

OH CHO, APPLICANT AND APPELLEE, VS. THE DIRECTOR OF LANDS, OPPOSITOR AND APPELLANT.

G. R. No. 48321. August 31, 1946

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a Judgment decreeing the registration of a residential lot located in the Municipality of Guinayangan., Province of Tayabas, in the name of the applicant.

The opposition of the Director of Lands is based on the applicant's lack of title to the lot, and on his disqualification, as alien, from acquiring lands of the public domain.

The applicant, who is an alien, and his predecessors in interest have been in open, continuous, exclusive and notorious possession of the lot from 1880 to the filing of the application for registration on January 17, 1940.

The Solicitor-General reiterates the second objection of the opponent and adds that the lower court committed an error in not declaring null and void the sale of the lot to the applicant.)

The applicant invokes the Land Registration Act (Act No. 496), or should it not be applicable to the case, then he would apply for the benefits of the Public Land Act (C.A. No. 141).

The applicant failed to show that he has title to the lot that may be confirmed under the Land Registration Act. He failed to show that he or any of his predecessors in interest had acquired the lot from the Government, either by purchase or by grant, under the laws, orders and decrees promulgated by the Spanish Government in the Philippines, or by possessory information under the Mortgage Law (section 19, Act 496). All lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of predecessors in interest since time immemorial, such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest. (*Cariño vs. Insular Government*, 212 U. S., 449; 53 Law. ed., 594). The applicant does not come under the exception, for the earliest possession of the lot by his first predecessor in interest began in 1880.

As the applicant failed to show title to the lot, the next question is whether he is entitled to a decree of registration thereof under the provisions of the Public Land Act (C. A. No. 141). Under the provisions of the Act invoked by the applicant, he is not entitled to a decree of registration of the lot, because he is an alien disqualified from acquiring lands of the public domain (sections 48, 49, C. A. No. 141).

As the applicant failed to prove title to the lot and has invoked the provisions of the Public Land Act, it seems unnecessary to make pronouncement in this case on the nature, character or classification of the lot sought to be registered.

It may be argued that under the provisions of the Public Land Act the applicant's immediate predecessors in

interest would have been entitled to a decree of registration of the lot had they applied for its registration; and that he having purchased or acquired it, the right of his immediate predecessors in interest to a decree of registration must be deemed also to have been acquired by him. The benefits provided in the Public Land Act for applicant's immediate predecessors in interest are or constitute a grant or concession by the State; and before they could acquire any right under such benefits, the applicant's immediate predecessors in interest should comply with the condition precedent for the grant of such benefits. The condition precedent is to apply for the registration of the land of which they had been in possession at least since July 26, 1894. This the applicant's immediate predecessors in interest failed to do. They did not have any vested right in the lot amounting to title which was transmissible to the applicant. The only right, if it may thus be called, is their possession of the lot which, tacked to that of their predecessors in interest, may be availed of by a qualified person to apply for its registration but not by a person as the applicant who is disqualified.

It is urged that the sale of the lot to the applicant should have been declared null and void. In a suit between vendor and vendee for the annulment of the sale, such pronouncement would be necessary, if the court were of the opinion that it is void. It is not necessary in this case where the vendors do not even object to the application filed by the vendee.

Accordingly, judgment is reversed and the application for registration dismissed, without costs.

Moran, C. J., Feria, Pablo, Hilado and Bengzon, JJ., concur.

PERFECTO, J., concurring:

Oh Cho, a citizen of the Republic of China, purchased in 1928 from Antonio, Luis and Rafael Lagdameo a parcel of land located in the residential district of Guinayangan, Tayabas, which has been in the continuous, public, and adverse possession of their predecessors in interest as far back as 1830. On June 17, 1940, Oh Cho applied for the registration of said parcel of land. The Director of lands opposed the application because, among other grounds, the Constitution prohibits aliens from acquiring public or private agricultural lands.

One of the witnesses for the applicant, on cross-examination, expressly admitted that this land in question is susceptible of cultivation and may be converted into an orchard or garden. Rodolfo Tiquia, inspector of the Bureau of lands, testifying as a witness for the government, stated that the land, notwithstanding the use to which it is actually devoted, is agricultural land in accordance with an opinion rendered in 1939 by the Secretary of Justice. The pertinent part of said opinion, penned by Secretary Jose Abad Santos, later Chief Justice of the Supreme Court, is as follows:

"1. Whether or not the phrase 'public agricultural land' in section 1 Article XII, of the Constitution may be interpreted to include residential, commercial or industrial lots for purposes of their disposition.

"1. Section 1, Article XII of the Constitution classifies lands of the public domain in the Philippines into agricultural, timber and mineral. This is the basic classification adopted since the enactment of the Act of Congress of July 1, 1902, known as the Philippine Bill. At the time of the adoption of the Constitution of the Philippines, the term 'agricultural public lands' had, therefore, acquired a technical meaning in our public laws. The Supreme Court of the Philippines in the leading case of *Mapa vs. Insular Government*, 10 Phil., 175, held that the phrase 'agricultural public lands' means those public lands acquired from Spain which are neither timber nor mineral lands. This definition has been followed by our Supreme Court in many subsequent cases. (*Montano vs. Ins. Gov't* 12 Phil., 572, 574; *Santiago vs. Ins. Gov't*, 12 Phil., 593; *Ibañez de Aldecoa vs. Ins. Gov't*, 13 Phil., 159; *Ins. Gov't vs. Aldecoa & Co.*, 19 Phil., 505; 516; *Mercado vs. Collector of Internal Revenue*, 32 Phil., 271, 276; *Molina vs. Rafferty*, 38 Phil., 167, 170; *Ramos vs. Director of lands*, 39 Phil.,

175, 181; *Jocson vs. Director of Forestry*, 39 Phil., 560, 564; and *Ankron vs. Government of the Philippines*, 40 Phil., 10, 14.)

"Residential, commercial or industrial lots forming part of the public domain must have to be included in one or more of these classes. Clearly, they are neither timber nor mineral, of necessity, therefore, they must be classified as agricultural.

Viewed from another angle, It has been held that in determining whether lands are agricultural or not, the character of the land is the test (*Odell vs. Durant*, 62 N. W. 524; *Lerch vs. Missoula Brick & Tile Co.*, 123 p. 85). In other words, it is the susceptibility of the land to cultivation for agricultural purposes by ordinary farming methods which determines whether it is; agricultural or not (*State vs. Stewart*, 190 p. 129)."

Judge Pedro Magsalin, of the Court of First Instance of Tayabas, rendered a decision on August 15, 1940, overruling the opposition without much explanation and decreeing the registration prayed for by the applicant. The Director of lands appealed from the decision, and the Solicitor General appearing for appellant, maintains that the applicant, not being a citizen of the Philippines, is disqualified to buy or acquire the parcel of land in question and that the purchase made in 1938 is null and void.

This is the question squarely submitted to us for decision. The majority; although reversing the lower court's decision and dismissing the application with which we agree, abstained from declaring null and void the purchase made by Oh Cho in 1938 as prayed for by the appellant. We deem it necessary to state our opinion on the important question raised by the Solicitor General. Having been squarely raised, it must be squarely decided.

The Solicitor General argued in his brief as follows:

"I. The lower court erred in decreeing the registration of the lot in question in favour of the complaint who, according to his own voluntary admission, is a citizen of the Chinese Republic.

"(a) The phrase 'agricultural land' as used in the Act of Congress of July 1, 1902, and in the Public Land Act includes residential lots.

