

MAURICE F. LOEWENSTEIN, PLAINTIFF, VS. H. C. PAGE, REGISTRAR OF DEEDS OF THE SUBPROVINCE OF BENGUET, DEFENDANT.

G.R. No. 5599. March 22, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

An original action in this court for the writ of mandamus against the defendant to compel him to register a certain certificate of title in accordance with the provisions of section 122 of Act No. 496 of the Philippine Commission.

The petition presented by the plaintiff is as follows:

"I. That plaintiff is a citizen of the United States of America, of age, and a resident of the city of Manila, Philippine Islands; that defendant is, and at all times herein referred to has been, an officer of the Government of the Philippine Islands, to wit, the acting register of deeds of the subprovince of Benguet, and is a resident of the municipality of Baguio in said subprovince.

"II. That plaintiff, in accordance with the laws of the Philippine Islands, has located a mineral claim on public and unoccupied land in the barrio of Bua, municipality of Itogon, subprovince of Benguet, has complied with all the requirements of law precedent to the issue of a patent in favor of plaintiff, and that a patent for the said mineral claim has been issued by the Government of the Philippine Islands for said mineral claim in the name of plaintiff and filed by the official who issued said patent with defendant as register of deeds of the subdivision of Benguet; that the said mineral claim is known and recorded as the 'Ultimo Mineral Claim,' and is fully and adequately described in the aforesaid patent.

"III. That plaintiff has paid to defendant P6, Philippine currency, as fees for the issue of a certificate of title in favor of plaintiff for the aforesaid mineral claim in accordance with the aforesaid patent, and has demanded of defendant that the latter issue such certificate; that defendant neglects and refuses to issue such certificate, unless and until plaintiff shall pay to defendant one-tenth of one per cent of the value of plaintiff's aforesaid mineral claim for an assurance fund and shall file with defendant sworn declarations of three disinterested persons that the value fixed by plaintiff is fair; that plaintiff has refused to pay any sum whatever for an assurance fund and has refused to file such sworn declarations or to fix a value, and upon such refusal has again demanded of defendant that he issue a certificate as aforesaid; that defendant thereupon refused and continues to refuse and neglect to issue to plaintiff a certificate of title for the mineral claim aforesaid.

"IV. That plaintiff has no plain, speedy, and adequate remedy in the ordinary courts of law, other than a writ of mandate to be issued to defendant commanding him forthwith to enter a certificate of title in the name of plaintiff for the aforesaid mineral claim and issue an owner's duplicate certificate therefor to plaintiff.

"Wherefore, plaintiff prays that judgment be entered granting a peremptory order against defendant, commanding him, immediately after the receipt of such order, to enter a certificate of title in accordance with the provisions of section 122 of Act No. 496 in the name of plaintiff for the 'Ultimo Mineral Claim,' as described in the patent issued in plaintiff's name by the Government of the Philippine Islands, and to issue an owner's duplicate thereof to, plaintiff; and plaintiff further prays that he be given judgment against defendant for his costs herein."

To this petition the defendant presented a demurrer, basing the same upon the following reasons:

"1. Because it appears from the complaint that the plaintiff has not done all that is required by the provisions of the Land Registration Act to entitle him to demand the, registration of the patent and the entry of a certificate of title and the issuance of an owner's duplicate certificate under section 122 of said Act.

"2. Because it appears from the complaint that the plaintiff has refused to pay the one-tenth of one per centum of the fair value of the land or any sum whatever for the assurance fund, which by section 99 of said Land Registration Act, as amended, is expressly made payable to the register of deeds upon the original registration of any land under said Act.

"3. Because it does not appear from the complaint that the defendant has unlawfully neglected or refused to perform any act which the law specially enjoins as a duty resulting from his office as register of deeds, or that he has unlawfully excluded the plaintiff from the use and enjoyment of any right to which he is entitled, and it does not appear that the duty is specially enjoined upon the register of deeds to register a patent to public land and enter a certificate of title thereto and issue an owner's duplicate certificate without the payment to him of the one-tenth of one per centum of the assessed or fair value of the real estate at the time of such original registration."

The petitioner claims that he has complied with all the requirements of law precedent to the issuance of a patent in his favor and that a patent for a mineral claim has been issued by the Government of the Philippine Islands to the plaintiff and has been filed by the official who issued said patent with the defendant as register of deeds of the subprovince of Benguet. This patent was filed with the register of deeds of the subprovince of Benguet for registration in accordance with the provisions of section 122 of Act No. 496. It is alleged by the petitioner that the register of deeds refused to register such patent unless and until he should pay the fee provided for in section 99 of Act No. 496. The question presented to the court by the demurrer is whether or not it is the plain and specific duty of the register of deeds to register said patent without demanding the fee provided for in section 99 of said Act No. 496. Section 37 of the Act of Congress of July 1, 1902, provides how persons, associations, or corporations may secure patents to mineral claims.

Section 122 of Act No. 496 (which Act is known as the Act providing for the registration of lands under the Torrens system) provides that "Wherever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands."

Section 73 of Act No. 926 provides that patents to public lands shall be issued "in the name of the United States and the Philippine Government under the signature of the Civil Governor; but such patents (patents to public lands) or certificates shall be effective only for the purposes defined in section 122 of the Land Registration Act (No. 496), and the actual conveyance of the land shall be effected only as provided in said section."

That part of section 122 (Act No. 496) to which said section 73 (Act No. 926) refers is as follows:

"The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act (No. 496) registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and 'Owner's duplicate,' such land shall be registered land for all purposes under this Act."

The petitioner contends that the only fee for registration which he is required to pay is the fee of \$3 (P6) provided

for in section 114 of Act No. 496.

The respondent contends that all patents and certificates granting "public lands" issued by the Government of the United States or the Government of the Philippine Islands, in order to be registered in accordance with the provisions of section 122 (Act No. 496), the holder thereof must pay the fee provided for in section 99 of said Act.

Act No. 496 of the Philippine Commission provides for a system of registration of land titles under a system popularly known as the "Torrens system." Said Act provides for the registration of titles to lands held by individuals, or, in other words, the registration of titles to lands which have already been granted by the State to private persons. Section 19 provides who may make application for registration of title. Section 21, as amended by Act No. 809, provides the form of application. Sections 29 and 41 provide for the registration or recording of the decree of the court granting the registration of the title under said Act. Section 99 provides that in the original registration or recording (meaning simply the first registration under the "Torrens system") that there shall be paid to the register of deeds one-tenth of 1 per cent of the assessed value of the real estate, on the basis of the last assessment for municipal taxation, as an assurance fund. Act No. 700 of the Philippine Commission provides for the method of ascertaining the value of the land, in case the same has not been theretofore assessed for taxation.

Act No. 926 of the Philippine Commission provides for the issuing of patents to public lands in six different cases, as follows:

First. Sections 1 to 9, for patents to homesteads on the public domain.

Second. Sections 10 to 21, for sales of portions of the public domain.

Third. Sections 22 to 31, for leases of portions of the public domain.

Fourth. Sections 32 to 35, for free patents to individual settlers on portions of the public domain.

Fifth. Sections 36 to 53, for the reservation of town sites.

Sixth. Sections 54 to 67, for unperfected titles and Spanish grants and concessions of the public domain.

In each of the above grants or patents issued in accordance with the provisions applicable thereto no provision whatever is made for the payment of a fee for the registration of the patent, except under the patent granted for unperfected titles and Spanish grants and concessions of the public domain, where, in section 57 (Act No. 926), we find this provision:

"The fees provided to be paid for the registration of lands under the Land Registration Act (No. 496) shall be collected from applicants under this chapter, except that upon the original registration of the land claimed hereunder no fee shall be required for the assurance fund."

