

MARCOS DE LA CRUZ, PLAINTIFF AND APPELLEE, VS. RAMON FABIE ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8160. October 27, 1916*

Ponente: ARELLANO, C.J.

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On August 23, 1909, Marcos de la Cruz filed a complaint against Vedasto Velazquez, in which he alleged the following facts: (1) That he is the administrator of the estate of Gregoria Hernandez, deceased; (2) that, on January 11, 1904, Gregoria Hernandez was declared by the Court of Land Registration to be the owner of a parcel of land situated at No. 364 Calle Magdalena, in the district of Binondo of this city (the other specific circumstances in connection therewith as alleged in the said complaint are herein taken for granted) and the proper certificate of title, No. 121, was issued in her favor by the register of deeds of the city of Manila; (3) that the defendant Vedasto Velazquez, being the attorney in fact of Gregoria Hernandez and having in his possession all documents and muniments of title relative to the said land, succeeded in having the register of deeds issue to him a certificate of title thereto on January 18 of the same year, by presenting a deed of sale executed in his behalf by the said Gregoria Hernandez; but that the said deed of sale was false and fraudulent and was not executed by Gregoria Hernandez nor by any person authorized by her so to do, wherefore it was canceled and annulled by the judgment of December 31, 1907, rendered by the Court of First Instance of the city of Manila, as a result of the complaint filed by Gregoria Hernandez against Vedasto Velazquez"on September 25, 1906, of which a notice of lis pendens was served on the register of deeds on May 8, 1907; (4) that, on November 7, 1904, Vedasto Velazquez sold the said land under pacto de retro to Ramon Fabie, and in May, 1907, sold it to him outright, whereupon certificate of title No. 766 was issued to the purchaser, Ramon Fabie being thenceforth the owner of the land and Gregoria Hernandez being deprived of her ownership therein; (5) that the said land was worth P15,000 and its rental value P214. By reason of all the foregoing facts, the plaintiff prayed the court to order Vedasto Velazquez and the Insular Treasurer (the latter subsidiarily in case of nonpayment by the former) to pay him P29,422, without legal interest, and to pay the costs.

These facts, it is to be supposed, were admitted by the Attorney-General in behalf of the Insular Treasurer in demurring to the complaint.

The plaintiff amended paragraph four of his complaint, which was made to read as follows: That on November 7, 1904, Vedasto Velazquez sold the land to Ramon Fabie under pacto de retro, the sale becoming absolute in May, 1907, no encumbrance being noted on the certificate of title at the time of the said sale of November 7, 1904; that on November 7, 1904, Ramon Fabie presented his deed of sale under pacto de retro for registration, and it was registered on the same date, November 7, 1904; and that Ramon Fabie received from the register of deeds title to the said land, through means of certificate No. 766, and since the date of the registration became, and is still, the owner of the land. The Court of First Instance of the city of Manila sustained the demurrer and granted the plaintiff five days in which to amend his complaint, but as the plaintiff would not amend it the court dismissed the complaint and the proceedings with respect to the Insular Treasurer, with the costs against the plaintiff.

The plaintiff appealed and, on September 23, 1911, this court affirmed the judgment of the trial court, also with costs against the plaintiff. The latter moved for a rehearing and his motion was denied on December 4, 1915. Such was the termination of this suit (case No. 5858).[1]

On October 31, 1911, Marcos de la Cruz filed a new complaint against Ramon Fabie and the register of deeds, in which he prayed the court: (1) To cancel and annul the deed of conveyance, Exhibit D; (2) to order the register of deeds to cancel the entry or registration of the documents A, C, and D and the certificates Nos. 43 and 766; and (3) to order Ramon Fabie to restore the land and to pay P17,976 for losses and damages, together with legal interest thereon and costs.

The document A is the deed of sale by Gregoria Hernandez to Vedasto Velazquez. Document C is the instrument of sale under pacto de retro from Vedasto Velazquez to Ramon Fabie. Document D is the deed of final sale by Velazquez to Fabie.

The history of the case is as follows: Vedasto Velazquez was the attorney in fact of Gregoria Hernandez. Gregoria Hernandez registered her title of ownership to the land in question in the property registry and was issued certificate of title No. 121. Vedasto Velazquez, being the attorney in fact of Gregoria Hernandez, had in his possession all the muniments of title of the land, including the certificate of title No. 121, and, abusing her confidence in him, a few days after the registration of the land, forged a notarial instrument wherein he made it appear that she had sold the said land to him for the price of P8,000.

Vedasto Velazquez then went to the register of deeds and applied for the registration of the land in his own name, presenting Gregoria Hernandez' certificate of title No. 121 for cancellation, and the deed of conveyance which was purported to have been made by Gregoria Hernandez in his favor in order that he might be registered as the true owner of the land. All this was done; Gregoria Hernandez' title was cancelled and certificate of title No. 43 was issued to Vedasto Velazquez.

Vedasto Velazquez, on November 7, 1904, sold the land to Ramon Fabie for P5,000 under pacto de retro, in the following terms: "This sale is condition on that if, upon the termination of the period of one year from the date of the execution of the present instrument, I, the vendor, do not repurchase the property from the vendee for the price above specified, the said present conditional sale shall be converted into an absolute and unrestricted one; Provided, however, That the said period may be extended for another year, if both parties are willing."

Ramon Fabie presented this deed to the register, who entered on the back of Vedasto Velazquez' title a memorandum of the sale under pacto de retro mentioned in the deed.

On May 31, 1907, Vedasto Velazquez and absolutely to Ramon Fabie, who presented to the register of deeds the notarial instrument executed for the purpose and was thereupon furnished with the certificate of title No. 766.

On September 26, 1906, Gregoria Hernandez filed a complaint against Vedasto Velazquez in the Court of First Instance of the city of Manila, and the plaintiff says that the court rendered judgment on December 31, 1907, canceling and annulling the instrument Exhibit A. This judgment was never presented in evidence in the former proceedings nor has it been shown in the present case; but, by stipulation of the parties, it is admitted that the said instrument was fraudulent, null, and void. Proof of this point is, therefore, no longer necessary.

Notwithstanding that the said complaint was filed on September 26, 1906, the register of deeds was not notified of the *lis pendens* (Exhibit B) until May 4, 1907, although the year stipulated in Exhibit C for the exercise of the right of redemption, which Vedasto Velazquez had reserved to himself, had elapsed since November 7, 1905; from this date, November 7, 1905, the sale under right of repurchase had become converted into an absolute and final sale, pursuant to the stipulations contained in the said instrument Exhibit C.

Such are the facts of the present case, the same as those of the previous one, with the difference that the first action was brought against the "assurance fund" of the Insular Treasury, while the case at bar is an action to recover the land sold by Velazquez to Fabie, since the sum for which the Insular Treasurer was sued could not be obtained. The trial court, presided over by the Honorable Judge Charles S. Lobingier, granted all the demands of the complaint.

The first demand is that the instrument Exhibit D be avoided and canceled and that the execution of this instrument be declared null and void in so far as it is claimed that it affects the plaintiff's rights.

The document Exhibit D is the deed of final sale made by Vedasto Velazquez to Ramon Fabie.