"In this jurisdiction lands of the public domain suitable for residential purposes are considered agricultural lands under the Public and law. The phrase 'agricultural public lands' has a well settled judicial definition. It was used for the first time in the Act of Congress of July 1, 1908, known as the Philippine Bill. It means those public lands acquired from Spain which are neither mineral nor timber lands (*Mapa vs. Insular Government*, 10 Phil. 175; *Montano vs. Insular Government*, 12 Phil. 572; *Ibañes de Aldecoa vs. Insular Government*, 13 Phil. 159; *Ramos vs. Director of Lands*, 39 Phil. 175; *Jocson vs. Director of Forestry*, 39 Phil., 560; *Ankron vs. Government of the Philippine Islands*, 40 Phil., 10). In the case of *Mapa vs. Insular Government*, supra, the Supreme Court, in defining the meaning and scope of that phrase from the context of sections 13 and 15 of that Act; said:

"The phrase 'agricultural public lands' as defined by the Act of Congress of July 1, 1902, which phrase is also to be found in several sections of the Public Land Act (No. 926) means those public lands acquired from Spain which are neither mineral nor timber lands.

* * * * *

"We hold that here is to be found in the act of Congress a definition of the phrase "agricultural public lands," and after a careful consideration of the question we are satisfied that the only definition which exists in said Act is the definition adopted by the court below. Section 13 says that the Government shall "make rules and regulations for the lease, sale; or other dispositions of public lands other than timber or mineral lands." To our minds that is the only definition that can be said to be given to agricultural lands. In, other words, that the phrases "agricultural lands" as used in Act No. 926 means those public lands acquired from Spain which are not timber or mineral land. * * * (*Mapa vs. Insular Government*, 10 Phil., 175, 178, 182, emphasis added.)

“This phrase 'agricultural public lands' was subsequently used in Act No. 926, which is the first public land law of the Philippines. As therein used, the phrase was expressly given by the Philippine Commission the same meaning Intended for it by Congress as interpreted in the case of Mapa vs. Insular Government, supra. This is self-evident from a reading of sections 1, 10, 32, and 64 (subsection 6 of Act No. 926). Whenever the phrase 'agricultural public lands' is used in any of said sections, it is invariably followed by the qualifications 'as defined by said Act Congress of July first, nineteen hundred and two.'

"More specifically, in the case of Ibañez de Aldecoa vs. Insular Government, supra the Supreme Court held that a residential or building lot, forming part of the public domain, is agricultural land, irrespective of the fact that it is not actually used for purposes or agriculture for the simple reason that it is susceptible of cultivation and may be converted into a rural estate, and because when a land is not mineral or forestal in Its nature it must necessarily be included within the classification of agricultural land. Because of the special applicability of the doctrine laid down in said case, we quote at some length from the decision therein rendered:

“The question set up in these proceedings by virtue of the appeal interposed by counsel for Juan Ibañez de Aldecoa, is whether or not a parcel of land that is susceptible of being cultivated, and ceasing to be agricultural land, was converted into a building lot, is subject to the legal provisions in force regarding Government public lands which may be alienated in favor of private individuals or corporations. * * *

* * * * *

“Hence, any parcel of land or building lot is susceptible of cultivation, and may be converted into a field, and planted with all kinds of vegetation; for this reason, where land is not mining or forestal in its nature, it must necessarily be included within the classification of agricultural land, but because it is actually used for the purposes of agriculture, but because it was originally agricultural and may again become so under other circumstances; besides the Act of Congress (of July 1, 1902) contains only three classifications, and makes no special provision with respect to building lots or urban land that have ceased to be agricultural land, * * *

* * * * *

“From the language of the foregoing provisions of the law, it is deduced that, with the exception of those comprised within the mineral and timber zone, all lands owned by the State or by the sovereign nation are public in character, and per se alienable and, provided they are not destined to the use of public in general or reserved by the Government in accordance with law, they may be acquired by any private or juridical person; and considering their origin and primitive state and the general uses to which they are accorded, they are called agricultural lands, urban lands and building lots being included in this classification for the purpose of distinguishing rural and urban estates from mineral and timber lands; the transformation they may have undergone is no obstacle to such classification as the possessor thereof may again convert them into rural estates.’ (Ibañez de Al decoa vs. Insular Government 13 Phil., 161, 163, 164, 165 166; emphasis added.)

“(b) Under the Constitution and Commonwealth Act No. 141 (Public Land Act), the phrase ‘public agricultural land’ includes land of the public domain suitable for residential purposes.

“Section 1, Article XII of the Constitution, reads as follows:

”All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated * * *.’ (Emphasis added.)

“Under the above-quoted provision, the disposition, exploitation, development or utilization of the natural resources, including agricultural lands of the public domain, is limited to citizens of the Philippines or to the corporations or associations therein mentioned. It also clearly appears from said provision that natural resources, with the exception of public agricultural land, are not subject to alienation.

“On November 7, 1936, or more than one year after the adoption of the Constitution, Commonwealth Act No. 141, known as the Public Land Act, was approved. Under this Act the lands of the public domain have been classified into three divisions: (a) alienable or disposable, (b) timber, and (c) mineral lands. The lands designated alienable or disposable correspond to the lands designated in the Constitution as public agricultural lands, because under section 1, Article XII, public agricultural lands are the only natural resources of the country which are subject to alienation or disposition.

"Section 9 of Commonwealth Act No. 141 provides that the alienable or disposable public lands shall be classified, according to the use or purposes to which they are destined, into agricultural, residential, commercial, industrial, etc., lands. At first blush it would seem that under this classification residential land is different from agricultural land. The difference, however, is more apparent than real. 'Public agricultural lands' as that phrase is used in the Constitution means alienable lands of the public domain and therefore this phrase is equivalent to the lands classified by Commonwealth Act No. 141 as alienable or disposable. The classification provided in section 9 is only for purposes of administration and disposition, according to the purposes to which said lands are especially adapted. But notwithstanding this classification all of said lands are essentially agricultural public lands because only agricultural public lands are subject to alienation or disposition under section 1, Article XII of the Constitution. A contrary view would necessarily create a conflict between Commonwealth Act No. 141 and section 1 of Article XII of the Constitution, and such conflict should be avoided, if possible, and said Act construed in the light of the fundamental provisions of the Constitution and in entire harmony therewith.

“‘Another universal principle applied in considering constitutional questions is, that an Act will be so construed, if possible, as to avoid conflict with the Constitution, although such a construction may not be the most obvious or natural one. "The Courts may resort to an implication to sustain a statute, but not to destroy it." But the courts cannot go beyond the province of legitimate construction, in order to save a statute; and where the meaning is plain, words cannot be read into it or out of it for that purpose.’ (1 Sutherland, Statutory Construction, pp. 135, 126.)

“In view of the fact that more than one year after the adoption of the Constitution the National Assembly revised the Public land law and passed Commonwealth Act No. 141, which is a compilation of the laws relative to lands of the public domain and the amendments thereto, the statute so revised and compiled must necessarily conform to the Constitution.

“‘Where the legislature has revised a statute after a Constitution has been adopted, such a revision is to be regarded as a legislative construction that the statute so revised conforms to the Constitution.’ (59 C.J., 1102; emphasis added.)