We believe that this exception is significant of the fact that it was the intention of the lawmaking body to require the payment of the fees for the registration of patents to public lands issued under the provisions of said Act No. 926. This view is emphasized by the fact that section 122 (Act No. 496) expressly provides that all patents to public lands shall be brought forthwith under the provisions of the Act providing for the registration of the land under the "Torrens system." Had it been the intention of the law-making body - as the petitioner claims - not to require the payment of one-tenth of 1 per cent by the holder of a patent to public land for the registration of the same, then why did the Commission expressly relieve the holder of a patent to a portion of the public domain (of unperfected titles and Spanish grants and concessions) from the payment of this fee, when at the same time they had brought all patents to public lands under the provisions of Act No. 496?

It will be noted by comparing section 41 of Act No. 496 with section 122 of the same Act, the former relating to

the registration of titles to private lands and the latter to the registration of public lands, that the procedure, after the decree, in the first instance, is granted by the court, and the patent, in the second, by the Governor (see section 73, Act No. 926) is substantially the same. It is as follows. Section 41 provides "Immediately upon the entry of the decree of registration the clerk shall send a certified copy thereof, under the seal of the court, to the register of deeds for the province, or provinces, or city in which the land lies, and the register of deeds shall transcribe the decree in a book to be called the 'Registration Book,' * * *. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. * * * The register of deeds shall in each case make an exact duplicate of the original certificate, including the seal, but putting on it the words 'Owner's duplicate certificate,' and deliver the same to the owner or to his attorney duly authorized."

Section 122 in part provides "It shall be the duty of the official (the Governor-General) issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an 'Owner's duplicate certificate' issued to the grantee."

It will be noted also that section 122 provides that this patent, "before its delivery to the grantee," shall be filed with the register of deeds * * * "to be there registered like other deeds and conveyances."

What does the phrase "like other deeds and conveyances," when applied to these patents and the registration of the same, mean? It can only mean titles issued under said Act No. 496. It can not be construed to apply to titles given or executed between private parties, for the reason that registration under the "Torrens system" makes no effort to change the method of transferring or registering titles granted by or to private persons, nor for the issuance of an "Owner's duplicate certificate."

It will be noted further that after the patent is filed with the register of deeds for the proper province, that a certificate shall be entered as in other cases of registered land, and an "Owner's duplicate certificate" issued to the grantee. This provision of said section 122 shows clearly that the phrase in said section "to be there registered like other deeds and conveyances" must necessarily refer to "other deeds and conveyances issued in accordance with the provisions of law granting 'Torrens titles.'"

All these Acts must be construed together. If we were to construe section 41 alone (Act No. 496) we might conclude that the register of property would be compelled to register a private title or a title to private lands granted under said Act without the collection of any fee or fees whatever. This section, read alone, seems to be mandatory in its terms. It says nothing about the collection of fees; yet no one contends that the fees provided for in section 99 of said Act must not be paid before the owner of the "original title" is entitled to the certificate.

Section 122 provides that the register of deeds must collect the fees. To what does the word "fees" apply? Section 57 of Act No. 926 says that the fees provided for the registration of lands, under the Land Registration Act, shall be collected from the applicants, except that no fee shall be required for an assurance fund.

Section 114 of Act No. 496 as amended by section 7 of Act No. 1648, as well as by section 11 of Act No. 1699, provides what fees shall be collected in the course of the proceedings for the registration of titles under the "Torrens system" and the amount in each case. This section (114) with its amendments read alone might be construed to include or cover all fees. It will be noted, however, that all these fees are for services actually rendered by the officers of the Court of Land Registration or by the register of deeds of the province, etc., while the fee under section 99 is not for services at all, but for the purpose of creating an "assurance fund."

The applicant admitted, by paying the fee for recording or registering his patent, that section 114 of Act No. 496, as amended, was applicable to a patent for public lands. An examination of section 114, as amended, shows that the only fee or fees collectible are fees for services actually rendered by employees of the Government.

Section 6 of Act No. 1699 provides that all fees for the services of the clerk of the Court of Land Registration shall be deposited in the Insular Treasury, and all fees payable for the services of the register of deeds, etc., shall be deposited in the provincial treasury, or in the case of the register of the city of Manila, then they shall be deposited in the Insular Treasury.

These funds are not available for the payment of any damages which may result to the real owner of property by reason of an illegal or improper registration under the "Torrens system" in the name of another, not the real owner. (See secs. 100, 101, 102, and 103, Act No. 496.)

The "assurance fund" is created for the purpose of paying any damages which may result from an improper or illegal registration. All the people of the Philippine Archipelago may be taxed for the purpose of paying these damages if the "assurance fund" is not sufficient, (Sec. 103, Act No. 496.) A large portion of the lands of the Archipelago still belong to the public domain. All original patents granted thereto are given the advantage and protection of the provisions of Act No. 496. Why should the future holders of these original patents be entitled to the protection of this law without sharing its burdens? We believe that when the legislative department of the Government provided that "Whenever public lands in the Philippine Islands, * * * are alienated, granted, or conveyed to persons or to public or to private corporations, the same shall be brought forthwith under the operation of this Act (No. 496) and shall become registered lands," thereby giving the holder of these original patents the benefit of said Act (No. 496), it intended also to impose upon such grantees the burdens of said Act. But in reply to this consideration we are met with the question, Why should the Government require a fund to insure against its own acts, thereby implying that there is no possibility of mistakes occurring in the granting of these patents and that there is no possibility of the occurrence of damages? The, literally, hundreds of cases which have been brought in the courts of the United States to set aside original patents granted by the Government which have been secured by fraud, mistake, etc., are a complete answer to this contention.

We are of the opinion and so hold that when the legislative department of the Government provided in section 99 of Act No. 496 that "Upon the original registration of land under this Act," etc., "there shall be paid to the register of deeds one-tenth of one per cent of the assessed value of the real estate," etc.; and when it provided that "Whenever public lands," etc., "are alienated, granted, or conveyed," etc., "the same shall be brought forthwith under the provisions of this Act" (sec. 122, Act No. 496), that it intended to bring all future titles granted to public lands immediately under the "Torrens system" and that such holders, in order to secure the registration of such titles, should make a contribution to the "assurance fund."

It not being the clear and specific legal duty, therefore, of the defendant to register the patent in question without requiring the payment of the fee provided for in section 99 of Act No. 496, the demurrer is hereby sustained with costs, and the petitioner is hereby given ten days from receipt of notice of this decision in which to amend his petition, if he so desires. If the petition is not amended within ten days, then let a judgment be entered with costs denying the issuance of the writ of mandamus prayed for in said petition. So ordered.

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

DISSENTING

MORELAND, J.,

In this dissenting opinion I shall discuss the case at bar in two aspects. In the first place, upon the plain provisions of the laws invoked in support of the majority opinion, the plaintiff is entitled to the writ prayed for. In the second place, if those laws mean what the majority of the court claim they do, then they are utterly and irremediably in violation of the express provisions of the Philippine Bill, and, therefore, null and void.

First, as to the plain provisions of the laws:

After full compliance on his part with the provisions of the mining laws, there was issued to plaintiff a patent for the "Ultimo" mineral claim, in the subprovince of Benguet. This patent, instead of being delivered personally to the plaintiff, was, in accordance with section 122 of Act No. 496, sent to defendant as register of deeds of the province where the patented land is situated. That section is as follows:

"Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act."