Nothing is asked for with regard to Exhibit C, which is the pacto de retro previously executed by Vedasto Velazquez in behalf of this same Fabie. As may be seen, the plaintiff maintains and recognizes the entire validity of the said pacto de retro, which, 'by force of the terms of the covenant itself, was converted into a final sale on November 7, 1905, therefore making the execution of the document Exhibit D unnecessary. In his brief in the previous case, No. 5858, the plaintiff said: "The facts show that he (Fabie) bought the property from Vedasto Velazquez on November 7, 1904, under right of repurchase, and that the sale was immediately registered. The evidence also shows that at the time of the purchase the certificate of title bore no entry of any encumbrance. Consequently, Fabie was vested with a perfect title on November 7, 1904 (see secs. 50 and 55 of Act No. 496). His title was subject to a right of repurchase which expired in May, 1907 (not so; it expired on November 7 of the year 1905, for the period stipulated was one year). 'The validity and sufficiency of a properly executed contract of purchase and sale is not affected or weakened by the addition thereto of an agreement of pacto de retro inasmuch as the right of ownership of the thing sold, although it may be defeated, is thereby transferred to the vendee, who is substituted for the vendor. (Guillermo vs. Matienzo, 8 Phil. Rep., 368.)

"Well then, supposing that a notice of lis pendens, in connection with the case of Gregoria Hernandez vs. Vedasto Velazquez, No. 4912 of the Court of First Instance, for the cancellation of the fraudulent deed of sale, had been presented to the register of deeds on May 8, 1907, what effect could it have against Fabie? (The plaintiff is talking) . The mere fact that the right to repurchase expired subsequent to that date (no; two and a half years before) in no manner affects his rights. These were acquired on November 7, 1904. Therefore the questions relative to the lis pendens and the date of the expiration of the period granted Velazquez to repurchase from Fabie, may be eliminated." (Brief, pp. 13 and 14.)

This court can not possibly affirm the judgment of the trial court in so far as it grants the first demand of the complaint, for the legal reasons contained in the preceding considerations put forward by the plaintiff himself in his said brief, to wit: (1) Because Ramon Fabie's title is perfect, pursuant to sections 50 and 55 of Act No. 496; (2) because the ownership of every purchaser, even though it be subject to a right to redeem and be defeasible by the covenant, originates from the consummation of the contract or from the time of the delivery to him of the thing purchased, and the pacto de retro does not affect the ownership of the thing sold more than to either reconvey it to the vendor or to consolidate it in the purchaser, once the condition has been fulfilled or extinguished, as decided by this Supreme Court in the case cited by the plaintiff and in many other decisions which now constitute settled doctrines; (3) because a notice of lis pendens registered on May 8, 1907, cannot affect a sale consummated since November 7, 1904, and which had become irrevocable and absolute since the same date of the following years 1905, and, as the plaintiff himself very properly insists, all questions regarding the effect of such a notice should be eliminated; and (4) because the document Exhibit D is one of supererogation or merely corroborative; it confers no other right, and has no other signification than a confirmation of what is implied by that which is explicit in accordance with the formalities of the register. So that, although the document Exhibit D were declared to be null and void in order to deprive of its effects the absolute sale therein stipulated, the land would not for that

reason cease to belong to Fabie, for the reasons stated by the plaintiff himself, that is, because the document Exhibit C, which is a perfect title of ownership, in accordance with law and the cases cited, remains in force.

The inscription of ownership made in the registry in behalf of Gregoria Hernandez had disappeared, having been substituted by the entry in the name of Vedasto Velazquez; and as the registry showed the latter to be the owner of the land, Fabie was enabled to arrange with him to purchase it. It having been proven that Fabie's ownership was and is perfect and absolute and that he is entitled to possess, as he does possess, the land in question, it is indisputable that Gregoria Hernandez had lost her property, and so it would appear that she was entitled to the indemnity she sought to recover in the previous suit, case No. 5858.

But that indemnity was denied her by both the trial court and this court, principally for the reason of her negligence. Section 101 of Act No. 496 provides that any person who without negligence on his part is wrongfully deprived of any land or any interest therein, by the registration of any other person as the owner of such land, may bring an action against the Insular Treasurer. Fabie was registered as the owner, it is true, but Gregoria Hernandez had not proven that he was enabled to obtain the inscription without negligence on her part.

The lower court states the facts of the case in the following terms: "It is alleged in the complaint and admitted in the stipulation that Velazquez, on January 18, 1904, succeeded in registering in his own name the part of the property belonging to the deceased (Gregoria Hernandez) that is the subject matter of these proceedings by exhibiting for the purpose a forged document (Exhibit A). On November 7, 1904, Velazquez executed the document Exhibit C in favor of the defendant Fabie, who in turn presented it to the register of deeds and obtained the registration in his name. This document contains a clause of pacto de retro, valid for one year, which subsequently expired on November 7, 1905. The fraud committed by Velazquez having been discovered in the meanwhile (that is, between November 7, 1904, and November 7, 1905), the deceased, on September 21, 1906, brought an action to have the said document annulled and on May 8, 1907, a notification of lis pendens was filed in the office of the register."

In the former proceedings the Attorney-General, in behalf of the Insular Treasurer, demurred to the complaint filed for the purpose of recovering indemnity, alleging that the complaint itself showed that if Gregoria Hernandez suffered any loss or damage whatsoever, it was due to her negligence and to the deceit and faithlessness of her agent and attorney in fact Vedasto Velazquez to whom she had confided her certificate of title, and that such loss and damage did not result from having brought the land under the provisions of the Land Registration Act, from its being registered by any other person, from any omission, mistake, or legal act unduly performed by the clerk or register, deputy or substitute of the register, in the discharge of their official duties. For this reason the lower court sustained the demurrer, and principally for this same reason we affirmed the judgment of the lower tribunal.

Although case No. 5858, the record of which is attached as evidence to these proceedings, is terminated, we desire to say that, for the reasons which will be given later on in connection with this case, the reason for sustaining the demurrer and for finally denying permission to bring an action against the assurance fund, to wit, Gregoria Hernandez' negligence, is solidly founded on good authority and on facts, though these latter only appear in the present case. because the former proceedings went no farther than the demurrer and the plaintiff refused to amend his complaint. The plaintiff himself testified in these proceedings that Gregoria Hernandez, while still living, commissioned Adriano Buenaventura to attend to a certain matter connected with her property titles, and that this was in 1904; that Gregoria Hernandez said that Vedasto Velazquez had not delivered to her the documents pertaining to her land, and she made this statement to the plaintiff when her mental faculties were as yet unimpaired; and when the plaintiff was asked whether Vedasto Velazquez used to go to Gregoria Hernandez' house very often, he replied that he did, sometimes in the morning, at others in the afternoon, and again during the siesta hour (record, pp. 57-58).

Adriano Buenaventura corroborated the references to him made in the testimony just above mentioned, and stated that Vedasto Velazquez was the person who handled Gregoria Hernandez' documents; that the land in question was the only parcel that she possessed and that it was used for building purposes and for raising forage grass; that Vedasto Velazquez lived in the same house with Gregoria Hernandez, who had neither husband nor children and was 60 years old; that when the witness made a demand upon Vedasto Velazquez, the latter told him "that he (Velazquez) would present the document on such and such a day, and that he would deliver, if not the money, the document;" and that the person who intervened was Aniceto Reyes as administrator.