"By way of illustration, let us suppose that a piece or tract of public land has been classified pursuant to section 9 of Commonwealth Act No. 141 as residential land. If, by reason of this classification, it is maintained that said land has ceased to be agricultural public land, it will no longer be subject to alienation or disposition by reason of the constitutional provision that only agricultural lands are alienable; and yet such residential lot is alienable under sections 58, 59, and 60 of Commonwealth Act No. 141 to citizens of the Philippines or to corporations or associations mentioned, in section 1, Article XII of the Constitution. Therefore, the classification of public agricultural lands into various subdivisions is only for purposes of administration, alienation or disposition, but it does not destroy the inherent nature of all such lands as public agricultural lands.

“(c) Judicial interpretation of doubtful clause or phrase used in the law, controlling.

“The judicial interpretation given to the phrase “public agricultural land” is a sufficient authority for giving the same interpretation to that phrase as used in subsequent legislation, and this is especially so in view of the length of time during which this interpretation has been maintained by the Courts. On this point Sutherland has the following to say:

“When a Judicial interpretation has once been put upon a clause, expressed in a vague manner by the legislature, and difficult to be understood that ought of itself to be a sufficient authority for adopting the same construction. Bullar, J., said: “We find one solemn determination, of these doubtful expressions in the statute, and as that construction has since prevailed, there is no reason why we should now put another construction on the act on account of any supposed change of convenience.” This rule of construction will hold good even if the court be of opinion that the practical construction is erroneous; so that if the matter were res integra the court would adopt a different construction. Lord Cairns said: “I think that with regard to statutes * * * it is desirable not so much that the principle of the decision should be capable at all times of justification, as that the law should be settled, and should, when once settled, be maintained without any danger of vacillation or uncertainty.” Judicial usage and practice will have weight, and when continued for a long time will be sustained though carried beyond the fair purport of the statute.” (II Lewis’ Sutherland Statutory Construction, pp. 892, 893.)

“An important consideration affecting the weight of contemporary Judicial construction is the length of time it has continued. It is adopted, and derives, great force from being adopted, soon after the enactment of the law. It may be, and is presumed, that the legislative sense of its policy, and of its true scope and meaning, permeates the judiciary and controls its exposition. Having received at that time a construction which is for the time settled, accepted, and thereafter followed or acted upon, it has the sanction of the authority appointed to expound the law, just and correct conclusions, when reached, they are, moreover, within the strongest reasons on which is founded the maxim of stare decisis. Such a construction is publicly given, and the subsequent silence of the legislature is strong evidence of acquiescence, though not conclusive, * * * (II Lewis’ Sutherland Statutory Construction, pp. 894-895.)

“Furthermore, when the phrase ‘public agricultural land’ was used in section 1 of Article XII of the Constitution, it is presumed that it was so used with the same judicial meaning therefore given to it and therefore the meaning of the phrase, as used in the Constitution, includes residential lands and other lands of the public domain, but excludes mineral and timber lands.

“Adoption of provisions previously construed—ad. Previous construction by Courts—Where a statute that has been construed by the courts of last resort has been reenacted in same, or substantially the same, terms, the legislature is presumed to have been familiar with its construction, and to have adopted it as a part of the law, unless a contrary intent clearly appears, or a different construction is expressly provided for; and the same rule applies in the construction of a statute enacted after a similar or cognate statute has been judicially construed. So where words or phrases employed in a new statute, have been construed by the courts to have been used in a particular sense in a previous statute on the same subject, or one analogous to it, they are presumed, in the absence of clearly expressed intent to the contrary, to be used in the same sense in the new statute as in the previous statute.” (59 C. J., 1061-1063.)

“Legislative adoption of judicial construction.— In the adoptions of the code, the legislature is presumed to have known the judicial construction which had been placed on the former statutes; and therefore the reenactment in the code or general revision of provisions substantially the same as those contained in the former statutes is a legislative adoption of their known judicial construction, unless a contrary intent is clearly manifest. So the fact that the revisers eliminated statutory language after it had been judicially construed shows that they had such construction in view.” (59 C. J. 1102.)

“II. The lower court erred in not declaring null and the sale of said land to the appellant (appellee).

"Granting that the land in question has ceased to be a part of the lands of the public domain by reason of the long, continuous, public and adverse possession of the applicant's predecessors in interest, and that the latter had performed all the conditions essential to a Government grant and were entitled to a certificate of title under section 48, subsection (b), of Commonwealth Act No. 141, still the Sale of said land on December 8, 1938, to the applicant as evidenced by Exhibits B and C, was null and void for being contrary to section 5, Article XII of the Constitution, which reads as follows:

"Save in oases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

"The applicant, being a Chinese citizen, is disqualified to acquire or hold lands of the public domain (section 1, Article XII of the Constitution; sections 12, 22, 23, 33, 44, 48, Commonwealth Act No. 141), consequently also disqualified to buy and acquire private agricultural land.

"In view of the well settled judicial meaning of the phrase 'public agricultural land,' as hereinbefore demonstrated, the; phrase 'private agricultural land,' as used in the above quoted provision, can only mean land of private ownership, whether agricultural, residential, commercial or industrial. And this is necessarily so, because the phrase 'agricultural land' used in the Constitution and in the Public Land Law must be given the same uniform meaning, to wit, any land of the public domain or any land of private ownership, which is neither mineral nor forestal.

"A word or phrase repeated in a statute will bear the same meaning throughout the statute, unless a different intention appears. * * * Where words have been long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute in which they are used, the rule of construction requires that the words used In such statute should be construction according to the sense in which they have been so previously used, although that sense may vary from the strict literal meaning of the words." (II Sutherland, Statutory Construction. p. 758.)

"This interpretation is in harmony with the nationalistic policy, spirit and purpose of our Constitution and laws, to wit, 'to conserve and develop the patrimony of the nation,' as solemnly enunciated in the preamble to the Constitution.

"A narrow and literal interpretation of the phrase 'private agricultural land' would impair and defeat the nationalistic aim and general policy of our laws and would allow a gradual, steady, and unlimited accumulation in alien hands of a substantial portion of our patrimonial estate, to the detriment of our national solidarity, stability and independence. Nothing could prevent the acquisition of a great portion or the whole of a city by subjects of a foreign power. And yet a city or urban area is more strategical than a farm or rural land.

"The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and the obvious purpose of the law should not be sacrificed to a liberal interpretation of such words." (II Sutherland, Stat. Construction, pp. 721, 722.)

"We conclude, therefore, that the residential lot which the applicant seeks to register in his name falls within the meaning of private agricultural land as this phrase is used in our Constitution and, consequently, is not subject to acquisition by foreigners except by hereditary succession.

The argument holds water. It expresses a correct interpretation of the Constitution and the real intent of the Constitutional Convention.

One of our fellow members therein, Delegate Montilla, said:

"The constitutional precepts that I believe will ultimately lead us to our desired goal are: (1) the complete nationalization of our lands and natural resources; (2) the nationalization of our commerce and industry compatible with good international practices. With the complete nationalization of our lands and natural resources it is to be understood that our God-given birthright should be one hundred per cent in Filipino hands * * * Lands and natural resources are immovable and as such can be compared to the vital organs of a person's body, the lack of possession of which may cause instant death or the shortening of life. If we do not completely nationalize these two of our most important belongings, I am afraid that the time will come when we shall be sorry for the time we were born. Our independence will be just a mockery, for what kind of independence are we going to have if a part of our country is not in our hands but in those of foreigners?" (2 Aruego, *The Framing of the Philippine Constitution*, p. 592.)

From the same book of Delegate Aruego, we quote;

"The nationalization of the natural resources of the country was intended (1) to insure their conservation for Filipino posterity; (2) to serve as an instrument of national defense, helping prevent the extension into the country of foreign control through peaceful economic penetration; and (3) to prevent making the Philippines a source of international conflicts with the consequent danger to its internal security and independence.