Plaintiff paid to defendant P6 to cover the fees for registration, raising no question as to whether any fees may lawfully be required of him, nor as to the amount thereof, and desiring only to cover the full amount that defendant may lawfully be entitled to charge for entering a certificate of title and issuing a duplicate thereof to the plaintiff. Defendant now requires of plaintiff a further payment of one-tenth of 1 per cent of the value of the patented land for an assurance fund, and requires plaintiff to file the affidavits of three disinterested persons for the purpose of showing that the value fixed by plaintiff is just. Defendant doubtless relies for such requirement upon section 99 of Act No. 496, which, as amended by Act No. 700, reads as follows:

"Upon the original registration of land under this Act, and also upon the entry of a certificate showing title as registered owners in heirs or devisees, there shall be paid to the register of deeds one-tenth of one per centum of the assessed value of the real estate on the basis of the last assessment for municipal taxation, as an assurance fund.

"In case land is subdivided subsequent to the last assessment and registration proceedings are had as to a portion only of such land, the value of such portion, for the purposes of this section and for the payment required by paragraph four of section one hundred and fourteen, shall be fixed by agreement between the applicant and the tax collector of the city or province where the land is situated and shall be proportioned to the value such land bears to the whole tract assessed. In case of disagreement between the tax collector and the applicant as to the value of the land, the question shall be submitted to the court for decision.

"Where land sought to be registered has not been assessed for taxation, its value, for the purposes of this Act shall be its market value, and the applicant shall file with his application the sworn declaration of three disinterested persons that the value fixed by him is to their knowledge a fair valuation.

"The court is authorized to increase the valuation as fixed under the two preceding paragraphs should it appear upon the hearing that the value stated in the application is too small."

The issue is therefore this: Defendant contends that his registration of the patent, entering of the certificate, and issue of the duplicate, under section 122, constitutes "the original registration of land under this Act," as the phrase is used in section 99; while plaintiff maintains that "the original registration of land under this Act" does not embrace the proceedings of a register of deeds under section 122.

It is apparent that sections 99 to 107 of the Land Registration Act provide in effect an insurance of titles, and that the payment of one-tenth of 1 per cent upon original registration is practically a premium for such insurance.

Act No. 496 provides two ways in which land may be brought under the Torrens system. The first way is by judicial proceedings in the Court of Land Registration, terminating in the decree of that court. The second way is by proceedings purely administrative taken upon the alienation of public lands. The first method is provided for in sections 19 to 49; the second by section 122. I submit that only the first method, that is, registration upon a judicial decree, is meant by the phrase "original registration," as employed in section 99.

If it should appear that the phrase "original registration" is used with a particular meaning in previous sections of Act No. 496, then it may fairly be assumed that it is used with the same meaning in section 99. Sections 19 to 49 of the Act, covering judicial proceedings in the Court of Land Registration, are grouped under the general heading "ORIGINAL REGISTRATION." Again examining section 99, as amended by Act No. 700, we find that the three paragraphs added by Act No. 700 indicate clearly that "original registration," as used in that section, refers only to registration upon judicial decree, and that the insurance premium is to be paid only for a judicial proceeding. Where, for instance, registered land has not been assessed for taxation, its market value must be stated by the applicant in his application, and this must be accompanied by three disinterested affidavits confirming the value fixed by the applicant. And so, where land has been subdivided since the last assessment, the tax collector and the applicant shall agree upon the assessment value of the parcel sought to be registered. Upon reference to the sections under the head of original registration, we find that "applicant" is the term used for the petitioner in the Court of Land Registration, and "application" is the technical name for his petition. The form of application contained in section 21, in its second clause, provides for fixing the value. All this is entirely inapplicable to the registration upon the alienation of public lands. "Applicant" and "application" unquestionably refer to the party and to his pleading in the Court of Land Registration; and although public lands, previous to the issue of patent, are not assessed for taxation, there is no provision under the mining laws whereby the locator of a mineral claim is required at any stage of the proceedings to fix the value of his claim. Defendant requires plaintiff to file the affidavits of three disinterested persons that the value fixed by plaintiff is fair. This requirement is evidently based upon section 99 as amended, and its inapplicability is evident from the fact that plaintiff has never fixed any value, as that was wholly unnecessary in the proceeding he took.

Again, section 99, as amended, provides that in case of a subdivision after the last assessment, if there is disagreement between the tax collector and the applicant the question shall be submitted to the court for decision; and that if the value fixed by the applicant should appear, upon the hearing, too small, the court is authorized to increase it. This indicates beyond question that section 99 has reference only to "original registration," that is to say, to registration upon a decree of court. In the proceedings by this plaintiff for a title to his mineral claim, no court has intervened.

An examination of section 122 of the Land Registration Act confirms the interpretation which I have given to section 99. It is there provided that upon the filing with the register of a patent for public land, it shall be "registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land." There is no provision in the Land Registration Act for a payment to the insurance fund upon the registration of deeds and conveyances. Such payment is made only upon "original registration" (with the single exception of the registration of inheritances and devises). Registration upon a judicial decree, under sections 19 to 49, is a ratification of an existing title; while a registration under section 122, as in the case of "other deeds and conveyances," is the certification of a new title to the grantee. Registration, under section 122, is therefore analogous to the entry of a certificate under section 57, rather than to the entry of an original certificate under sections 41 and 42.

Again, section 122 provides: "The fees for registration shall be paid by the grantee." It is clear that the insurance premium provided for in section 99 is not a fee in any real sense, and it would seem to be equally clear that if the legislature had intended to require a patentee of public lands to pay the insurance premium, section 122 would have so stated.

That the Philippine Commission understood the phrase "original registration under this Act" meant only registration upon a decree of the Land Court, as distinguished from registration upon the issue of a patent, is also apparent from an examination of Act No. 926, the Public Land Act, enacted in pursuance of the provisions of the Act of Congress of July 1, 1902. The Public Land Act provides for the alienation of the public domain in six several ways: homesteads on the public domain; sales of portions of the public domain; leases of portions of the public domain; free patents to native settlers; town sites; and unperfected titles and Spanish grants and concessions. It provides that unperfected titles and Spanish grants shall be perfected by proceedings in the Court of Land Registration leading to a decree and the issue of a certificate thereon (sec. 63 of Act No. 926). All the other methods of alienation are administrative proceedings under the direction of the Bureau of Lands, and lead to the issue of patents which are to be converted into certificates of title in accordance with the provisions of section 122 of Act No. 496 (see sec. 73 of Act No. 926). There can be no reason why an insurance premium should be collected from native settlers entitled to free patents, and none from applicants for the perfection of incomplete Spanish' grants; and yet we find that by the last sentence of section 57 of Act No. 926 the latter class are specifically exempted from the payment of this insurance premium. It must, therefore, have been the understanding of the Commission that specific exemption was unnecessary in the case of persons obtaining patents through the Bureau of Lands, for the reason that the issue of certificates upon such patents is not included in "original registration," as used in section 99 of Act No. 496, and that such exemption was necessary in cases where the certificates were issued upon a decree of the Court of Land Registration.

I have thus stated affirmatively the argument in a general way deducible in favor of plaintiff's case from the plain provisions of the laws invoked to sustain the majority opinion in this case, I now propose, in an amplification of those arguments, to examine the positions successively taken by the court in its opinion as it advanced the final conclusion.