From this testimony of the plaintiff's own witnesses it is to be seen that Gregoria Hernandez, even as far back as 1904, called upon Vedasto Velazquez to deliver to her the certificate of title, and that Vedasto Velazquez was already speaking of delivering money to Hernandez, and if not money, the document; that Hernandez since 1904 interested herself in the matter of her documents and in the only piece of land she possessed, the rental of which, as set forth in the plaintiff's first complaint, was P214 per month, or, as he stipulated with Fabie in this second complaint, only P66 per month, but whether it was P214 or P66, Hernandez was too much in absolute need of this income for her support not to have been anxious about it and about her land. Nevertheless, until September, 1906, she had not commenced any judicial proceedings in respect to the said land, the alleged fraudulent sale of which by Vedasto Velazquez in November, 1904, she tried to annul, as it was annulled by the court on December 31, 1907.

James Edward Hogg, the author of a work deemed by the trial judge to be authoritative, entitled "Australian Torrens System," says on page 448 thereof: "In some cases damages are recoverable, or are only recoverable under certain conditions. 1. * * * 2. * * * 3. No damages are recoverable from the 'assurance fund' if the loss has been caused or contributed to by the owner's negligence. 4. With some exceptions, damages are not recoverable from the 'assurance fund' for loss occasioned by breaches of trust.' "

The Attorney-General did not err when he wrote in his brief in the preceding case: "To hold that the principal may recover damages from the assurance fund on account of such a fraudulent act as that charged to Vedasto Velazquez in this case would be equivalent to throwing open the door to fraud, to the great advantage of the registered landowner and his agent and to the ruin and rapid disappearance of the assurance fund, and the general funds of the Insular Treasury would become liable for the claims for indemnity in cases where none such was due. This course would in time wreck the Insular Treasury and enrich designing scoundrels." (Brief, p. 16.)

The appellant in said case No. 5858 observed that abuse of confidence is the same as robbery.

The agent's abuse of confidence is not comparable to a robbery. If Vedasto Velazquez had forced the safe in which Gregoria Hernandez kept her certificate of title, had removed the certificate therefrom and with it had performed all the other acts imputed to him, no negligence whatever could have been charged to Gregoria Hernandez, because the robbery would have been an unforeseen and fortuitous event; and no one can be held liable for fortuitous happenings; but abuse of confidence is not a fortuitous event, unforeseen and unavoidable, rather should it be foreseen and avoided; it is a willful and deliberate act on the part of the person who commits the abuse, perhaps because of the indolence and negligence of the person wronged as where a checkbook is received from the bank and the owner leaves it in the possession of a person because he reposes confidence in such person, if the latter should draw a check against the bank the owner of the money cannot excuse himself from liability, because he stands convicted of negligence or failure to exercise due care in safeguarding his documents of credit.

This negligence, in the beginning, was the reason for the ruling on the demurrer, upon the sole facts set up in the complaint in the preceding cause and recited in the first part of this decision. In the present case, the same plaintiff

has offered evidence of facts which show something more than negligence, to wit, the giving of an opportunity for the abuse of confidence charged against Vedasto Velazquez. From the testimony adduced by his witnesses, we agree with the finding of the lower court at the end of the judgment, to wit, that in the meanwhile, or between 1904 and 1905, Gregoria Hernandez became aware of the fraud committed by Vedasto Velazquez, but notwithstanding that fact she allowed two years to pass before bringing charges in court. And it is not too much to assert that the conveyance made by Vedasto Velazquez was for a consideration agreed upon between himself and Gregoria Hernandez; otherwise there is no explanation of why, when demand was made upon Vedasto Velazquez for the documents, he should have replied that on such and such a day he would deliver, if not the money, the document. Of what money could he have spoken that should take the place of the document demanded of him? The money which both of them expected in exchange for the document in case the land was sold. Negligence is apparent, it being proven that Gregoria Hernandez had not lost sight of Vedasto Velazquez because he frequented her house in the morning, in the afternoon and at the siesta hour, as one witness testified, or because, according to another witness, he lived in the same house as she did.

And though the negligence be comparable to a theft, it is certain that, as prescribed in section 55 of Act No. 496, "in case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by some one in his behalf to the register of deeds of the province in which the land lies as soon as the loss or theft is discovered." Up to this date neither Gregoria Hernandez nor the plaintiff has furnished the required notice to the register of deeds of this city.

Even considering the denial of the right of action against the assurance fund from the point of view of the registration of the other owner in the registry, the defendant in the case at bar, the action for recovery of possession here brought is improper. There is no reason for ordering the register of deeds to cancel the registration A, C, and D, as requested in the second prayer of the complaint.

In the first place, the first inscription made in the name of Gregoria Hernandez would not be revived by canceling these others. At the commencement of his decision the trial judge says that the purpose of these proceedings is to obtain the cancellation of a registration of title in order to have the register substitute other documents in place of the one to be canceled and to recover possession of a piece of property, together with the value of its use and occupation. This court has not found that any petition had been made to have other documents substituted in place of those to be canceled. The second prayer of the complaint reads literally as follows: "That the defendant register of deeds be ordered to cancel the entry or registration of the documents A, C, and D, and to cancel and annul the certificates Nos. 43 and 766."

Had Gregoria Hernandez, in due season, complied with her duty to notify the register of deeds of the loss of her certificate No. 121 and had then petitioned the court to cancel the registration of the document A, and had the court decreed the same and ordered the register of deeds to cancel all registrations subsequent to the original one made in the name of Gregoria Hernandez, he would have proceeded in entire conformity with law. "In all cases of registration procured by fraud," says the law, "the owner may pursue all his legal and equitable remedies against the parties to such fraud. * * * After the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void."

Any person other than Gregoria Hernandez would have exercised all her rights of action against the perpetrator of the fraud, Vedasto Velazquez; he would have brought proceedings for the abuse of confidence and for the recovery of the certificate of title No. 121; he would have prosecuted the author for the forgery of the instrument Exhibit A; in civil proceedings he would have sought to annul the fraudulent sale contained in instrument Exhibit A; he would have prayed for all the things above mentioned with regard to the cancellation of the registration of

the document A and the reentry of the original registration in her name, petitions which she has not made even now in this complaint, filed seven years afterwards and which therefore could not be and certainly were not granted by the court. The lower court made only the following pronouncement: "It is decreed and ordered that the documents marked A, C, and D and the certificates numbered 43 and 766 be canceled and annulled, and that the register of deeds be instructed to record in his registry the said annulment and registration." Nothing is said in the judgment about substituting any documents in place of those canceled. As far as the public is concerned, the original registration disappeared the very moment it was substituted by the registration of the transfer Exhibit A, which up to the present time stands unchallenged in the registry. It remained in the registry only as an antecedent or key to the title of the land in question.

It was necessary to institute proceedings for the abuse of confidence, first, in order to recover the certificate of title No. 121, as in a case of theft, and in order to be able to demand its reentry as a consequence of the reentry of the original registration; second, in order to preclude all idea of connivance between the owner and the thief and avert the suspicion that the loss or theft was feigned and agreed upon, especially as the owner and the thief were, prior to all of these events, principal and agent.

The interest which Gregoria Hernandez had in clearing up the situation and prosecuting the case was far greater than that of the public in exacting its vengeance. It is not known how the plaintiff came to hold and still holds in his possession certificate No. 121.