* * * * *

"* * * In the preface to its report, the committee on nationalization and preservation of lands and other natural resources said:

"International complications have often resulted from the existence of alien ownership of land and natural resources in a weak country. Because of this danger, it is best that aliens should be restricted in the acquisition of land and other natural resources, in example is afforded by the case of Texas. This state was originally a province of Mexico. In order to secure its rapid settlement and development, the Mexican government offered free land to settlers in Texas. Americans responded more rapidly than the Mexicans, and soon they organized a revolt against Mexican rule, and then secured annexation to the United States. A new increase of alien landholding in Mexico has brought about a desire to prevent a repetition of the Texas affair. Accordingly the Mexican constitution of 1917 contains serious limitations on the right of aliens to hold lands and mines in Mexico. The Filipinos should profit from this example.'

* * * * *

"It was primarily for these reasons that the Convention approved readily the proposed principle of prohibiting aliens to acquire, exploit, develop, or utilize agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines. For the same reasons the Convention approved equally readily the proposed principle of prohibiting the transfer or assignment to aliens of private agricultural land, save in case of hereditary succession." (2 Aruego, *Framing of the Philippine Constitution*, pp. 604, 605, 606.)

All the foregoing show why we, having been a member of the Constitutional Convention, agree with the Solicitor General's position and concur in the result in this case, although we would go as far as the outright pronouncement that the purchase made by appellee is null and void.

BRIONES, M., con quin están conformes PARÁS y TUASON, MM., disidente:

El solicitante en este expediente pide el registro del solar de que se trata como terrano de propiedad privada, y tan sólo con carácter supletorio invoca las disposiciones del capítulo 8.[o] de la Ley No. 2874 sobre terrenos públicos (Pieza de Excepciones, pág. 3).

Por su parte, el Director de Terrenos se opone a la solicitud en virtud de tres fundamentos, a saber; (1) porque ni el solicitante ni sus predecesores en interés pueden demostrar título suficiente sobre dicha parcela de terreno, no habiéndose adquirido la misma ni por título de composición con el Estado bajo la soberanía de España, ni por título de información posesoria bajo el Real Decreto de 13 de Febrero de 1894; (2) porque el citado solar es una porción de los terrenos de dominio público pertenecientes al Commonwealth de Filipinas; (3) porque siendo el solicitante un ciudadano chino, no está capacitado bajo las disposiciones de la Constitución de Filipinas para adquirir terrenos de carácter público o privado (*idem*, págs. 5 y 6).

Tanto el solicitante como el Director de Terrenos practicaron sus pruebas ante un árbitro nombrado por el Juzgado de Primera Instancia de Tayabas. Con vista de tales pruebas, el Juez Magsalin, del referido Juzgado, dictó sentencia a favor del solicitante, de la cual transcribimos las siguientes porciones pertinentes;

"La representación del opositor Director de Terrenos trató de probar por medio del testimonio del Inspector del Buró de Terrenos que, el terreno objeto de la solicitud es parte del dominio público y además el solicitante es ciudadano chino, pero dicho testigo afirmó que el terreno objeto de la presente solicitud es un solar situado dentro de la población del municipio de Guinayangan, Tayabas, y en el mismo existe una casa de materiales fuertes, y careciendo de mérito esta oposición debe desestimarse la misma.

"Por tanto, previa desestimación de la oposición del Director de Terrenos, se adjudica con sus mejoras la parcela de terreno objeto de la presente solicitud descrito en el plano Psu-109117, a favor del solicitante Oh Cho, ciudadano chino, mayor de edad, casado con Yee Shi, y residente en el municipio de Guinayangan, Tayabas, Islas Filipinas." (Decisión, pág. 8, Record on Appeal.)

De lo transcrito se infiere de una manera forzosa lo siguiente: (a) que el tribunal inferior desestimó de plano la oposición del Director de Terrenos fundada en el supuesto de que el solar cuestionado es parte del dominio público; (b) que el mismo tribunal rechazó el otro fundamento de la oposición, esto es, que siendo el solicitante ciudadano chino está incapacitado bajo nuestra Constitución para adquirir terreno, ya público, ya privado, aunque sea un solar de carácter urbano; (c) que, según el fallo del Juez a quo, no siendo público el terreno cuestionado, es necesariamente terreno privado.

El Director de Terrenos, no estando conforme con la sentencia, apeló de ella para ante el Tribunal de Apelación y hace en su alegato dos señalamientos de error, ninguno de los cuales pone en tela de juicio la calidad de privado del terreno cuestionado. El apelante no plantea ninguna cuestión de hecho; plantea sólo una cuestión, de derecho. Por eso que en la reconstitución de este expediente—el original se quemó durante la Guerra—no ha habido necesidad de incluir las notas taquigráficas ni las pruebas documentales, y de hecho nemos considerado y decidido este asunto sin dichas notas y pruebas. El abogado Constantino, del apelado, en la audiencia para la reconstitución de los autos, hizo esta manifestación; "In view also of the fact that the questions involved here are only questions of law, this representation waives the right to present the evidence presented in the trial court * * *." Por su parte, el Procurador General, al explicar el caso en representación del apelante Director de Terrenos, principia su alegato con la siguiente declaración;

"This appeal is a test case. There are now several cases of exactly the same nature pending in the trial courts.

"Whether or not an alien can acquire a residential lot and register it in his name is the only question raised in this appeal from a decision of the Court of First Instance of Tayabas which sustained the affirmative and decreed the registration of the said property in favor of the applicant who, by his own voluntary admission, is a

citizen of the Chinese Republic. This question is raised in connection with the constitutional provision that no private agricultural land shall be transferred or assigned to foreigners except in cases of hereditary succession." (Págs. 1, 2, alegato del apelante.)

Habiéndose apelado de la sentencia para ante el Tribunal de Apelación, ¿por qué se elevó este asunto al Tribunal Supremo, ante el cual ya estaba pendiente aun antes de la guerra, y sin resolverse durante la ocupación japonesa? La razón no consta específicamente en autos, pero como no se trata de una alzada del Tribunal de Apelación a la Corte Suprema, la única explicación que oabe es que aquél, al percatarse de que en la apelación no se planteaba más que una cuestión de derecho, ordenó, como era de rigor, el traslado del asunto a esta Corte por ser de su jurisdicción y competencia.

Hemos estimado necesario sentar las anteriores premisas porque las mismas sirven de base a la argumentación que a seguida vamos a desenvolver para fundamentar esta disidencia.

I. De lo expuesto resulta evidente que el Director de Terrenos se ha opuesto al registro solicitado, entre otros fundamentos, porque el terreno es público; que el tribunal inferior ha desestimado este fundamento por "carecer de mérito", fallando que el terreno es privado; que el Director de Terrenos, en su apelación ante nosotros, no cuestiona esta conclusión del juez a quo, sino que dando por admitido que el terreno es de propiedad privada, arguye, sin embargo, que bajo la sección 5, Artículo XII de la Constitución de Filipinas el solicitante, por ser extranjero, no puede adquirir terreno agrícola privado, estando incluido en este concepto un solar urbano como el de que se trata en este expediente. Planteado el asunto en tales terminus ¿puede esta Corte considerar y resolver un punto no contenido entre las partes—un punto que está firme y definitivamente resuelto y no es objeto de apelación? Dicho de otra manera: ¿puede esta Corte, como hace la mayoría en su opinión, revocar una conclusión del tribunal inferior que no está discutida en el alegato del apelante? ¿Podemos, en buena ley procesal, declarar público el terreno en cuestión, por nuestra propia iniciativa, cuando el mismo Procurador General, que representa al Estado, admite en su alegato el carácter privado del solar, y sólo suscita una cuestión de derecho, a saber: que bajo nuestra Constitución ningún acto traslativo de dominio a favor de un extranjero es válido, así se trata de predio urbano, porque la frase "terreno agrícola privado" que se contiene en la constitución abarca no sólo las fincas rusticas sino también las urbanas? Y, sobre todo, ¿podemos, en equidad y justicia, considerar y revisar un punto que no sólo no está discutido por las partes, pues lo dan por admitido y establecido, sino que es de derecho y de hecho al propio tiempo? ¿Qué base tenemos para hacerlo cuando no tenemos delante las pruebas tanto testificales como documentales? Nuestra contestación es, en absoluto, negativa.