It must be borne always in mind that the court in its opinion is continually comparing two proceedings, one a purely administrative proceeding for a patent to public lands, that is, a proceeding to obtain title, and the other a purely judicial proceeding to register a title already acquired; and by such comparison drawing the conclusions upon which its judgment is based. The court quotes as the basis of and reason for its decision no law but the Public Land Law (No. 926) and the Torrens Law (No. 496), the one providing for the administrative proceeding for a title and the other the judicial proceeding upon a title already acquired. The decision admits, in effect, that the provisions of the Public Land Law (No. 926), the law which provides how and under what conditions a patent

to public lands may be obtained, do not expressly require an insurance premium to be paid as a part of such proceeding, in other words, that the payment of an insurance premium or assessment is not, under said law, a part of the proceeding, a condition precedent to obtain title. This admission is unquestionably in accordance with the fact. Nowhere in said law is there the slightest mention of the insurance premium or assurance fund. The opinion also admits, in the same way, that the provisions of the Torrens Law (Act No. 496), which require the payment of an insurance premium or assessment as a condition precedent to the registration of title, do not expressly require the payment of such premium or assessment in proceedings under the Public Land Law. This admission is also unquestionably in accordance with the fact; for nowhere in Act No. 496, the Torrens Law, is there any express provision requiring such payment to be made. Summarizing these admissions of the court, it is unquestioned that there is no law anywhere expressly requiring the payment of an insurance assessment in proceedings to obtain a patent to public lands. This is necessarily so. If it were not, there would have been no cause of this character here and these opinions would not have been written. The provision requiring payment would have been expressed and no question concerning the necessity of its payment could have arisen.

As a result of this, the necessity for such payment must be interpreted, construed, spelled, implied out of the law, or the payment can not be required. That is what the court has done. It has compared and analyzed and inferred and deduced in order to require the payment.

It is a universal maxim of statutory construction that where the meaning of a statute is doubtful, the construction most in accordance with reason and justice should be adopted; for it will not be presumed that the legislature contemplated unreason or injustice. The construction given by the court to the statutes involved in the case at bar is, in my humble judgment, unjust and unreasonable. I have so much confidence in the judgment of my associates and so little in my own that only the sternest necessity, as I regard it, induces me to dissent from the decision of the court in this case. If the decision did not involve, in my humble judgment, a misapprehension of the nature and purposes of the Torrens Law, and an opposition to the policy of the Government in relation to the public lands, I would not permit myself to dissent.

The sole question is whether an individual who has purchased from the Government a portion of its public land and paid to the Government the value thereof as fixed by law, shall then be required, before he can register the deed which the Government has given him, to pay to the Government a further sum to insure the very title which the Government has just given him. In other words, must a vendee for full value himself protect the title of the vendor? That is to say, must the vendee, in the absence of his agreement to do so, warrant the title of the vendor? The decision of the court in this case says "yes." For this reversal of every principle of law and justice relating to real estate uninterruptedly applied in every part of the civilized world from Justinian to Blackstone and from Blackstone to Washburn, some solid reason ought to be given. Such reason can not justly be construed by tortuous process out of a doubtful situation. It should not be necessary to spend pages in confrontation of laws, in comparison of phraseology, in interpretation and substitution of words and sentences, in close and intricate analysis, in strained construction and uncertain interpretation, in order to find such reason. It should, in fairness and in justice, be so clear and plain as to leave absolutely no room for doubt. It is an invariable rule of statutory construction and interpretation, as I have said before, that a statute will never be construed so as to work injustice. To produce such a result the terms of the law must be so plain as to require no construction.

The plaintiff in this case bought mining lands of the Government. He paid the full purchase price therefor. The Government granted him a patent. When it was sought to record this patent in the office of the register that functionary refused to register it, unless the plaintiff should pay to the Government a certain sum to warrant the validity of that title.

It may be said, as the opinion indicates, that the payment to the assurance fund is not to protect the patentee, but

the person who may be injured by the bringing of the patentee's title under the Torrens Law; that it is not the benefit to the patentee but to the person injured by the operation of the law which is the basis of the requirement to pay. But the instant reply is that if the person who pays gets no benefit, why should he pay? It is unjust, unfair, if not absolutely unconstitutional, to require one to part with his property without consideration. No law may compel one to pay money solely to benefit some one else. He must be the one benefited if he pays. The only legal basis upon which the Torrens Law can stand is that the one who pays is the one who benefits. If, on the other hand, it be held that the patentee is benefited by the payment in that his title is thereafter absolutely guaranteed, that the land itself can never be taken away from him by reason of defects in the Government's title, the reply comes that the patentee, having paid the full consideration required by the Government, and having obtained title from the Government, his title is already guaranteed. Can a title be better guaranteed than by having the Government itself back of it? What more can the Torrens Law offer by way of a warranty than the power and resources of the Government itself? Nothing whatever. The Government may repeal the Torrens Law utterly and apply the assurance fund to other purposes, but it can not, except by the odious and infamous process of repudiation, escape its contract with a patentee to protect his title. When the patentee paid P25 per hectare, the full purchase price of the public land bought as fixed by law, he then and there paid the full consideration for a warranty of title. It could not have been intended that he pay a whole purchase price and get half a title. It could not have been presumed that he should pay a sound price and get an unsound title. The Government which rigidly enforces the maxim that a sound price imports a sound article among its citizens can not in decency refuse to apply that doctrine to itself. This being so, what is there of equity, fairness, or justice in the requirement that the patentee in this case shall again pay for the protection of his title? Why should he pay twice for the same thing?

But it may be said that the Government's warranty of title on the sale is merely a covenant running with the land and does not insure to the patentee the land itself; that section 122, by bringing the title under the Torrens Law, insures that the patentee shall retain the land itself whatever the defect in the Government's title may have been; and that the patentee, being thus assured of something more than he would get under a covenant of warranty, should pay for it. In reply it may be noted, in the first place, that the fact that the land itself is assured to the patentee constitutes in the law no greater consideration than the covenant of warranty. In the eyes of the law the one is as valuable as the other. Moreover, if should be observed that inasmuch as section 122 provides that the issuance and delivery of the patent do not actually transfer the title but operate merely as a contract between the Government and the patentee, and that the operative act to transfer the title is the registration, it is evident that the assurance assessment is paid while the title is yet in the Government. Why, then, is the Government not justly the one to pay this assessment, if anyone is to pay it? If anyone is being injured, he is that one, and he is injured by reason of the Government selling lands which do not belong to it. The patentee pays and gets for such payment absolutely nothing in the eye of the law that he did not already have.

It should be noted, also, that the payment to the assurance fund, under the Torrens Law itself, is purely voluntary. One is not obliged to apply for the registration of his title under that law. It is wholly optional. One may leave his title as it was before the passage of that law. The Legislature, in enacting that law, was very careful not to make registration compulsory. One may assume the risk himself. It was very careful also to provide that no title should suffer by reason of a failure to register. Under the holding of the court in this case, however, no choice is left to a patentee.. He must come under that law willy nilly. He must pay whether he will or not. It is of no significance that he is satisfied with the title the Government gives him and wishes no further guaranty than the Government itself. It is of no consequence that he is willing to assume the risk himself. He must take what the law offers whether he will or not, and whether it really benefits him or not; and he must pay for it, too. I maintain that such a construction is unfair and unjust. There is no reason whatever why one who comes under the Torrens Law by virtue of having purchased land from the Government should be obliged to pay, while all other owners or

purchasers of real estate may pay or not as they please. One who purchases public lands is assisting in carrying out a great Government program, that of the development of the resources of the Islands. It is the manifest purpose of the Insular Government to exploit the great mineral wealth of this country; to induce as many deserving persons as possible to take up homesteads; to develop the wealth of the forests; in short, to make earth, field, and forest yield up their riches. To fasten upon every person who desires to enter with heart and hand into this scheme of the Government an obligatory payment as a condition precedent to such cooperation is, to the extent of that obligation, to present an obstruction and a hindrance in the way of the Government's policy.