Vedasto Velazquez has not been held to account for the results of his wrongful act. Its effects have fallen on third persons: In the first proceedings that third person was the Insular Treasurer; in these second proceedings, the third person is the purchaser Ramon Fabie.

In the second place, the lower court has not set forth in his judgment any positive ground for despoiling the defendant of his property for the purpose of returning it to the plaintiff as the representative of Gregoria Hernandez. He explicitly states that the defendant is the rightful owner of the land: the law protects Fabie because he purchased from the owner previously registered; but selecting a paragraph from the previous decision of the Supreme Court in the previous case No. 5858, he puts it forward as a reason for deciding to the contrary, because our decision was a contrary one in that case and although it was only on a demurrer, yet all the legal points thus decided are as binding as though they had been settled in a final judgment.

This Supreme Court made no finding whatever in that decision with respect to the defendant Ramon Fabie, nor had it anything to decide, because Fabie was not a party to the proceedings and the proceedings had not reached the stage where a decision could be rendered on the merits, inasmuch as they had been brought before us merely on the demurrer to the complaint.

It is true that this court stated in that decision that if Gregoria Hernandez had not been negligent (this part was suppressed by the trial judge in his citation) she could have cancelled inscription A and Velazquez' certificate of title No. 43 and, consequently, Fabie's inscription C, not the latter's certificate of title which had not yet been issued and which, as shown in these second proceedings, was not issued until after the inscription of D was made. It does not appear that there was any error on this point.

At first this question was considered in the light of the provisions of the Mortgage Law of Cuba and the Philippines and afterwards according to those of Act No. 496, in agreement with Act No. 190.

The Mortgage Law of Cuba and the Philippines was applied, because the appellant in that suit, the plaintiff herein, subjected to the provisions of that law the following question. He said: "Now we come to a stage of the proceedings similar to that discussed in the case of Merchant vs. Lafuente (5 Phil. Rep., 638), a suit that was

decided in accordance with the said Mortgage Law. This is very clear and cannot be denied, for in accordance with the said Mortgage Law no error whatever was committed by this court in that pronouncement. Article 34 of the said law positively says: 'Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the registry, has a right thereto, shall not be invalidated by third persons, after they have once been recorded (as happens with respect to Fabie) although later the right of the person executing them (let us call him Velazquez) is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry.'

"Only by virtue of a recorded instrument (like that of Hernandez) may another later instrument (Fabie's) also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article 389 (which has nothing to do with the case)."

In accordance with Act No. 496, the plaintiff, after having secured a judgment annulling the spurious sale made by Velazquez and ordering the cancellation of the inscription A, should have complied with the provision of section 81 of the said Act, that is to say, he should have requested the registration of the said judgment. The clerk of the court would then have issued a certified copy thereof addressed to the register of the province where the property is situated, and the latter would have entered upon the proper certificate of title a memorandum to this effect, that is, upon Vedasto Velazquez' certificate of title No. 43, whereon a memorandum had been made of the inscription G in Fabie's behalf, and he would have recorded another memorandum in witness of the annulment of the fraudulent sale and the cancellation of the said spurious certificate of title in favor of Velazquez. Nothing of all this was done.

According to section 55 of the same Act, "after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void."

Quaere: Is the inscription A, made in the name of Vedasto Velazquez, null and void on account of its being fraudulent and is his certificate No. 43 null and void? Is the inscription C made in the name of Fabie, which appears on the back of this certificate, also null and void? No, if it is shown that Fabie was an innocent holder, because the same section of the Act just above cited provides: "That in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice to the rights of any innocent holder for value of a certificate of title."

The defect was that it was not alleged in the first complaint (transcribed in the first part of this decision) as it was agreed upon in these second proceedings, that Fabie was an innocent holder of a certificate of title for value and, consequently, in the demurrer no other fact could be understood as admitted than that affirmed and in the manner in which it was affirmed in the complaint.

Question: By the mere allegation made by the plaintiff in his complaint and accepted by the defendant in the demurrer, that Vedasto Velazquez, the notorious and convicted forger, had sold the land to Ramon Fabie, can it be concluded that no one other than Fabie should be considered to be the owner of the land as being an innocent purchaser? Is not a judicial finding as to the ownership of the land necessary, in order to know who is really vested with the ownership? Is the affirmation of one of the parties sufficient to resolve so difficult, serious and important a problem?

This court understood and understands, in agreement with the Attorney-General (p. 12 of his brief), that it does not devolve upon the plaintiff and his attorney to decide whether Ramon Fabie is or is not an innocent purchaser for value and without knowledge of the alleged fraud or participation therein; and in the amended complaint there is, no sufficient allegation of fact to show that Ramon Fabie is an innocent purchaser for value and that he had no

knowledge of the fraud said to have been committed by Vedasto Velazquez.

The simple allegation contained in the complaint that Fabie is a registered purchaser is not the same as that of his being a registered innocent purchaser. The fact of the sale and the fact of the registration are not sufficient to allow the understanding that it was also admitted in the demurrer that he was an innocent purchaser.

There is no law or doctrine that authorizes such an interpretation. The plaintiff must set forth in his complaint all the facts that necessarily conduce toward the result sought by his action. The action was for the purpose of recovering from the assurance fund indemnity for the damage suffered by the plaintiff in losing the ownership of his land as a result of the registration obtained by an innocent holder for value (purchase). It is a necessary requirement of the law that the registered property shall have been conveyed to an innocent holder for value who shall also have registered his acquisition. Necessarily the complaint must show these facts as they are required by the law. Will it be understood as an indisputable fact, as *res judicata*, that Fabie was an innocent purchaser merely because the fact of the purchase and the fact of the registration were alleged in the complaint?

A person who, like Vedasto Velazquez, knew how to forge a deed of sale in his own behalf might very easily make it appear that the property was sold to a third party—without the knowledge of the said third and afterwards have the purchase registered in the name of the third party so as to enable the swindler to obtain from the assurance fund P29,420 for a piece of land worth only P5,000. We do not say that this actually happened, but that it could have happened and we leave the persons who have taken part in this affair their good name and reputation intact. If in the opinion of the courts the possibility should exist, it is sufficient to preclude interpretations and presumptions. It is not enough to allege in the complaint the fact of the sale and the fact of the registration in order that it may be understood to be admitted, in the demurrer that the purchaser was presumably innocent. He might not have been innocent. If the proceedings had gone forward after the allowance of the demurrer it might perhaps be a question as to whose duty it was to prove that he was or was not an innocent purchaser, but at all events it cannot but be shown to the Insular Treasurer that the thing is irremediable, that the plaintiff's ownership has been lost as to her, because an innocent third person holds the land and his ownership has been finally and irrevocably entered in the registry; "in other words," says the Attorney-General in his brief (p. 30), "in order that the court may be informed by the allegations of the complaint whether the said Ramon Fabie is an innocent purchaser for value and has acquired the title to said property without notice of fraud or forgery or any incumbrance, the court is entitled to require the plaintiff to plead all the material facts in connection with the alleged transfer and registration of title and on the trial in proof of his allegations to present in evidence a certified copy of the certificate of title or owner's duplicate alleged to have been issued to said Ramon Fabie, together with the notations or indorsements on the back of said certificate of title * * * and the plaintiff must show the court the reason, if any there be, why the plaintiff did not in due time pursue his legal and equitable remedies against the parties to the alleged fraud."