La competencia de esta Corte para revisar las sentencias de los tribunales inferiores, de las cuales se ha interpuesto apelación, se basa en el principio de que dicha competencia, en su ejercicio, tiene que limitarse a las cuestiones controvertidas, y esto se determina mediante el señalamiento de errores que el apelante hace en su alegato. El artículo 19 del antiguo reglamento de los procedimientos en este Tribunal Supremo decía en su primer párrafo lo siguiente:

"Anexo al alegato del apelante y en pliego separado, se acompañara una relación de los errores de derecho que han de discutirse. La especificación de cada uno de estos errores se hará por párrafos separados, con toda claridad, de una manera concisa, y sin incurrir en repeticiones, y serán numerados por orden correlativo."

El artículo 20 del mismo reglamento preceptuaba:

"Ningún error de derecho fuera del relativo a competencia sobre la materia de un litigio, será, tornado en consideración como no se halle puntualizado en la relación de los errores y presentado como uno de los fundamentos en el alegato."

Interpretando estas disposiciones reglamentarias, la Corte hizo en el asunto de Santiago contra Felix, (24 Jur. Fil.,

391), los siguientes pronunciamientos doctrinales:

“1.

APELACIÓN; EFECTO DE DAJAR DE PRESENTAR RELACIÓN DE ERRORES; REGLA FIRMEMENTE ESTABLECIDA.—Es regla establecida por la jurisprudencia de los Tribunales de estas Islas, en virtud de repetidas y uniformes sentencias de esta Corte, la de que si en una apelación el recurrente dejare de hacer señalamiento de los errores en que haya incurrido el Tribunal inferior, y se limitare a discutir cuestiones de hecho en general, no es posible que este Tribunal pueda considerar ni revisar la resolución adverse a la parte apelante, por el motivo de haberse dictado contra la ley y el peso de las pruebas, sino que es necesario que se señale y se especifique el error o errores que determinaron la decision apelada que el apelante califica de ilegal e injusta.

"2.

ID.; ID.; REGLA IGUAL A LA ADOPTADA POR LOS TRIBUNALES DE LOS ESTADOS UNIDOS —Igual doctrina legal se halla en observancia en los Tribunales de los Estados Unidos de America del Norte, toda vez que una manifestación general de que el Juzgado erró en dictar sentencia a favor de una de las partes, no es suficiente como base para que la Corte pueda revisar la sentencia apelada, pues que a no ser que la apreciación hecha por un Juez de los hechos alegados y probados en juicio sea manifiestamente contraria al resultado y peso de las pruebas, el Tribunal de alzada suele aceptar el juicio y criterio del Juez sobre las cuestiones de hecho, y no procede revocar sin motivo fundado la sentencia apelada. (Enríquez contra Enríquez, 8 Jur. Fil., 574; Capellaníla de Tambobong contra Antonio, 8 Jur. Fil., 693; Paterno contra La Ciudad de Manila, 17 Jur. Fil., 26.)” (Santiago contra Felix, Jur. Fil., 391)

Esta doctrina se reiteró posteriormente en los siguientes asuntos: Tan Me Nio contra Administrador de Aduanas, 34 Jur. Phil., 995, 996; Hernández contra Montelibano, 34 Jur. Fil., 1011.

La regla 53, sección 6, del actual reglamento de los tribunales, dispone lo siguiente;

"SEC. 5. Questions that may be decided.—No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brier, save as the court, at its option, may notice plain errors not specified, and also clerical errors."

No se dirá que la cuestión de si el terreno cuestionado es público o privado, considerada y resuelta por la mayoría en su decisión sin previo señalamiento de error ni apropiada argumentación en el alegato del Procurador General, está comprendida entre las salvedades de que habla la regla arriba transcrita, porque ni afecta a la jurisdicción sobre la materia del litigio, ni es un “plain error”, o “clerical error”.

Se notará que en el antiguo reglamento no había eso de “plain errors not specified” (errores patentes o manifiestos no especificados en el alegato). Pero ¿cabe invocar esta reserva en el caso qua nos ocupa? Indudablemente que no, por las siguientes razones:(a) los autos no demuestran que el Juez a quo cometió un error patente y manifiesto al declarar en su sentencia que el terreno no es público sino privado; no tenemos más remedio que aceptar en su faz la conclusión del Juez sentenciador sobre este respecto por la sencilla razón de que no tenemos ante nosotros las pruebas ni testificales ni documentales, y, por tanto, no hay base para revisar, mucho menos para revocar dicha conclusión, habiéndose interpretado esta reserva en el sentido de que sólo se puede tomar "conocimiento judicial del error palpable con vista de los autos y procedimientos"; (b) aun admitiendo por un momento, a los efectos de la argumentación, que Su Señoría el Juez padeció error palpable al sentar dicha conclusión, como quiera que el Procurador General no suscita la cuestión en su alegato debe entenderse que ha renunciado a su derecho de hacerlo, optando por fundamentar su caso en otros motivos y razones; por tanto, no

estamos facultados para considerar motu proprio el supuesto error, pues evidentemente no se trata de un descuido u oversight del representante del Estado, sino de una renuncia deliberada, y la jurisprudencia sobre el particular nos dice que "el propósito subyacente, fundamental de la reserva en la regla es el de prevenir el extravío de la justicia en virtud de un descuido". He aquí algunas autoridades pertinentes:

"Purpose of exception as to plain errors.—The proviso in the rule requiring assignments of error, permitting the court, at its option, to notice a plain error not assigned, 'was and is intended, in the interest of justice, to reserve to the appellate court the right, resting in public duty, to take cognizance of palpable error on the face of the record and proceedings, especially such as clearly demonstrate that the suitor has no cause of action.' Santaella vs. Otto F. Lange Co. (155 Feb., 719, 724; 84 C. C. A. 157)

"The rule does not intend that we are to sift the record and deal with questions which are of small importance, but only to notice errors which are obvious upon inspection and of a controlling character. The underlying purpose of this reservation in the rule is to prevent the miscarriage of justice from oversight." Mast vs. Superior Drill Co. (154 Fed., 45, 51; 83 C. C. A. 157)

II. Hasta aquí hemos desarrollado nuestra argumentación bajo el supuesto de que la calidad de privado del terreno litigioso no es controversia justiciable en esta instancia por no estar suscitada la cuestión en el alegato de Procurador General ni ser material de disputa entre las partes siguintemente, no estamos facultados para revisar, mucho menos revocar motu proprio la conclusion del tribunal a quo sobre el particular. Ahora vamos a laborar bajo otro supuesto—el de que el Procurador General haya hecho el correspondiente señalamiento de error y la cuestión esté, por tanto, propiamente planteada ante esta Corte Suprema para los efectos de las revision. La pregunta naturalmente en orden es la siguiente: ¿cometió error el Juez a quo al declarar y conceptuar como privado el terreno en cuestión, o es, por el contrario, acertada su conclusion a este respect? Somos de opinion que el Juez no cometió error, que el terrona de que se trata reúne las condiciones jurídicas necesarias para calificarlo como privado y diferenciarlo de una propiedad de dominio público, y que, por tanto, el solicitante tiene sobre la propiedad un título confirmable bajo las disposiciences de la Ley de Registro de Terranos No. 496.