Moreover, the Torrens Law, by its very terms, applies only to titles already acquired. It does not apply to the process of acquiring title. It simply registers a title already vested. It does not pretend in any way to make compliance with any of its provisions a condition precedent to the vesting of a title. It begins to operate only after the title is vested. Section 19 of that law provides, in part: "Application for registration of title may be made by the following persons, namely:

"First. The person or persons claiming, singly or collectively, to own the legal estate in fee simple."

By section 21 the application must contain the statement that the applicant is "the owner in fee simple (or by possessory information)" of the land the title to which is to be registered. That is to say, that before one is allowed even to initiate the proceedings by which the title is registered, he must be the owner of the premises or have such interest therein as the law requires. The purpose of the law is to insure or assure a title already vested. It was never intended to be a means of obtaining title or to be a step in or a part of the proceedings by which that title was obtained. This being so, section 122, Act No. 496, has no such significance or meaning as is given to it by the opinion of the court in this case. That section provides:

"Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance to bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of the authority to the clerk or register of deeds to make the registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act."

It provides, as is seen, that "whenever public lands * * * are conveyed * * * the same shall be brought forthwith under the operation of this Act and shall become registered lands," This unquestionably means that the instant the sale is completed that instant they become registered lands; that when one proceeding, namely, the administrative proceeding for a patent under Act No. 926, is completed, its results shall be the same, so far as the unimpeachability of the title is concerned, as are the results which follow the judicial proceeding under Act No. 496. But it emphatically does not say that any proceeding or any payment which is a condition precedent to that registration under the Torrens Law shall also be indispensable to the proceeding under the Public Land Law. When a proceeding under the Public Land Law is complete that is an end of it. It can not, without express provision of law, be opened in order to put in another condition to the completion of the proceeding. The evident intention of that section, as it is also of the Public Land Law, Act No. 926, is to keep the two proceedings wholly

separate and distinct while they are in progress. Each one shall proceed according to its own law, taking its own forms, pursuing its own methods, involving its own costs and expenses and providing for its own fees and disbursements. The two proceedings, as such, never touch, never come in contact. They are never involved with each other until both are fully terminated. Even then they do not touch. They simply have the same result by express provision of law; and that provision of law does absolutely nothing else than to affect results. It does not affect or touch proceedings to obtain results. That this is the intention of section 122 is apparent from the provisions of the Public Land Law, Act No. 926. Under that law public lands may be patented for any one of six different purposes. There is a separate and distinct proceeding required in each case. Each proceeding is complete in itself. The law states specifically and in detail what the applicant must do and what he must pay to obtain a patent. It also states that when he has done those things his patent shall be issued to him. He has done everything that the law requires. He has paid his full consideration. The proceeding is then complete in all of its essential features. Nothing remains to be done but to record the patent. This is purely a clerical matter in no sense affecting the essentials of the proceeding. But even this the patentee is not required to do. Section 122 expressly provides that the official shall cause the patent to be registered. It says: "It shall be the duty of the official issuing the instrument of alienation * * * to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances * * *."

The quotation clearly concedes that the patentee has done all that the law requires him to do in order to bind the Government legally and morally to give him a title. The remainder, whatever it is, must be done by the Government itself. That title, having the Government back of it, is as good as it can be. Nothing can be added to it; nothing can be taken away from it. He stands upon the proceedings he has taken, upon consideration he has paid, and justly demands his title.

But, says the opinion of the court, and this is the central point of the decision, section 122 provides that "the fees for registration shall be paid by the grantee;" and then asks, in substance, "does this not mean that he shall pay the insurance fund assessment, and if not, why not?" The answer is "no;" and the reason is that the plain and unmistakable language of the section shows clearly that no such thing was intended or thought of. The section says that he shall pay the "fees for registration" not an assurance fund fee or assessment. The phrase "fees for registration" means what it says. It is an expression well known to the law. It has a known and definite signification. It is a fee for registration, not for insurance. It is something paid to a Government official for services performed by that official for the benefit of the payer and not a thing paid to the Government in trust for someone that the Government has unjustly deprived of his property. It is a payment for valuable services rendered to the payee and not to purchase immunity for the Government or some one else for its or his unjust and spoliative acts committed against another. To hold that the expression "fees for registration" includes an assessment for an insurance is to violate language and rob it of its significance.

Moreover, if anything more were needed to demonstrate the error involved in the construction given to said phrase by the court, it will be found in section 114 of the same Act. Act No. 496 is divided into headings, such as "Assurance Fund," "Powers of Attorney," "Lost Duplicate Certificates," "Adverse Claims," "Surrender of Duplicate Certificates," etc. One of the divisions is headed in capital letters, "FEES FOR REGISTRATION." Under this heading comes every charge which may be made, as a fee, from the beginning of the proceeding to its close. That section reads:

"FEES FOR REGISTRATION.

"SEC. 114. Fees payable under this Act shall be as follows:

"For every application to bring land under this Act, including indexing and recording the same, and

transmitting to the clerk, when filed with the register of deeds, three dollars.

"For every plan filed, seventy-five cents.

"For indexing any instrument recorded while application for registration is pending, twenty-five cents.

"For examining title, five dollars and one-tenth of one per centum of the value of the land, as fixed by the last preceding valuation for the purposes of taxation.

"For each notice by mail, twenty-five cents and the actual cost of printing.

"For all services by a sheriff or other officer under this Act, the same fees as are now provided by law for like services.

"For each notice by publication, twenty-five cents and the actual cost of publication.

"For entry of order dismissing application, or decree of registration, and sending memorandum to register of deeds, one dollar.

"For copy of decree of registration, one dollar.

"For entry of original certificate of title and issuing one duplicate certificate, three dollars.

"For making and entering a new certificate of title, including issue of one duplicate certificate, one dollar.

"For each duplicate certificate, after the first, fifty cents.

"For the registration of every instrument, whether single or in duplicate or triplicate, including entering, indexing, and filing the same, and attesting registration thereof, and also making and attesting copy of memorandum on one instrument or on a duplicate certificate when required, one dollar and fifty cents.

"For making and attesting copy of memorandum¹ on each additional instrument or duplicate certificate if required, fifty cents.

"For filing and registering an adverse claim, three dollars.

"For entering statement of change of residence or post-office address, including indorsing and attesting the same on a duplicate certificate, twenty-five cents.

"For entering any note in the entry book or in the registration book, twenty-five cents.

"For the registration of a suggestion of death or notice of bankruptcy, insolvency, or analogous proceeding, twenty-five cents.

"For the registration of a discharge or release of mortgage or other instrument creating an incumbrance, fifty cents.

"For the registration of any levy, or of any discharge or dissolution of any attachment or levy, or of any certificate of or receipt for the payment of taxes, or notice of any pending action, or of a judgment or decree, fifty cents.

"For indorsing on any mortgage, lease, or other instrument a memorandum of partition, one dollar.

"For every petition filed under this Act after original registration, one dollar.

"For a certified copy of any decree of registered instrument, the same fees as are provided by the Code of Procedure in Civil Actions and Special Proceedings for clerks of Courts of First Instance for like services.