Elsewhere in his brief, on page 28 thereof, he also says the following: "It does not appear why Gregoria Hernandez did not file suit for the annulment of the fraudulent sale by Vedasto Velazquez until September 25, 1906, nor does it appear why Gregoria Hernandez or her agent did not file the *lis pendens* with the register of deeds under section 79, Act No. 496, immediately upon filing her suit in September 26, 1906, instead of waiting until May, 1907.

There is no allegation of facts giving any reason why Gregoria Hernandez did not take steps between January 18, 1904, and November 7, 1904, the date of the alleged sale with *pacto de retro*, to have said false and fraudulent deed and the certificate of title issued thereunder declared null and void, as the law says they are."

As Velazquez perpetrated a crime in order to appear in the registry as the owner of the land; as the fraudulent sale appearing in the deed Exhibit A was declared to be null and void in 1907 and, as the certificate of title No. 43 was

canceled in consequence of the annulment of the registration A, naturally a doubt arose as to whether Vedasto Velazquez, who was not the lawful owner of the land, could convey any right of ownership whatever to Ramon Fabie in the land acquired by the latter; and a still greater doubt whether, after the cancellation of Velazquez' certificate of title, on the back of which was noted the sale under pacto de retro made to Fabie, the memorandum still continued in effect.

The natural consequence of the judicial declaration of the annulment of the sale of the land and of the certificate of title obtained by Velazquez was the filing of another suit to compel Velazquez to restore the possession of the land to Gregoria Hernandez or to her agent and for the cancellation of the inscription A and the certificate of title No. 43, Ramon Fabie being included in the proceedings, because of his being the present possessor and because the cancellation of the certificate of title containing a memorandum of his pacto de retro purchase title might affect him. Gregoria Hernandez or her agent in the complaint simply states the fact of Vedasto Velazquez conveying the land to Ramon Fabie by sale under pacto de retro.

Ramon Fabie can demur to the complaint of Gregoria Hernandez or her agent, alleging that the facts set forth therein do not constitute a right of action, because the plaintiff must presume that he is an innocent holder of a certificate of title for value, and, under section 55 of Act No. 496, he can not be sued by reason of such acquisition. It is certain that in reply the plaintiff would allege that in his complaint he is not obliged to presume anything, that he has only to affirm actual facts in support of his right of action. If no presumption may be allowed in the complaint with respect to the facts alleged therein, why must presumption be allowed in the admissions of the demurrer? Necessarily discussion would inevitably fall upon the principal fact in the case, to wit, whether Ramon Fabie is an innocent holder of a certificate of title for value and the court would finally decide whether he is or is not, in order to determine the propriety or impropriety of the action for recovery of possession. The Insular Treasurer would necessarily have to have before him a final judgment declaring Fabie to be an innocent holder for value in order to consider the property lost to one person by reason of the registration of another as the owner thereof. Without this, there is no court that can order that an owner be indemnified out of the "assurance fund."

In these proceedings it has only been shown, by virtue of a stipulation of facts, that Ramon Fabie is an innocent holder of a certificate of title for value; consequently, in conformity with the oft-cited section 55 of Act No. 496, he is the absolute owner of the land mentioned in the complaint, and the action for recovery of possession, improperly brought against him, can in no wise prosper.

It is improper to cancel the registrations A, C, and D. The last two, C and D, the deeds of sale under pacto de retro and the final and absolute deed of sale executed by Vedasto Velazquez, for the reason that they are perfectly legal; and the registration A, that of the, sale forged by Vedasto Velazquez in his favor, because, according to section 38 of Act No. 496, in case there be an innocent purchaser for value, the decree of registration fraudulently obtained shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal. This is the registration to which Ramon Fabie found no objection whatsoever and upon which the certificate No. 43 showing his repurchase was issued.

In turn the defendant asks for the cancellation of the notice of lis pendens made on the certificate of title No. 766 issued as a result of the absolute sale. This petition should be allowed, because it was shown by the plaintiff himself that such notice was absolutely valueless.

It is improper to tax the costs against Fabie jointly with Velazquez, or in any other manner, because Velazquez was not made a party defendant, and because Fabie is entirely in the right.

The judgment appealed from is reversed in so far as it decrees the cancellation of the documents A, C, and D and the certificates Nos. 43 and 766, directs the register to record the said cancellation and orders the possession of the

land to be adjudicated to the plaintiff, with the costs against Fabie and Velazquez; and the judgment is affirmed in so far as it denies the prayer for damages and the payment of rentals. No special finding as to costs. So ordered.

Johnson, J., concurs.

[1] De la Cruz vs. Velazquez, not reported.

C O N C U R R I N G

TORRES, J.,

The undersigned concurs in the foregoing decision. He believes, however, that certified copies of the forged deed and certified copies of other documents and records of proceedings in connection therewith, as may be conducive to prove the commission of the crime, should be forwarded to the Attorney-General in order that he may take such action in the premises as the law requires.

C O N C U R R I N G

CARSON, J.,

I concur.

I am satisfied that an examination of the second proviso in section 55 of Act No. 496 together with the context, having in mind the general purpose and object sought to be attained by the enactment of the statute as a whole, leads to the conclusion that notwithstanding the fact that after the transcription of the decree of registration on the original application, any subsequent registration which is procured by the presentation of a forged instrument is null and of no effect as between the parties, it may nevertheless be the root of a good title; so that the title of a registered owner, who has taken bona fide for a valuable consideration, is not affected by reason of his claiming through someone, the registration of whose right or interest was void because it had been procured by the presentation of forged instruments. I am not unaware of the objections which can be urged to this construction of the statute, and especially the objections based on alleged constitutional limitations on the power of the local legislature to enact the proviso thus construed. But similar provisions have been adopted by some of the States of the United States (cf. par. 38 of the California Act) and until the Supreme Court of the United States shall have held to the contrary, I am not prepared to hold the proviso unconstitutional and thus emasculate the entire statute and weaken the confidence of the public in the whole system. I recognize the force of the argument against the constitutionality of the proviso, but I do not deem it of such conclusive force as to justify the court in declaring the statute unconstitutional in this regard.

I here insert some citations from the comment by William C. Niblack in his Analysis of the Torrens System of Conveying Land, on the effect upon that system of forgery (Chapter XI), because they quite clearly develop some of the difficulties confronting us in the disposition of this case, and the reasoning on which the court must rely in its rulings on the various contentions of the parties.