Afirmase en la decision de la mayoría que el solicitante no ha podido demostrar que él o cualquiera de sus causantes en derecho adquirió el lote de Estado mediante compra o concesión bajo las leyes, ordenanzas y decretos promulgados por el Gobierno Español en Filipinas, o en virtud de los trámites relativos a información posesoria bajo la ley hipotecaria en tiempo de España. De esto la mayoría saca ka conclusion de que el terrano cuestionado no es privado porque, según su criterio, "todos los terrenos que no fueron adquiridos del Gobierno (Gobierno Español, se quire decir), ya mediante compra, yap or concesión, pertenecen al dominio público"; y citando como autoridad el asunto clásico de Cariño contra el Gobrierno Insular la ponencia no admite más excepcion a la posesión del ocupante y de sus predecesores en interés desde tiempo immemorial, pues semejante posesión justificaría la presunción de que el terreno nunca había sido parte del dominio público, o que había sido propiedad privada aun antes de la conquista española."

Lo que, en primer lugar, no parece correcto es la seguridad con que en la ponencia se afirma que el terreno no se adquirió bajo la soberanía española en virtud de cualquiera de los modos conocidos en la legislación de entonces, pues como no tenemos delante las pruebas, no hay naturalmente manera de comporbar la certeza de la proposición. Si se tiene en cuenta que el Director de Terrenos se opuso a la solicitud de registro por el fundamento de que el terreno es de domonio público, y que el tribunal inferior desestimó este fundamento, la presunción es que la calidad de privado del terreno se probó satisfactoriamente, presunción que queda robustecida si se considera que el Procurador General, al sostener la apelación del Gobrierno, no discute ni cuestiona en su alegato la conclusion de que el referido terreno es de propiedad particular.

Por otro lado, la mayoría parece dar un character demasiado absolute y rígido a la proposición de que "todos los

terrenos que no fueron adquiridos del Gobierno (en tiempo de España), mediante compra o por concesión, pertenecen al dominio público." Interpretando estrictamente la ley, esta Corte Suprema denegó el registro solicitado en el célebre asunto de Carino contra el Gobierno Insular que cita la mayoría en su opinión, por eso mismo que se acentúa en la ponencia—por el fundamento de que Cariño no pudo demostrar título de compra, concesión o información posesoria expedido por el Gobierno en tiempo de España, siendo por consiguiente el terreno parte del dominio publico. Pero al elevarse el asunto en grado de apelación a la Corte Suprema de los Estados Unidos, la misma revocó la sentencia de esta Corte, declarando el terreno como propiedad privada y decretando su registro a nombre del solicitante. En la luminosa ponencia del Magistrado Holmes se sientan conclusiones que proclaman el espíritu liberal de aquel gran jurista y reafirman con vigor democrático los derechos de propiedad de los nativos de estas Islas sobre sus predios en contra del concepto y teoría feudales de que la Corona de España era la dueña absoluta hasta del último palmo de tierra y de que ningún habitante podía ser dueño de nada, a menos que tuviese en sus manos un título o papel expedido por aquel Gobierno. He aquí lo que dice el Magistrado Holmes:

"We come, then, to the question on which the case was decided below—namely, whether the plaintiff owns the land. The position of government, shortly stated, is that Spain assumed, asserted, and had title to all the land in the Philippines except so far as it saw fit to permit private titles to be acquired; that there was no prescription against the Crown, and that, if there was, a decree of June 25, 1880, required registration within a limited time to make the title good; that the plaintiff's land was not registered, and therefore became, if it was not always, public land; that the United States succeeded to the title of Spain, and so that the plaintiff has no rights that the Philippine government is bound to respect.

"If we suppose for the moment that the government's contention is so far correct that the Crown or Spain in form asserted a title to this land at the date of the treaty of Paris, to which the United States succeeded, it is not to be assumed without argument that the plaintiff's case is at an end. It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the same zone of civilization with themselves. It is true, also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide." (U. S. Supreme Court Reports, Vol. 212, p. 596.)

Más adelante se dice lo siguiente en la citada sentencia de la Corte Suprema Federal:

* * * * *

"It is tame that, by section 14, the Government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more than 16 hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat.

* * * * *

"If the applicant's case is to be tried by the law of Spain, we do not discover such clear proof that it was bad by that law as to satisfy us that he does not own the land. To begin with, the older decrees and laws cited by the

counsel for the plaintiff in error seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant. In other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will. For instance, Book 4, title 12, Law 14 of the *Recopilación de Leyes de las Indias*, cited for a contrary conclusion in *Valenton vs. Murciano*, (3 Phil. 537), while it commands viceroys and others, when it seems proper, to call for the exhibition of grants, directs them to confirm those who hold by good grants or *justa prescripción*. It is true that it begins by the characteristic assertion of feudal overlordship and the origin of all titles in the King or his predecessors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books.

"Prescription is mentioned again in the royal cedula of October 15, 1754, cited in (3 Philippines, 546): 'Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession, as a valid title by prescription.' It may be that this means possession from before 1700; but, at all events, the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty.

"It is true that the language of articles 4 and 5 attributes title to those 'who may prove' possession for the necessary time, and we do not overlook the argument that this means may prove in registration proceedings. It may be that an English conveyancer would have recommended an application under the foregoing decree, but certainly it was not calculated to convey to the mind of an Igorot chief the notion that ancient family possessions were in danger, if he had read every word of it. The words 'may prove' (*acrediten*), as well, or better, in view of the other provisions, might be taken to mean when called upon to do so in any litigation. There are indications that registration was expected from all, but none sufficient to show that, for want of it, ownership actually gained would be lost. The effect of the proof, wherever made, was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law. The royal decree of February 13, 1894, declaring forfeited titles that were capable of adjustment under the decree of 1880, for which adjustment had not been sought, should not be construed as a confiscation, but as the withdrawal of a privilege. As a matter of fact, the applicant never was disturbed. This same decree is quoted by the court of land registration for another recognition of the common-law prescription of thirty years as still running against alienable Crown land.

* * * * *

"* * * Upon a consideration of the whole case we are of opinion that law and justice require that the applicant should be granted what he seeks, and should not be deprived of what, by the practice and belief of those among whom he lived, was his property, through a refined interpretation of an almost forgotten law of Spain. (U. S. Supreme Court Reports, Vol. 212, pp. 597-599.)