"In all cases not expressly provided for by the law the fees of all public officers for any official duty or service

under this Act shall be at the same rate as those prescribed herein for like services: Provided, however, That if the value of the land sought to be registered does not exceed one hundred dollars the fees payable for the application to bring land under this Act and for indexing and recording instruments while application for registration is pending, for examining title, for notices by mail or by publication, for services by sheriff or other officer, for entry of order dismissing application or decree of registration, and for entry of original certificate of title and issuing one duplicate shall be ten dollars."

Certainly the necessity of a payment to the insurance fund is not found here.

The Public Land Law requires the payment of no fees whatever except in cases of "unperfected titles and Spanish grants and concessions," and to establish the titles in those it is required by the law that the full and complete proceeding under the Torrens Law must be taken. In those cases the same payments are made as in the regular proceeding, except that to the assurance fund. In this law, then, there is no provision for fees which can possibly be construed to include a payment to the assurance fund.

Moreover, section 122 provides, as we have seen, that the patent shall be "registered like other deeds and conveyances." These words, "deeds and conveyances," certainly can not mean the certified copy of the court's final decree in the judicial proceeding under Act No. 496, which is the instrument transmitted by the clerk of the court to the register of deeds in the province where the land lies, to be there registered as the final act of the proceeding; for the reason that neither such certified copy of the final decree nor the final decree itself is a "deed" or "conveyance." As I have said before, it transfers no title whatever; it conveys nothing. The person instituting the proceedings had title before he began. He was the owner before he made the application. He must be such under the law. The words "deed," "conveyance" mean unquestionably an instrument which transfers a title to or interest in real property from one person to another. Inasmuch as the registration of title under the Torrens Law transfers absolutely nothing, such registration can not possibly mean "deeds and conveyances" as those words are used in section 122. This is a complete reply to that portion of the opinion which, after quoting from section 122 the words "to be there registered like other deeds and conveyances," says: "What does this phrase 'like other deeds and conveyances,' when applied to these patents and the registration of the same, mean? It can only mean titles issued under said Act No. 496." The fundamental error embedded in this quotation, and it runs all through the decision, is that the Torrens Law grants or "issues titles." The law does nothing of the kind. It guarantees a title already "issued" or vested. As I have said repeatedly, the very first condition precedent to the institution of the proceeding under that law is that the applicant must be the owner; and that law specifically provides that if, during the proceedings, it appears that he is not the owner the proceedings must be dismissed. The law simply confirms irrevocably a right already vested. The state, and it is the state acting through the law, can grant no rights which it does not have, can issue or grant no title which it does not possess. Its very purpose in promulgating the Torrens Law was to confirm a title which a court should find, after a judicial trial in an ordinary action, to have been legally vested in the applicant at the time the action was instituted. It confirms, not grants. It guarantees, not transfers. Section 38 provides:

"If the court after hearing finds that the applicant has title as stated in his application, and proper for registration, a decree of confirmation and registration shall be entered * * *."

Therefore, when section 122 used the words "to be there registered like other deeds and conveyances" it did not, by said words, in any sense refer to the final decree, or a certified copy thereof, as defined in the Torrens Law. It simply meant that the patent inasmuch as it is a deed or conveyance, should be registered or recorded in the same manner as any other deed or conveyance. That patent granted and transferred a title, an ownership, in exactly the same manner as would a deed of conveyance between John Doe and Richard Roe. Why, then, should it be recorded differently or under a different law?

All this goes to show simply that the Torrens Law has absolutely nothing to do with the proceedings for a patent under the Public Land Law. Section 122 simply provides what shall be the effect, the result, after the proceedings are terminated.

Entering upon the second phase of the question, I am of the opinion that section 122 of Act No. 496, if it means what the majority of the court conclude it means, is in violation of the Act of July 1, 1902.

It must be remembered, first of all, that the land involved in this action is mineral land.

It must be borne in mind also that the only law in force in the Philippine Islands which has to do with the sale of mineral lands is the Act of July 1, 1902.

It is of the very greatest importance also to note that the Public Land Law is wholly inapplicable by express provision to the sale of mineral lands.

This inapplicability was lost sight of by the court in its decision. The opinion attempts to show that the Public Land Law is applicable to the case at bar, and for that purpose refers to said law as follows:

"First. Sections 1 to 9, for patents to homesteads on the public domain."

Section 1, referred to, provides (the italics are mine):

"Section 1. Any citizen of the Philippine Islands, or of the United States, or of any insular possession thereof, * * * may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands * * *."

Section 2, referred to, provides for the form and contents of the application for homestead, and says that one of the necessary allegations in the application shall be, "that the land applied for is nonmineral, does not contain valuable deposits of coal or salts, is more valuable for agricultural than forestry purposes and is not occupied by any other person."

The opinion further says:

"Second. Sections 10 to 21, for sales of portions of the public domain."

Section 10, referred to, provides:

"SEC. 10. Any citizen of the Philippine Islands, or of the United States, or of any insular possession thereof, or any corporation or like association of persons organized under the laws of the Philippine Islands, or of the United States, or of any State, Territory, or insular possession thereof, and authorized to transact business in the Philippine Islands, may purchase any tract of unoccupied, unappropriated, and unreserved nonmineral agricultural land in the Philippine Islands * * *."

Section 12 contains the requirement that the application must show affirmatively that the land applied for is nonmineral.

The opinion further says:

"Third. Sections 22 to 31, for leases of a portion of the public domain."

Section 22, referred to, provides:

"Any citizen of the United States, * * * may lease any tract of unoccupied, unreserved, nonmineral agricultural public lands * * *."

Section 24 requires that the application for the lease must contain the statement that the land is "nonmineral in

character."

The opinion further says:

"Fourth. Sections 32 to 35, for free patents to individual settlers on portions of the public domain."

These sections constitute Chapter IV of the Public Land Law. Said chapter is headed: "Free Patents to Native Settlers." Section 32 provides:

"Any native of the Philippine Islands now an occupant and cultivator of unreserved, unappropriated agricultural public land, as defined by the Act of Congress of July first, nineteen hundred and two, who has continuously occupied and cultivated such land * * * since August first, eighteen hundred and ninety-eight; or who, prior to August first, eighteen hundred and ninety-eight, continuously occupied and cultivated such land for three years immediately prior to said date, and who has been continuously since July fourth, nineteen hundred and two, until the date of the taking effect of this Act, an occupant and cultivator of such land, shall be entitled to have a patent issued * * *."

Section 33 requires that the petition presented under this chapter shall show that the applicant is a native of the Philippine Islands.

The opinion further says:

"Sixth. Sections 54 to 67, for unperfected titles and Spanish grants and concessions of the public domain."

These sections compose Chapter VI of said Public Land Law. It is headed: "Unperfected titles and Spanish Grants and Concessions."

