by operation of law. A register of deeds is presumed to have complied with his duties, one of which is to make on the certificate of title memoranda of all entries in his day book upon payment by the interested party of the corresponding fee. If the fee is not paid within fifteen days from the date of the entry in the day book, said entry automatically become null and void. (Section 56, Act No. 496.) No memorandum having been made on the certificate of title involved in the present case, it can be assumed, in the absence of proof to the contrary, that the plaintiff-petitioner or his alleged assignees or successors in interest did not pay the necessary fee, and this failure, in all probability, was due to the considerable value of the property in question which made the fee correspondingly high, and to the fact that said property was encumbered by a heavy mortgage.

On the other hand, I cannot align myself with my colleagues in their attempt to enunciate a new doctrine on what should be the act that operates to convey and affect land registered under the Torrens system. Heretofore, and as stated by the majority, citing the cases of *Government of the Philippine Islands vs. Aballe*, 60 Phil., 986, and *Director of Lands vs. Abad*, 61 Phil., 479, the registration or entry in the day book of the register of deeds has been considered the operative act. While I am sticking to this rule, because it is based on sound practical reasons and on the plain letter of the law, it being provided in section 50 of Act No. 496, that "the act of registration shall be the operative act" and, in section 56 of the same statute, that all instruments or other process "shall be regarded as registered from the time" they are noted in the day book, the majority is for its abrogation and for the doctrine that actual inscription on the certificate of title should be the prevailing operative act. There may be some good reasons for the latter view, but it is clearly against the law and will lead to consequences certainly not to be desired.

By law, by tradition, and in practice, the office of the register of deeds is known to be the source of information regarding titles or other rights to real property, and is therefore the place where any one in search of correct particulars about real estates goes. As will presently be illustrated, the certificate of title cannot always be safely relied upon,—a warning that has resonant echo in the legal provisions that "all records and papers relating to registered land in the office of the register of deeds shall be open to the public" (section 56, Act No. 496) and that "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 persona from the time of such registering, filing, or entering" (section 51, Act No. 496). Such records and papers, it is fair to assume, are kept and filed by the register of deeds with such system and care as to enable him to locate any wanted information with ease and speed, with the result that any interested party need not worry about the necessity of examining

voluminous records and papers.

In actual practice memoranda of transactions about or liens on land are made on the certificate of title days after the filing of the necessary instruments in the office of the register of deeds; and this happens not only because the interested party has fifteen days from the date of the entry in the day book within which to pay the requisite fee, but because the register of deeds has to wait for the presentation of the owner's duplicate certificate, it being of course necessary to make such memoranda both on the original certificate of title and on its duplicate.

Now, if the parties may depend chiefly on what is noted on the certificate of title, they will surely have occasion to discover that, although it is free from all liens and adverse claims because none is registered thereon, instruments creating the same may nevertheless have been filed in the office of the register of deeds, in which case it becomes the legal duty of the latter to enter in the day book the year, day, hour and minute of the reception of such instruments, and to make on the certificate of title the corresponding memoranda, which, when duly made, retroact to the day of the entry in the day book. (Section 56, Act No. 496.) Under the rule announced in the decision of the majority, the retroactive force thus expressly accorded by the law to such entry is in effect nullified.

Suppose the plaintiff-creditor in a suit for the recovery of a sum of money, after finding in the office of the register of deeds that a certain parcel of land is registered in the name of the defendant-debtor whose title appears to be clear of all liens and adverse claims because none appears in the day book, attaches the land in accordance with law and pays the corresponding entry fee. In such case, wherein the duplicate certificate need not be presented at the time of registration (section 72, Act No. 496), the register of deeds necessarily has to enter or register said attachment in his day book. The plaintiff-creditor, who has fifteen days within which to pay the fee for noting the attachment on the certificate of title, does not pay the same until the tenth day. On the same date, notwithstanding said attachment, the defendant-debtor, who is holding the owner's duplicate certificate of title, sells the property to a third person who, relying simply on what appears thereon, enters into a contract of purchase and sale which is filed in the office of the register of deeds. In this example, even if the purchaser pays the required fees, the attachment levied at the instance of the plaintiff-creditor will still have to be noted on the new certificate of title, since its entry in the day book is prior, and the purchaser must content himself with a title subject to the rights of the attaching creditor. If the attachment is thus recognized, it must be for the reason that the registration in the day book is considered the operative act that binds the land.

Conversely, suppose a person purchases a parcel of land with a clean title and all the necessary instruments regarding the transaction are duly presented in the office of the register of deeds and entered in the day book, but no new certificate of title has as yet been issued for nonpayment of the corresponding fee, the purchaser having fifteen days within which to pay the same. In the meantime the plaintiff-creditor goes to the office of the register of deeds and, finding that the certificate of title in the name of the defendant-debtor, without reference to the day book, is free from all liens and encumbrances, causes the property to be attached and the attachment to be noted on the certificate of title on the tenth day after the entry of the purchaser's documents in the day book, but before the latter has paid the fees required for the issuance of a new certificate of title. Under the theory of the majority, the right of the attaching creditor should prevail over that of the purchaser simply because the former's right is already noted on the certificate of title. The innocent purchaser, whose proprietary right was entered on a prior date in the day book, is thus put at a great disadvantage, nay, penalized for his compliance with the law granting him fifteen days within which to pay the fee necessary to perfect his title.

In other words, the theory of the majority is conducive to the possibility that the owner may in succession negotiate his certificate of title to different persons in fraud of one or the other, or of all, and he can be stopped only when he is unable to continue to be the holder thereof. The benefit from the negotiability of the certificate of

title which the majority is zealous about, and which is more apparent than real, is thus entirely erased by the evil resulting from such possibility.