"In some acts it is provided that the production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles to enter a new certificate or to make a memorial of registration in accordance with such instrument,

and that a new certificate or memorial shall be binding upon the registered owner and upon all claiming under him, in favor of every purchaser for value and in good faith. When a person is dealing with land registered under an act containing such a provision, it seems to be unnecessary for him to require any other evidence of the existence and identity of the registered owner than the production of the owner's duplicate certificate, and it seems that he may rely on the validity of a conveyance from the person producing such certificate. If this is the right construction of this declaration, it validates the title of an innocent person for value, relying on the production of the certificate, who is registered as the immediate result of a forgery committed by some third person, and, in doing so, it goes one step beyond the general Torrens system, which requires that a registration be made under the last real registered owner, in order to be valid. If the production of the last certificate of title makes the new certificate binding on the registered owner whose name has been forged, in favor of the new registered purchaser for value and in good faith, then the latter keeps the title to the land, and the former registered owner is remitted to his remedies against the person causing the loss and against the indemnity fund. In *Gibbs vs. Messer*, supra, and *Ex parte Davey*, supra, the owners' duplicate certificates were produced at the time of the new registrations, and if the Victoria and New Zealand acts had declared that the production of such a certificate should make a memorial of registration binding on the last registered owner, in favor of a new registered purchaser for value in good faith, the decisions in those cases might have been entirely different. The intention of the legislature must be very clear, before a court will hold that a person registered and claiming immediately under a forged instrument will take an indefeasible title by virtue of his registration, and it may be very doubtful whether, in enacting the provisions just referred to, there was really any intent on the part of the legislature to declare that the production of the last duplicate certificate should validate a new certificate, even though it was issued as the result of a forgery. It is much more probable that the purpose of the provisions was to get away from the suggestion that the registrar was acting in a judicial capacity when he made a registration, and to have the validity of a transfer declared under the terms of a statute, rather than to have it inferred as a matter of law from the act and determination of the registrar. Nevertheless, the provisions seem to show a clear legislative intent, in any event and under any circumstances, even in case of forgery, to vest the title in the new registered owner, whenever the last duplicate certificate is produced at the time of registering the transfer.

"While the acts of Massachusetts, Hawaii, and the Philippine Islands provide that the production of the owner's duplicate certificate shall be conclusive authority to the registrar to make a new registration, and that a new certificate shall be binding in favor of every purchaser for value and in good faith, there is this qualification: 'After the transcription of the decree of registration on the original application, any subsequent registration which is procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void.' This qualification does not say that any title founded on a forgery shall be null and void, but it merely says that a registration procured by a forged certificate or other instrument shall be void, and we may infer that under such a statute the general rule applies, that a registration procured by forgery is void, but that such a registration may be the root of a good title, and that a person registered in good faith and for value under a prior registration procured by forgery, when the last certificate is produced, takes a valid title. Looked at from this point of view, the three acts just mentioned simply declare the general rule where the statute is silent on the subject of forgery, and are in effect the same as the South Australia, California and Ontario statutes.

"* * * * *

"If a Torrens act makes a title founded on a forged instrument null and void, it renders certificates of title clearly defeasible, and tends to take away the confidence of the public in them; and if it makes a forged instrument capable of becoming the root of a new title, it upsets the long-cherished and popular tradition that a forged instrument is absolutely void for all purposes. The English theory that a landed proprietor is to be protected as far as possible in his proprietary rights may be the basis of the deep-seated and general feeling that a person ought not to lose his land, under any possible circumstances, by means of or as the result of a forgery. One who does not understand the reasons of the general rule, as to the effect of forgery under the Torrens system, may regard it as a compromise between two different policies, but the rule arises logically from certain

principles of title registration. A proposed purchaser of land who becomes registered under an imposter, and not under a real registered owner, gets no title to the land, loses the money he has paid on the proposed purchase, and has no recourse to the indemnity fund. He has been guilty of negligence contributing to the loss, and his loss did not arise from operations under the act, because he dealt with a person who was not registered under the act, at least as to the property in question. Whatever may be the practical merits of the theory, his case does not detract from the general proposition that one registered under the last registered owner of an estate in land gets the title to the registered estate. Where one in good faith for value is registered as a new owner under a person who is registered with a title, invalid because it was procured by forgery, one of two innocent persons must lose the land—either the owner from whom the transfer was forged, or the registered purchaser from the registered person, whose title was invalid while he was so registered. In the absence of any constitutional limitations on its powers, it is competent for the legislature to say which one shall have the title, and in establishing a system of title registration, it is proper for it to declare, in favor of the last certificate of title issued under governmental authority, that the new registered owner shall have it, and that the victim of the forgery shall be left to his actions against the wrongdoer and against the indemnity fund. The English act alone declares the other way—that a registration obtained by forgery is void for all purposes, that in case of forgery the register shall be rectified, and that the person suffering loss by the rectification shall be entitled to the indemnity. "We have discussed the effect of the forgery of instruments respecting registered land as if the conditions of the law were the same in this and in foreign countries. In foreign countries the legislative power may declare that the production of the last duplicate certificate of title shall be conclusive authority to a registrar to make a new registration, and may declare also that a new registration on a transfer from the last registered owner shall be valid and shall be conclusive evidence of title. When it declares that a registration void for forgery shall become the root of a new title, in favor of a bona fide transferee for value from the owner whose certificate was issued as the result of the forgery, there is the end of it. But in this country there are constitutional limitations on the power of the legislatures to pass laws, and no law of a state may deprive any person of property without due process of law. There are many decisions of courts in this country on the question as to what is and what is not due process of law, and, as the system develops, the Torrens statutes of this country are likely to swell the number of them very greatly. Before it can be said that the Torrens system is a secure method of conveyancing and dealing with land in this country, it must be established firmly that such statutory declarations are valid and effective here. In order to work the system, certificates must vest an indefeasible title, and it will not do to deal with registered land under a system where any registration, no matter how far back, may be set aside as void. In England landowners cried out vehemently against a statute which gave effect to a title founded on a forgery. They were more concerned about holding the lands they had than about an improved system under which they might take title to other lands, and they refused to put their lands under the Act of 1875. In framing the Act of 1897 due reference was paid to this objection to the Torrens system, and a registration founded on a forgery was declared to be absolutely void for all purposes, and a person suffering loss by the rectification of the register was given compensation from the indemnity fund. This provision, making all registrations under a forgery absolutely void, greatly impairs the symmetry and effectiveness of the English system, for it is directly contrary to the cardinal principle that a bona fide transferee for value from the last registered owner holds a certificate which is conclusive evidence of title to registered land. If such statutory declarations as we have mentioned are null and void under our constitutional limitations, the American, Ontario and English systems are practically alike as to the result of a forgery, except that no recourse to the indemnity fund is given in any of the American statutes to the person who may suffer loss from the rectification of the register. It may be that section 38 of the California act is constitutional and valid, but for the determination of this matter, and of many questions arising under Torrens statutes, we must wait until the supreme court of the United States has rendered its decision."

DISSENTING

MORELAND, J.,

I agree with the trial court in the disposition of this case and its judgment ought to be affirmed.

The parties submitted to the trial court a stipulation of facts in which it was admitted by the defendant that the deed from Gregoria Hernandez to Vedasto Velazquez was forged and that it had been set aside upon that ground in an action instituted by Gregoria Hernandez against Vedasto Velazquez. The trial court in its opinion says in this connection;

"It is alleged in the complaint and admitted by the stipulation that Velazquez on January 18, 1904, procured the registry in his own name of that portion of decedent's property which is here in question, presenting for that purpose a forged instrument (Exhibit A)."

The fact of forgery and the cancellation of the forged deed in the action referred to are admitted by both parties on this appeal and nobody questions either of those facts in this Court, nor the fact that the registration was procured fraudulently by means of the forged deed.