Section 54 provides:

"The following-described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuance of a certificate of title therefor, to wit:

"1. All persons who prior to the transfer of sovereignty from Spain to the United States had fulfilled all the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the purchase of public lands, including the payment of the purchase price, but who failed to secure formal conveyance of title;

"2. All persons who prior to the transfer of sovereignty from Spain to the United States, having applied for the purchase of public lands and having secured a survey, auction, and an award, or a right to an award, of such lands, did not receive title therefor through no default upon their part;

"3. All persons who prior to the transfer of sovereignty from Spain to the United States, having applied for the purchase of public lands and having secured a survey and award of same, did not, through negligence upon their part, comply with the conditions of full or any payment therefor, but who after such survey and award shall have occupied the land adversely, except as prevented by war or force majeure, until the taking effect of this Act;

"4. All persons who were entitled to apply and did apply for adjustment or composition of title to lands against the Government under the Spanish laws and royal decrees in force prior to the royal decree of February thirteenth, eighteen hundred and ninety-four, but who failed to receive title therefor through no default upon their part;

"5. All persons who were entitled to a gratuitous title to public lands by 'possessory proceedings' under the provisions of articles nineteen and twenty of the royal decree of the King of Spain issued February thirteenth,

eighteen hundred and ninety-four, and who, having complied with all the conditions therein required, failed to receive title therefor through no default upon their part; and

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

"All applicants for lands under paragraphs one, two, three, four, and five of this section must establish by proper official records or documents that such proceedings as are therein required were taken and the necessary conditions complied with: Provided, however, That such requirements shall not apply to the fact of adverse possession.

"SEC. 55. All persons claiming title to Government lands not coming within the classes specified in the preceding sections are excluded from the benefits of this chapter.

"SEC. 56. Any person or persons, or their legal representatives or successors in right, claiming any lands or interest in lands in the Philippine Islands, under the provisions of this chapter, and who now desire or claim the right to have such title perfected, must in every case present an application in writing to the Court of Land Registration praying that the validity of the alleged title or claim be inquired into and that a certificate of title issue to them under the provisions of the Land Registration Act for the lands claimed.

"SEC. 57. Such claims and applications shall conform as nearly as may be in their material allegations to the requirements of an application for registration under the provisions of sections twenty-one and subsequent sections of the Land Registration Act, and shall be accompanied by a plan of the land and all documents evidencing a right on the part of the applicant to the lands claimed. The applications shall also set forth fully the nature of the claim to the land, and when based upon proceedings initiated under Spanish laws shall particularly state the date and form of the grant, concession, warrant, or order of survey under which the claim is made; by whom such grant, concession, warrant, or order of survey was made; the extent of the compliance with the conditions required by the Spanish laws and royal decrees for the acquisition of legal title, and if not fully complied with the reason for such noncompliance, together with a statement of the length of time such land or any portion thereof has been actually occupied by the claimant and his predecessors in interest; the use made of the land, and the nature of the inclosure, if any. The fees provided to be paid for the registration of lands under the Land Registration Act shall be collected from applicants under this chapter, except that upon the Original registration of land claimed hereunder no fee shall be required for the assurance fund."

"SEC. 63. All proceedings under this chapter involving title to, or interest in, land shall be conducted and considered as an application for registration of such land, and the final decree of the court shall in every case be the basis for the original certificate of title in favor of the person entitled to the property under the procedure prescribed in section forty-one of the Land Registration Act."

From these provisions it is perfectly plain that Act No. 926 has absolutely nothing to do with the sale of mineral lands. It is equally plain from the provisions of that Act that section 122 of Act No. 496 has absolutely nothing to do with the sale of mineral lands, inasmuch as the "public lands" referred to in section 122 are the same kind of public lands described in Act No. 926. Section 73 provides:

"All patents or certificates for lands disposed of under this law shall be prepared in the Bureau of Public Lands and shall issue in the name of the United States and the Philippine Government under the signature of the Civil Governor; but such patents or certificates shall be effective only for the purposes defined in section one hundred and twenty-two of the Land Registration Act and the actual conveyance of the land shall be effected

only as provided in said section."

Nothing could be clearer than that section 122 in its reference to public lands means the same kind of public lands described in Act No. 926. Section 122 touches public lands only through paragraph 73. It ought to be self-evident that it refers only to such lands as the Insular Government has power and jurisdiction to convey.

Moreover, from the provisions of the Act of July 1, 1902, it is beyond question not only that section 122 has absolutely no relation to mineral lands but also that it can have no such relation. To demonstrate this it is necessary to quote those provisions of said Act touching this matter:

"SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

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

"SEC. 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

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

The preceding sections are those under which the Government of the Philippine Islands found authority to pass Act No. 926. They have nothing to do with mineral lands.

"SEC. 20. That in all cases public lands in the Philippine Islands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

"SEC. 21. That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation, and purchase, * * * by citizens of the United States, or of said Islands: Provided, That when on any lands in said Islands entered and occupied as agricultural lands under the provisions of this Act, but not patented, mineral deposits have been found, the working of such mineral deposits is hereby forbidden until the person, association, or corporation who or which has entered and is occupying such lands shall have paid to the Government of said Islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the Government for the same as mineral claims."

"SEC. 36. That the United States Philippine Commission or its, successors may make regulations, not in conflict with the provisions of this Act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements.:

"On each claim located after the passage of this Act, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year: Provided, That upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location, of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required thereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim, and in two newspapers published at Manila, one in the English language and the other in the Spanish language, to be designated by the Chief of the Philippine Insular Bureau of Public Lands, for at least once a week for ninety days, and, if at the expiration of ninety days after such notice in writing or by publication such delinquent shall fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his coowners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim.

"SEC. 37. That a patent for any land claimed and located for valuable mineral deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this Act, having claimed and located a piece of land for such purposes, who has or have complied with the terms of this Act, may file in the office of the provincial secretary, or such other officer as by the Government of said Islands may be described as mining recorder of the province wherein the land claimed is located, an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the Chief of the Philippine Insular Bureau of Public Lands, showing accurately the boundaries of the claim, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such office, and shall thereupon be entitled to a patent for the land, in the manner following: The provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such an application has been made, once a week for the period of sixty days, in a newspaper to be by him designated as nearest to such claim and in two newspapers published at Manila, one in the English language and one in the Spanish language, to be designated by the Chief of the Philippine Insular Bureau of Public Lands; and he shall also post such notice in his office for the same period. The claimant at the time of filing his application, or at any time thereafter within the sixty days of publication, shall file with the provincial secretary or such other officer as by the Philippine Government may be described as mining recorder a certificate of the Chief of the Philippine Insular Bureau of Public Lands that five hundred dollars' worth of labor has been expended or

improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the provincial secretary or such other officer as by the Government of said Islands may be described as mining recorder at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent upon the payment to the provincial treasurer or the collector of internal revenue of five dollars per acre and that no adverse claim exists, and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this Act: Provided, That where the claimant for a patent is not a resident of or within the province wherein the land containing the vein, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent where said agent is conversant with the facts sought to be established by said affidavits,"

"SEC. 49, That as a condition of sale the Government of the Philippine Islands may provide rules for working, policing, and sanitation of mines, and rules concerning easements, drainage, water rights, right of way, right of Government survey and inspection, and other necessary means to their complete development not inconsistent with the provisions of this Act, and those conditions shall be fully expressed in the patent. The Philippine Commission or its successors are hereby further empowered to fix the bonds of deputy mineral surveyors."

"SEC. 51. That all patents granted shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the preceding section.

"SEC. 52. That the Government of the Philippine Islands is authorized ,to establish land districts and provide for the appointment of the necessary officers wherever they may deem the same necessary for the public convenience, and to further provide that in districts where land offices are established proceedings required by this Act to be had before provincial officers shall be h,ad before the proper officers of such land offices."

"SEC, 57. That in case of conflicting claims upon coal lands where the improvements shall be commenced after the date of the passage of this Act, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the passage of this Act, division of the land claimed may be made by legal subdivisions, which shall conform as nearly as practicable with the subdivisions of land provided for in this Act, to include as near as may be the valuable improvements of the respective parties. The Government of the Philippine Islands is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and preceding sections relating to mineral lands."