The majority has also expressed excessive concern over the indefeasibility of the Torrens' title. I am of the opinion that, when a Torrena title is referred to as being indefeasible, the correct idea intended to be conveyed is that all questions that led to its issuance in favor of the registered owner have been definitely closed, but that subsequent transactions regarding the land covered by said title are not in themselves indefeasible and are subject to the rule of priority prescribed in section 56, in relation to section 50, of Act No. 496.

CONCURRING AND DISSENTING

BOCOBO, J.,

I concur in the result. Presumably, the required fee was never paid by the appellant; so the entry of the sheriff's sale in his favor became null and void according to section 56 of the Land Registration Act. This nullity of said entry fully disposes of appellant's first special defense and it therefore becomes unnecessary to abandon the doctrine laid down in the case of *Government of the People of the Philippines vs. Aballe*, which appears to be supported by writers on the subject. For example Niblack in his "Analysis of the Torrens System" says on page 140:

"The rule, that a purchaser may rely on the register to determine the status of the main title, is subject to at least one practical exception. The acts provide for the filing of instruments dealing with registered land, and for the notation thereon of the year, month, day, hour, and minute of such filing. Many acts expressly provide for the relating; back of the registration, when made, to the time of the filing of the instrument, and perhaps this is the legal effect of registration whether it is so declared in the statute or not. A person dealing with land, therefore, must take notice of all instruments and the contents of them, which have been received at the registry, and which have not yet been registered. According to the English rule, 'when an instrument purporting to be already executed by a registered proprietor is delivered at the registry for registration, notice of the fact shall be sent to him at his registered address and unless the execution is admitted by him, the registration shall not be completed until after the expiration of three clear days from the posting of the notice.' It is nowhere contemplated that the register shall be kept down to date, and an examination of the instruments not yet registered must be made, since they take priority according to the order in which they are received for registration."

Moreover, I believe that under said section 56, such instrument filed with the office of the Register of Deeds but not yet noted on the certificate of title serves as notice to the world only within fifteen days if the required fee is not paid within said period. This is so because in that case the entry on the day book becomes null and void if the required fee is not paid. Therefore, anyone dealing with the land within that period is bound only for fifteen days by said instrument so entered but not yet noted on the certificate of title. In this case, nearly five years elapsed between the entry of the sheriff's sale to appellant and the sheriff's sale to appellees; that is, between April 9, 1924 and January 5, 1929. If the sheriff's sale to appellees had been effected before or within fifteen days from April 9, 1924, appellees would have been bound for fifteen days to take notice of the instrument concerning the first sheriff's sale which was received at the registry on said date.

Judgment affirmed with instructions.

December 14, 1942

RESOLUTION ON MOTION FOR RECONSIDERATION

OZAETA, J.:

In his motion for reconsideration appellant contends that the registration of the certificate of sale made by the sheriff in favor of the appellee Hijos de I. de la Rama on January 27, 1929, before the sale was confirmed by the court, was not authorized by law and, therefore, the issuance by the register of deeds in favor of said appellee of transfer certificate of title No. 11411 was null and void. Consequently, appellant contends, the annotation on the day book of the certificate of sale made by the sheriff in his favor on April 9, 1924, should prevail.

We find no merit in appellant's contention, which he raises for the first time in his motion for reconsideration. The preventive annotation or entry on the day book of appellant's certificate of sale ceased to have any legal effect after the lapse of fifteen days without said document having been annotated on the certificate of title, presumably due to appellant's failure to pay the statutory fees to the register of deeds. The irregularity in the registration of the sheriff's deed of sale in favor of Hijos de I. de la Rama on January 27, 1929, before it was approved by the court, was cured by the subsequent approval or confirmation of said sale by the court on July 27, 1929, no third party having acquired a better right to the land in question during the intervening period. If appellant had registered the deed of sale in his favor before July 27, 1929, when the foreclosure sale in favor of Hijos de I. de la Rama was approved by the court, his new contention might prevail.

In a separate motion appellant announces his intention to present a certified copy of the sheriff's final deed of sale supposed to have been executed on March 10, 1925, the original of which, according to him, was delivered to his former attorney, Alejandro de Guzman. But said document, never having been registered, could not in any way affect the rights of the appellee over the land in question. Hence the presentation of a certified copy thereof to this Court would serve no useful purpose. It is also alleged in said motion that, included in the price of P4,811.33 for which the interest and participation of the execution-debtor Pedro Ferrer in the land in question was adjudicated by the sheriff to appellant, was an item of P50.58 "por los derechos y honorarios" of the sheriff, and that said sum should cover not only the sheriff's fees but also the registration fees. That has not been proved: but even assuming that to be true, it would not necessarily show that the register of deeds actually received the corresponding fees. The fact, deducible from appellant's motion, that he kept the sheriff's final deed of sale dated March 10, 1925, and delivered it to his first attorney in the present case instead of filing it in the office of the register of deeds accompanied by the necessary fees, clearly shows that appellant failed to take the steps required by law to protect and perfect his right.

Regarding appellant's contention that this Court should not have considered the question of prescription of appellant's action because that involved a question of fact which cannot be raised before this Court on appeal, suffice it to say that this appeal was taken directly to this Court because the value of the property in litigation exceeded P50,000, and in such a case this Court has jurisdiction to determine questions of fact and of law.

Wherefore, appellant's motion for reconsideration is denied. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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