Resulta evidente de la jurisprudencia sentida en el citado asunto de Cariño contra el Gobierno insular que cualquiera que fuese la teoría acerca del superdominio feudal que la Corona de España asumía sobre todos los terrenos en Filipinas, en la práctica y en la realidad se reconocía que el mero lapso de tiempo en la posesión (20 ó 30 años, según el caso) podía establecer y de hecho establecía derechos privados de propiedad por justa prescripción, y el título presuntivo así adquirido era para todos los efectos equivalente a una concesión expresa o un título escrito expedido por el Gobierno. Pero de todas maneras—parafraseando lo dicho por el Magistrado Holmes— aun suponiendo que España tenía semejante soberanía o superdominio feudal sobre todas las tierras en este archipiélago, y que contra otras naciones los Estados Unidos, al suceder a España, afirmaría dicha soberanía, de ello no se sigue que contra los habitantes de Filipinas el Gobierno americano (ahora la República filipina) tomaría la posición de que España tenía tal poder absoluto. Históricamente se sabe que el catabio de soberanía tuvo el efecto de liquidar muchas instituciones y leyes españolas que vinieron a ser obsoletas, arcaicas en el nuevo estado de cosas, e incompatibles con el espíritu del nuevo régimen. No había ninguna razón para que este cambio

no produjese también sus saludables efectos en las normas jurídicas del régimen de la propiedad sobre la tierra. Parafraseando otra vez al Magistrado Holmes, y aplicando la doctrina al presente caso, no hay razón por qué, mediante "una refinada interpretación de una casi olvidada ley de España", se considere como terreno público lo que evidentemente, bajo todos los conceptos y normas, es un terreno privado.

La jurisprudencia sentada en el asunto de Cariño contra el Gobierno Insular ha venido a establecer la norma, la autoridad básica en los asuntos de registro ante nuestros tribunales. Al socaire de su sentido y tendencia genuinamente liberal se han registrado bajo el sistema Torrens infinidad de terrenos privados. En casos mucho menos meritorios que el que nos ocupa se ha reconocido por nuestros tribunales el carácter o condición de propiedad privada de los terrenos sobre que versaban las solicitudes, aplicándose no las habilitadoras y supletorias cláusulas de las leyes sobre terrenos públicos—primeramente la ley no. 926, después la No. 2874, y finalmente la No. 141 del Commonwealth—sino las disposiciones más estrictas de la Ley No. 496 sobre registro de terrenos privados, bajo el sistema Torrens. No existe motivo para que esa tendencia liberal y progresiva sufra una desviación en el presente caso.

Pero adn bajo la legislación española interpretada estrictamente, creemos que el terreno en cuestión es tan privado como el terreno en el asunto de Cariño, si no más. Según la sentencia del inferior—el único dato para este exatnen, pues ya se ha dicho repetidas veces que no tenemos delante las pruebas—"el terreno objeto de la presente solicitud era primitivamente de Capitana Gina y que esta estuvo en posesión desde el año 1880, después pasó a ser de Francisco Reformado hasta el año 1885, más tarde o sea en 1886 fué de Claro Lagdameo, a la muerte de éste le sucedió en la posesión su viuda Fortunata Olega de Lagdameo, ésta en 1929 lo vendió a sus tres hijos Antonio, Luis y Rafael apellidados Lagdameo, según los Exhibitos F y G, y éstos últimos a su vez lo vendieron en 1938 al solicitante Oh Cho, según los Exhibitos B 1-y C-1." *** Este terreno es un solar residencial dentro de la población del municipio de Guinayangan, Tayabas, y en el mismo existe una casa de materiales fuertes que ocupa casi todo el terreno" *** (Pieza ds Excepciones, pág. 8).

Como se ve, por lo menos desde 1880 había un conocido propietario y poseedor del terreno—la Capitana Gina. Ahora bien, coincide que el 25 de Junio de ayuel año precisamente cuando se expidió el Decreto "para el ajuste y adjudicación de los terrenos realengos ocupados indebidamente por individuos particulares en las islas Filipinas." Si bien es cierto que el objeto del Decreto o ley era el ordenar que se cumpliesen y practicasen los procedimientos de ajuste y registro descritos en el mismo, y en tal sentido el requerir que cada cual obtuviese un documento de título o, en su defecto, perder su propiedad. Tambien es cierto que en el Decreto se expresaban ciertas salvedades que parecían denotar que estos trámites formales no eran de rigurosa aplicación a todo el mundo. Una de dichas salvedades, por ejemplo, proveia (artículo 5) que, para todos los efectos legales, "todos aquellos que han estado en posesión por cierto periodo de tiempo serán considerados como dueños—para terreno cultivado, 20 años, sin interrupción, es suficiente, y para terreno no cultivado, 30 años." Y el artículo 6 dispone que "las partes interesadas no incluídas en los dos artículos anteriores (los artículos que reconocen la prescripción de 20 y 30 anos) podrán legalizar su posesión, y consiguientemente adquirir plena dominio sobre dichos terrenos, mediante procedimientos de ajuste y adjudicación tramitados de la siguiente manera." Esta última disposición parece indicar, por sus términos, que no es aplicable a aquellos que ya nan sido declarados duños en virtud del simple transcur de cierto lapso de tiempo (Véase Cariño contra el Gobierno Insular, supra, p. 598).

No consta en la senteneia del inferior que Capitana Gina se haya acogido a las disposiciones del referido Decreto de 25 de Junio de 1880, obteniendo un documento de título para legalizar su posesión, pero tampoco consta positivamente lo contrario, pues no tenemos ante nosotros las pruebas. Pero aun suponiendo que no se nay an cumplido los trámites formales prescritos en el Decreto, de ello no se sigue que el terreno no era ya privado entonces, pues la presunción es que no hubo menester de semejante formalidad porque la Capitana Gina o sus

causantes en derecho ya habían sido declarados dueños del predio por el mero transcurso de un lapso de tiempo, a tenor de las salvedades de que se ha hecho mención. Esta presunción es tanto más lógica cuanto que el artículo 8 del Decreto proveía para el caso de partes que no solicitaban dentro del plazo de un año el ajuste y adjudicación de terrenos de cuya posesión disfrutaban indebidamente, y conminaba que el Tesoro "reasumirá el dominio del Estado sobre los terrenos" y venderá en subasta la parte que no se reserve para sí; y no sólo no consta en autos que la posesión de Capitana Gina o de sus causahabientes en derecho se haya considerado jamás como ilegal o que el Estado y sus agentes hayan adoptado y practicado contra ellos las diligencias y procedimientos de que trata el citado artículo 8 del Decreto, sino que, por el contrario, consta en la sentencia que desde Capitana Gina en 1880 hubo sucesivas transmisiones de derechos sucesivamente a Francisco Reformado en 1885 y después a Claro Lagdameo en 1886, y a la muerte de este último a su viuda Fortunata Olega de Lagdameo, de quien pasó el título en virtud de compraventa a sus hijos Antonio, Luis y Rafael apellidados Lagdameo, y la última transacción sobre el solar tuvo lugar en fecha bastante reciente, en 1938, cuando los últimamente nombrados lo vendieron al Oh Cho el solicitante en el presente expediente de registro. De todo lo cual se deduce que el solar en cuestión fué considerado siempre como propiedad privada—por lo menos allí donde la memoria alcanza—desde 1880 hasta que feneció la soberanía americana en Filipinas, y que ni el Estado ni sus agentes se entrometieron jamás en el hecho de su posesión exclusiva, continua y pública a título de dueño por diferentes personas no sólo bajo el Decreto de 25 de Junio de 1880 tantas veces mencionado, sino aun bajo el Decreto de 13 de Febrero de 1894 (información posesoria) que fué prácticamente el último decreto expedido en las postrimerías de la soberanía española en relación con el ajuste y adjudicación de terrenos realengos o públicos. Y no se diga que ello habría sido por inadvertencia de las autoridades, particularmente del Fisco, porque tratándose de un solar situado en la misma población de Guinayangan, uno de los pueblos más antiguos de la provincia de Tayabas, es indudable que si no reuniera las condiciones y requisitos para ser conceptuado como propiedad privada y la posesión de sus ocupantes sucesivos fuese indebida e ilegal, ya los agents del Fisco o Tesoro lo hubiesen prestamente confiscado a tenor del artículo 8 ya citado del Decreto de 25 de Junio de 1880 (Vease Carifio contra el Gobierno Insular, *ut supra*, 598). El que nada de ésto haya acontecido es la mayor prueba de que en tiempo de España los diferentes y sucesivos ocupantes de este solar ya tenían título dominical perfecto, y es sencillamente absurdo, ridículo que ahora, al cabo de 66 años, se declare público el terreno; y todo ¿por qué y para qué?—para rendir sometimiento, repitiendo de nuevo la sutil ironía del Magistrado Holmes, a la "refinada interpretación de una casi olvidada ley de España." Y resalta más la futilidad de esta tardío tributo a un anacronismo, a una momia jurídica de un pasado cada vez más remoto, si se considera que cuando el Magistrado Holmes pronunció su sentencia a todas luces liberal y progresiva (23 de Enero de 1909) estábamos tan sólo a escasamente 10 años desde la caída de la soberanía española en Filipinas, mientras que ahora que se intenta una radical desviación del surco trazado por la sólida reja de dicha sentencia estamos ya casi a medio siglo de distancia, con pleno dominio republicano sobre el territorio nacional. Esto no debiera preocuparnos si no fuese porque esta decisión de ahora puede ser interpretada como una abrogación de tantos precedentes moldeados en la turquesa de la doctrina holmesiana, y al propio tiempo como la demarcación del punto de partida de una nueva ruta en nuestra jurisprudencia sobre registro de terrenos.