I think the opinion of this court is in error in discussing any other question than that stated by the trial court to have been submitted to it for decision when it said: "The question is therefore clearly presented as to the right under the Torrens land transfer system of a bona fide purchaser from a registered holder who became such through the fraudulent registration of a forged instrument." That was absolutely the only question presented to or discussed or considered by the trial court. The defense of negligence or laches was not offered; nor was that of estoppel or election of remedy or kindred defense ever suggested. Nor have these defenses been offered on this appeal. Not one of them is relied on or even mentioned in the brief of counsel, and no oral argument thereon has been offered. As I view the case, therefore, none of these questions is before this court. The sole question presented for our consideration, the plaintiff not having appealed, is whether or not the conveyance to Fabie by Velazquez, whose title was obtained by means of a forged deed, deprived Gregoria Hernandez and her successors in interest of the property, it being conceded that Fabie was an innocent purchaser for value.

In my judgment, section 55 of Act No. 496 is conclusive of the case. The second paragraph of that section provides that "the production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the clerk or register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith." There are, however, two provisos found in this same paragraph, one of which has a very material bearing on the provision just quoted in favor of "every purchaser for value and in good faith." The first proviso deals with the relations between the owner and the person who commits a fraud against him in the original registration, and declares that the provision of section 55 shall not interfere with his right of action against the wrongdoer based upon the fraud. The second proviso deals with the relations between the owner and a purchaser in good faith and for value and declares, in effect, that the rights of such purchaser as conferred by the section must give way to those of an owner who has been deprived of his property by a forged duplicate certificate or by a forged deed or other instrument. It provides:

"And provided further, That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or a forged deed or other instrument, shall be null and void."

This language, as I view it, is so clear and comprehensive that it leaves no room for doubt. It is a direct statement to the effect that the rights of an innocent purchaser for value, and of every other person for that matter, are subordinated and must give way to the superior rights of an owner whose property has been taken away from him by means of a forged duplicate certificate of title or a forged deed or other instrument. Indeed, the declaration of

the statute is that a title so obtained is absolutely valueless no matter into whose hands it falls—it is null and void. Language cannot be stronger.

The contention of counsel quoted in the opinion of the trial court to the effect that "the proviso surely can only mean that such registration is null and void as between the immediate parties," is baseless. The right of an owner of property concerning which a deed has been forged and registry obtained in the name of the forger to bring an action to set aside that deed and to cancel the registry obtained under it exists and existed under the law of the land quite regardless of the proviso under discussion. So long as the property remains in the forger's hands there can be no question, there never was any question, of the right of the owner to obtain an annulment of the deed and a cancellation of the registry obtained thereunder. No provision of statute is required to confer that right. It exists independent of section 55 and is a right of which the legislature could not deprive him if it tried. The contention is unsound for another reason. The proviso under discussion refers to an innocent purchaser for value and not to the forger. It was introduced into the section for the purpose of limiting the privileges just granted by another portion of the section to innocent purchasers for value. A person who forges a deed to another's property and obtains a registry in his own name under that forged instrument is not a purchaser for value and in good faith. Indeed, he is not a purchaser at all; and, as a necessary consequence, the proviso cannot refer to him as it deals, as I have said, with an innocent purchaser for value. It touches the relations between the owner and the innocent purchaser and has nothing to do with the relations between the owner and the forger.

Such being the case, the decisions cited by the trial court in substantiation of his own personal opinion as against that of the court expressed in the decision in the case of *Hernandez vs. Velazquez* are not applicable, there being a statute in this jurisdiction dealing expressly with the subject to which the decisions refer.

I cannot agree to the conclusions which the concurring opinion quotes and adopts from "Analysis of the Torrens System of Conveying Lands" by Mr. Niblack, found in his discussion of the last proviso of section 55 under consideration here. I do not desire in any manner to criticize the author or his very able work. I refer to and discuss certain of his views because they are a type of that extreme school which, it seems to me, needlessly sacrifices everything to the interests of the innocent purchaser for value. Speaking of the limitations of the proviso he says:

"This qualification does not say that any title founded on a forgery shall be null and void, but it merely says that a registration procured by a forged certificate or other instrument shall be void, and we may infer that under such a statute the general rule applies, that a registration procured by forgery is void, but that such a registration may be the root of a good title, and that a person registered in good faith and for value under a prior registration procured by forgery, when the last certificate is produced, takes a valid title. Looked at from this point of view, the three acts just mentioned simply declare the general rule where the statute is silent on the subject of forgery, and are in effect the same as the South Australia, California, and Ontario Statutes."

In the first place, if the first part of this statement has any meaning, it makes a distinction between a registration and a title founded on a registration. This, in my judgment, is unwarranted. The statute of the Philippine Islands a portion of which, namely, the last proviso of section 55 (Act 496), makes no such distinction. Indeed, by express provision, it renders such a distinction impossible, and in the strongest terms prohibits a separation of the title from the registration. Section 50 of the Act (No. 496) provides:

"An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties 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 land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies."

From this section it is clear that the registration is the title. Until registration is accomplished there is nothing between the parties but "a contract" which operates simply as an "authority to the clerk or register of deeds to convey and effect the land." Under the Torrens system, here the owner cannot convey or give title. He is deprived of all power to do so. He can only give authority to the clerk or register to convey. The act of the clerk or register in registering the title is "the operative act to convey and affect the land." As a necessary result, the registration is the title, is absolutely the only evidence of ownership, the only means "whereby the owner of lands hath the just possession of his property." Therefore, if the registration is null and void, there is no title. The fact that the registration is null and void prevents the occurrence of anything affecting the title; and, registration being the only act which can create title, none is created and, therefore, none transferred. The quoted statement would be more in harmony with the provisions and purposes of the statute if the word "title" were replaced by the word "registration" so that the statement would read: This qualification does not say that any registration founded on a registration procured by forgery shall be null and void, but it merely says that a registration procured by a forged certificate or other instrument shall be void, etc. What is meant, as shown by subsequent lines, is that the forged registration is sound on its face and that if the land is transferred to another and registered in his name that registration is good; in other words, a valid registration can be founded on a void registration. We may admit this to be true for the purposes of the discussion; but if true it is so not because the void registration was the "root" of a title but because, as to third persons, it was the title itself; not because it was bad but could be ripened or grown into something good, but because it was always good, the law not permitting it to be called bad, but conclusively presuming that, as to the world, it was good from the beginning; not because it was defective and could be completed and perfected by the subsequent acts of somebody, but because there never was a moment when, as to all the outside world, the registration was not complete and perfect. If the innocent purchaser for value could get anything by his registration based on the void registration, he got all there was at once; and, if the forged registration could give him anything at all, it could give him all. It could not give him the root of a title, it gave him the title itself. The statement that the forged registration, while absolutely void between the owner and the forger, was valid as to an innocent purchaser for value does not mean the same as the statement that a forged registration "may become the root of a good title." It distinguishes between a title and an inchoate title, between a complete and an incomplete title, between a root of a good title and a good title, between a title and a registration. The statute permits of no such distinction. Moreover, if the title may detach itself from the registration and wander about independent thereof, there is an end of the Torrens system; for then registration will not be the sole determinant of title, a necessity absolutely essential to the integrity of that system. As to third persons, under the Torrens law there are no equitable titles. Legal titles alone are those created and sanctioned by that law. Nor are there half-titles or quarter-titles or colored titles or colors of title or roots of title, or things that can ripen into titles. What that law knows is simple title—a complete title; and under it is title or nothing. By express provision of that law title is registration and registration is title. It is clear, therefore, that, when the author speaks of a void registration being the "root of a good title," he must be held to say simply that a void registration is good as to purchasers for value in good faith—which is the very proposition we set out to discuss and which is one clearly necessary to discuss in view of the proviso which has provoked all these words. The whole discussion of the question whether a forged registration will protect an innocent purchaser for value consists, then, simply in the statement that a void registration protects an innocent purchaser for value. While this gets quick results it is not altogether satisfactory.

