

**PILAR GIL, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF
DECEASED MANUEL MURCIANO, PETITIONER AND APPELLEE, VS.
SILVINO LOPEZ, OPPONENT AND APPELLANT.**

G.R. No. 6537. November 13, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is a proceeding brought in the Court of Land Registration by Pilar Gil as executrix of the last will and testament of Manuel Murciano, deceased. The Land Court ordered the property registered in the name of the plaintiff as such executrix and the corresponding certificate of title issued. This appeal is taken from the judgment decreeing such registration and the issuance of such title.

We have already held in the case of Soriano vs. Talens (p. 257, *supra*) that the Land Registration Act does not confer authority upon an administrator to register title to the land of which his intestate died seized. In the absence of such authority such administrator is not the proper party to bring such a proceeding. We see no reason why such a holding should not apply to. an executrix where the record does not show, as it does not in this case, that the will of the deceased conferred upon the executrix as such any interest in the land of which he died seized.

This question, however, was not raised in the court below and has not been specifically raised on this appeal. We feel, however, that it is one which the court ought not to pass without notice although it is not expressly raised. If we permitted this cause to pass successfully through this court, thereby giving it our sanction, we might thereby mislead an innocent purchaser or an innocent incumbrancer of the property in question to part with his money upon the faith of such sanction only to find later, possibly, that there was a serious question as to whether or not the registered title upon which he had based his faith and paid his money was of doubtful validity. We are of the opinion, therefore, that, upon this ground alone, it is the duty of this court to raise this question itself and present it for the consideration of the litigants in this case. There is another ground also. Where a cause of action is stated in the name of one person and the proofs show that the real party in interest is another person wholly distinct, the court should not permit the judgment to stand even though the question is not specifically raised. In such case there is no foundation upon which to base a judgment in favor of the plaintiff as there is a failure of proof of a cause of action in favor of the moving party. Justice will not permit us to overlook a case of that character and send it on to the future with the implied sanction which such action would give.

We are not unmindful of the force of the principle that courts, generally speaking, should not decide cases upon points not presented and argued, without giving the parties an opportunity to be heard upon such questions; and in reversing this judgment we do so with the knowledge that the defeated party may make application for reargument within the time prescribed by the rules of this court.

The judgment is hereby reversed and the application dismissed. So ordered.

Mapa, Johnson, Carson, and Trent, JJ., concur.

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