"SEC, 59. That no Act granting lands to provinces, districts, or municipalities to aid in the construction of roads, or for other public purposes, shall be so construed as to embrace mineral lands, which, in all cases, are reserved exclusively, unless otherwise specially provided in the Act or Acts making the grant.

"SEC. 60. That nothing in this Act shall be construed to affect the rights of any person, partnership, or corporation having a valid, perfected mining concession granted prior to April eleventh, eighteen hundred and ninety-nine, but all such concessions shall be conducted under the provisions of the law in force at the time they were granted, subject at all times to cancellation by reason of illegality in the procedure by which they were obtained, or for failure to comply with the conditions prescribed as requisite to their retention in the laws under which they were granted: Provided, That the owner or owners of every such concession shall cause the corners made by its boundaries to be distinctly marked with permanent monuments within six months after this Act has been promulgated in the Philippine Islands, and that any concessions the boundaries of which are not so marked within this period shall be free and open to explorations and purchase under the provisions of this

Act.

"SEC. 61. That mining rights on public lands in the, Philippine Islands shall, after the passage of this Act, be acquired only in accordance with its provisions."

These are the only provisions of the Act of July 1, 1902, which touch the question of mineral lands. From these provisions we see:

- That there is provided a complete proceeding for the sale of mineral lands. Nothing whatever essential to the proceeding is omitted or left to be done by others. The proceeding provided for is absolutely complete from the "staking" of the claim to the issuance of the patent.
- That the Government of the Philippine Islands is prohibited in express terms from intervening in any way in the proceeding except in a manner wholly clerical or mechanical. Every line of the law leads inevitably to this conclusion. Section 36 provides that the Philippine Commission "may make such regulations, not inconsistent with the provisions of this Act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements:" The following section then provides fully the amount of work required, when it shall be performed, and what shall be the result in case it is not performed as required. Section 37 provides expressly how a patent for mineral lands shall be obtained. It sets out the "requirements fully and in detail and provides that after complying with the conditions in that section expressed, the applicant "shall thereupon be entitled to a patent for the land, in the manner following:" The section then provides that the applicant shall file certain notes, notices, affidavits, and certificates; that a certain notice shall be published and posted for sixty days; that after such time "it shall be assumed that the applicant is entitled to a patent upon the payment to the provincial treasurer or the collector of internal revenue of five dollars per acre and that no adverse claim exists, and therefore no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this Act."
- That the applicant and the Government of the United States (not the Philippine Government), by these provisions, enter into a special relation, the one making an offer to sell lands and the other accepting the offer and performing the conditions named therein; that the terms of that offer are set forth fully in those provisions; that it clearly and explicitly appears therefrom what the applicant must do, and all he must do, to obtain his patent; that it is plainly set forth what shall be the result of a performance of the conditions. Now, while I have no doubt that the Philippine Government has full power, as stated in section 57, to make "rules and regulations for carrying into effect the provisions of this and the preceding sections relating to mineral lands," it must carry those provisions into effect, onerous to the applicant. The terms of the offer are fixed by the United States. None may take away or add to them. It is undoubtedly proper for the Philippine Government to require the patent to be recorded in a particular place and to say who shall pay the recording fee. But it has no right to say that the patentee shall do other things and pay other moneys as a condition precedent to obtain title, when the Government of the United States has stated specifically that he shall be entitled to a patent, a title, when he has done the things and paid the moneys specified in that Act. In other words, the Government of the United States, through the statute, says to the applicant: "You do the things which we specify herein and I will give you a perfect title to certain mineral lands." The applicant meets fully the conditions named in the offer of the Government. Whereupon the Government, on its part, issues the title. But at this point the Philippine Government, by section 122 of Act No. 496, steps in and says: "That title that you have just received from the United States is not a title or patent at all. It is not what the Government of the United States represented it to be. It does not have at all the effect which the United States said that it should. It 'shall not take effect as a conveyance to bind the land, but shall operate only as a contract between the Government and the grantee; the act of registration shall be the operative act to convey the lands.' Before you can have a title, a patent, you must pay the Insular Government an assessment for assurance, a sum of

money to guarantee the title which the Government of the United States already guarantees. The Government of the United States was mistaken when it said that all you had to do to obtain a perfect title was to perform the conditions specified in the Act of July 1, 1902. We have one other condition to add, one that the Government of the United States neglected to impose, and if you don't meet this condition also, we shall declare the proceedings had between you and the Government of the United States, in effect, nugatory."

not change them, nor insert new provisions, nor add new, other or different provisions or conditions

It needs no argument to demonstrate that the Insular Government has no power to alter in a material way a statute of the United States (U. S. vs. Bull, 15 Phil. Rep., 7) or to add anything whatever to those conditions laid down by a statute of the United States as being by the terms of said statute the only conditions required to be met in order to obtain a title to public lands. If the Insular Government may add one material condition, it may add others, and thus change entirely the relation established between the Government of the United States and the applicant. The right to alter is the right to abrogate. If section 122 is operative as to mineral lands in the manner claimed by the court, then the Insular Government has changed so essentially the proceedings for a patent to mineral lands, provided in the Philippine Bill, as to destroy the vested rights of one who has done his work and paid his money in reliance upon a promise of the United States Government.

Moreover, the Act of July 1, 1902, provides that third parties who prior to the sale had an interest in the mineral lands sold and who were threatened with an unjust and illegal deprivation of such interest by reason of the applicant's failure to comply with the terms of the Act, may come in even after the issuance of the patent and set aside the proceedings, recovering the land itself in a proper case. Section 122, however, by bringing the title to mineral lands under the Torrens Law, effectually and irrevocably cuts off the rights of third parties thus guaranteed by the Philippine Bill. Under the conception of the court after registration under section 122 the title to the lands becomes absolutely secure not only against all persons who had rights in the land before registration, but also against the Government of the United States itself. So that, after the lapse of one year, no matter how flagrant and vicious may have been the fraud practiced upon the Government of the United States or upon any other interested party by the patentee in obtaining his patent, the Government of the United States, as well as the party, is, by section 122, absolutely prohibited from disturbing him in the enjoyment of his tainted title. If the Insular Government can not protect him as fully as it does all others who bring their lands under the Torrens Law, it has no right to take the money. It protects all others from their vendors as well as other persons. It should protect the applicant in the same way.

- That the officers of the Insular Government who participate in the proceedings for the sale of mineral lands do so as agents of the Government of the United States rather than of the Insular Government.

It is a question of extreme doubt whether a person injured by the sale by the United States Government of a mineral claim to an applicant would have the right to resort to the assurance fund. Section 101 of Act No. 496, as amended by section 12 of Act No. 1699, would need to be strained to the breaking point in order to include within its terms such person.

It is also a matter of some doubt whether the purely administrative proceeding¹ followed in cases of sales of mineral lands affords that due process of law to those persons who have an interest in the lands conveyed which is required before one may be deprived of his property to the extent provided in the Torrens Law. It is certainly widely different from the proceedings followed under said Act No. 496.

In view of all this I am confident that the Philippine Government never intended that section 122 of Act No. 496 should be given the meaning accorded it by the decision of this court.

Giving section 122 all the signification which it was intended to have, it simply requires that a patent t⁵ mineral

lands shall be registered "like other deeds and conveyances." The provisions of the law are express and mandatory, leaving no discretion whatever in the register of deeds. This is apparent and clear on reading the section. (*Marbury vs. Madison*, 1 Cranch., 172.) While the section provides that the official shall cause the patent to be registered, I am of the opinion that the patentee has a sufficient interest to compel the registration.

The mandamus should be issued.

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