Sin embargo, en la opinión de la mayoría se dice que el solicitante no puede alegar con éxito que su lote es terreno privado porque la posesión de su primer predecesor (Capitana Gina) comenzó sólo en 1880, mientras que en el asunto de Cariño contra El Gobierno Insular, se exige como requisito la posesión desde tiempo inmemorial, posesión que, según la mayoría, "justificaría la presunción de que el terreno nunca había sido parte del dominio público, o que había sido propiedad privada aun antes de la conquista española." No parece sino que se quiere señalar una fecha, un año, como norma para determinar la inmemorialidad del comienzo posesorio. Pero ¿qué fecha, qué año, sería ese? ¿1870, '60, '50? ¿No sería suficiente *v. gr.* 1875, '65, o '55? En el asunto de Cariño la fecha conocida y recordada de la posesión inicial podía fijarse alrededor de la mitad del siglo pasado, o sea 1849, pues según las pruebas, Cariño y sus antecesores habían poseído el terreno algo más de 50 años hasta el tratado

de París—Abril 11, 1899. En el presente caso, desde Capitana Gina hasta que el solicitante presentó su solicitud de registro el 17 de Enero, 1940, habían transcurrido 60 años; de suerte que en cuanto al tiempo de la posesión ambos casos son idénticos. Con una ventaja a favor del presente caso, a saber: mientras en el asunto de Cariño las tierras objeto de la solicitud eran pasto, en gran parte, y sólo cultivadas unas cuantas porciones, en el que nos ocupa el lote es urbano, sito en uno de los pueblos más antiguos de Filipinas, con una casa de materiales Fuertes enclavada en el. Es innegable que la posesión de un solar urbano es más concreta, mas terminante y más adversa a todo el mundo, sin excluir el Estado.

Pero aun limitándonos a la posesión bajo la soberanía española para los efectos de la calificación del terreno como propiedad privada, todavía se puede sostener que el presents caso es san bueno si no mejor que el de Cariño. En el asunto de Cariño el punto de partida conocido es alrededor de 1849; en el nuestro, 1880, en que comenzó la posesión de Capitana Gina, según la sentencia apelada. Pero ésto no quiere decir que antes de Capitana Gina el solar no fuese ya finca urbana, habida por algún otro como propiedad particular. Hay que tener en cuenta que se trata de un solar ubicado en la población de Guinayangan, uno de los más antiguos en Tayabas. No tenemos delante la fecha exacta de la fundación de dicho pueblo, y no tenemos tiempo ahora para hacer investigación histórica. Pero afortunadamente hemos logrado salvar de la devastación causada por la reciente guerra una parte sustancial de nuestra biblioteca privada, y uno de los libros salvados es el celebrado Diccionario Geográfico, Estadístico e Histórico de las Islas Filipinas publicado en Madrid por Fr. Manuel Buzeta y Fr. Felipe Bravo en 1850. según el pie de imprenta, de dos volúmenes. En el 2.[o] tomo, pp. 70 y 71, se da una descripción del pueblo de Guinayangan, con buena copia de datos históricos, geográficos, sociales y económicos. Comienza la descripción de esta manera: "Pueblo con cura y gobernadorcillo, en la Isla de Luzon, provincia de Tayabas, dióc. de Nueva cáceres"; * * * "tiene como unas 1500 casas, en general de sencilla construcción, distinguiéndose como de mejor fábrica la casa parroquial y la llamada tribunal de justicia, donde está la cárcel * * *" Considerando que podemos tomar conocimiento judicial de que en tiempo de España el municipio y la parroquia eran la culminación de un lento y largo proceso de civilización y cristianización, podemos, por tanto, presumir que mucho antes de, 1850—50, 70 ó 100 años—el pueblo de Guinayangan ya era una unidad geográfica, civil y espiritual, en toda regla, y con caracteres definitivos de viabilidad urbana. También cabe perfectamente presumir que sus habitantes poseían sus respectivos solares a título de dueños, al igual que lo que ocurría en otros municipios debidamente organizados. No cabe presumir que el Estado les permitiera ocupar indebidamente sus solares, sin que tomase contra ellos la acción de que habla el artículo 8 del referido Decreto de 25 de Junio de 1880; y ya hemos visto que no consta en autos que el solar en cuestión haya sido jamás confiscado por los agentes del Fisco o Tesoro, o declarada ilegal la posesión sobre el mismo, a tenor de lo ordenado en el mencionado Decreto. Así que desde cualquier ángulo que se vea el presente asunto, cae perfectamente bajo las normas de posesión inmemorial establecidas en el asunto de Cariño.

III. Demostrado ya que el terreno en cuestión es privado, resulta forzosa la conclusión de que el solicitante tiene derecho a que se confirme su título bajo las disposiciones de la Ley de Registro de Terrenos No. 496, de acuerdo con el sistema Torrens. Es doctrina firmemente establecida en esta jurisdicción que un extranjero tiene perfecto derecho a que se registre a su nombre un terreno privado, bajo el sistema Torrens, y que las disposiciones de la ley de terrenos publicos son inaplicables a terrenos privados (véanse Agari contra el Gobierno de las islas Filipinas, 42 Jur. Fil., 150; Tan Yungquip contra Director de Terrenos, 42 Jur. Fil., 134; Central Capiz contra Ramirez, 40 Jur. Fil., 926). En el primer asunto citado el solicitante era un japonés llamado lehisuke Agari y la solicitud se estimó por tratarse de un terreno privado, adquirido en tiempo de España mediante composicion con el Estado. En el segundo asunto el solicitante era un chino y se 'estimó la solicitud por la misma razón, habiéndose probado una posesión conocida y recordada de 30 a 40 años con anterioridad a la presentación de la solicitud, es decir, un timapo más corto que el del presents caso. Lo propio sucedió en el tercer asunto citado, siendo españoles los

dueños de la finca. Confírmese, por tanto, la sentencia apelada.

Judgement reversed; application dismissed.

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