The necessary result of Mr. Niblack's discussion is that the proviso under consideration produces no effect whatever except between the owner and the forger.

This theory seems to me to be untenable. In the first place, if it be correct the proviso does nothing but set down the law as it then existed; for it has always been the law that a title obtained by forgery is absolutely void as between the forger and the owner. If the proviso does no more than declare that principle, it does nothing. In the second place, the proviso taken in conjunction with the enacting clause to which it relates refers, as a mere matter of language, to an innocent purchaser for value; and the limitation contained in the proviso is precisely a limitation on the rights of the innocent purchaser. It is well recognized that a proviso is a clause engrafted on a preceding enactment for the purpose of restraining or modifying the enacting clause, or of excepting something from its operation which otherwise would have been within it; and that its appropriate office is to restrain or modify the enacting clause and not to enlarge it. Clearly the enacting clause here is "the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith." Now, the proviso, referring directly to this enacting clause, declares that "any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or forged deed or other instrument, shall be null and void." To what does the proviso refer? Clearly to the declaration in favor of an innocent purchaser for value and to him alone. The proviso is meaningless unless that be so. There is no person mentioned in the enacting clause between whom and the owner the proviso could possibly establish a relation except the innocent purchaser. The innocent purchaser is alone named in the enacting clause and the effect of the forger's act on him is alone declared in the proviso. It requires no interpretation or construction to reach this conclusion; and I have gone into it thus far only by way of reply. If the language of statutes were looked at by judges and authors with the same abstraction with which they look at ordinary articles in the newspapers there would be far more application and far less interpretation and construction of statutes. If one should receive a letter from his wife in which she says that yesterday she sent all of the children to school except Virginia, it would take no interpretation or construction of the letter, or involved argument, to determine which child was not sent to school. If a statute says that a registration shall protect an innocent purchaser except when it is obtained by forgery it takes no consideration, or interpretation, or construction, or fine distinctions, or involved argument, to determine when a registration does not protect an innocent purchaser. This is precisely what the proviso before us does. The statute states that a registration shall be conclusive upon the owner and shall protect an innocent purchaser for value except when that registration is procured by forgery. Does it require any interpretation, or construction, or fine distinction, or involved argument, to determine when an innocent purchaser is not protected?

A word now as to the relative merits of the Torrens system without the proviso and that system with the proviso, assuming it to mean what I contend it means. The author says that a proviso applied as I insist on applying the one before us "greatly impairs the symmetry and effectiveness of the English system, for it is directly contrary to the cardinal principle" which protects an innocent purchaser for value; and he complains against the English landowners who cried out vehemently against a statute which gave effect to a title founded on forgery and he declaims against them especially because they refused to out their lands under the Torrens Act of 1875. It occurs to me to inquire why should not an owner strenuously object when, on going to bed at night, he knows that the very house in which he sleeps may be stolen from him before he arises in the morning. And more; he knows that if it is stolen he will never be able to recover it; that his loss will be irrevocable. He knows that, under such a system, he is placed in a far worse position than is he who has his watch or his jewelry or his automobile or his horse stolen. These can be retaken whenever found, no matter through how many innocent hands they may have passed; but his house, his land, his home, is lost forever. Under the benign and ultra-civilized theories of the Torrens system extremest, real estate may be stolen with results incomparably more disastrous to the owner than centuries of civilization, of law and order, have permitted to follow the theft of personal property. Why should the owner of real estate not object when he is dealt with in such an unheard of manner? Why should he not protest when he is placed in a position where the safest thing for him to do when he receives his title from the State is to burn it up on the spot in order to insure himself against the loss of his lands by the theft of his title? I have heard

much talk about the protection of the innocent purchaser; but I have heard none about the protection of the innocent owner. As I view it he is the one entitled to first consideration; and any system which, in its attempt to protect the innocent purchaser, goes to the extreme of rendering insecure the title of the innocent owner is essentially vicious, is irremediably bad. And the ridiculous thing about it is that such a system does not in reality protect the innocent purchaser; for the very instant he himself becomes the owner his ownership is as insecure as that of the owner from whom his purchase assisted in filching it. I contend that any system which render the beneficial and effective ownership of real estate less secure in any given instance than that of personal property is inherently wrong.

I have heard much talk also of the "symmetry" of the Torrens system; of its "emasculatation" and the defeat of its "cardinal principle" and of the destruction of the "confidence of the public" in the system, by a failure to protect the innocent purchaser for value. But I have heard nothing about a system which, in the very act of protecting an innocent purchaser, renders his title insecure; which operates advantageously only so long as the transfer of ownership is continuous; and which, when the ownership stops in any given person long enough to be stolen, puts the stamp of its approval on the theft of it. I have heard nothing about "emasculating" the title of an innocent owner; or of defeating "the cardinal principle" of ownership. Nor have I heard anything against a theory which sacrifices the security of ownership to the symmetry of a system.

But it may be urged that the loss of title by theft and forgery will be so infrequent that the cry of the owner of real estate against the system of the extremists is not justified. Very well; let us admit this; but the answer is a conclusive demonstration of the utter weakness and futility of the contention and argument of the opposition; for if the loss to the owner will be negligible under that system then for the very same reason the loss to the innocent purchaser would be negligible under the other system. Why, then, change the status quo? If nothing is accomplished by changing a principle of law centuries old, which protects owners from theft and robbery and all other crimes against their property, why change it? If nothing is gained why change the incidence of loss from where it has been placed for generations not only by settled law, but also by unimpeachable principles of right and justice? Certain it is that if the loss of title under the Torrens system by forgery will be so infrequent as not to disturb the security of ownership, and I admit that it will be, how can it affect the "symmetry" of the system, or "emasculate the entire statute," or "weaken the confidence of the public in the whole system," or "greatly impair the symmetry and effectiveness of the * * * system?" To precisely the extent that, under such a system, transfers are made secure, ownership is made insecure. If 10,000 innocent purchasers of Torrens lands lose them in a single day in the city of Manila by reason of the proviso under discussion, the Torrens system with that proviso is ruined. But, on the other hand, if 10,000 owners of Torrens lands can, without the proviso, irrevocably lose those lands in a single day in the city of Manila by forgery and theft, then also is the Torrens system without the proviso ruined; for no system can stand which exposes ownership in lands to such risks. But, if we accept the probabilities and satisfy ourselves that not more than two cases of loss by forgery will occur in the Philippine Islands in 20 years, then the Torrens system, as a system, will be wholly unaffected whoever is required to lose. As a necessary result, this cry about "emasculating" the system and destroying its "symmetry" and the loss of confidence in it because the innocent purchaser instead of the owner must lose, is as devoid of practical as it is of theoretical basis. All I contend for is that, when there is a loss, it shall not be placed on the only one who, under settled law and in all justice and equity, ought not to lose.

I have never heard that this right to recover stolen personal property has made the business of the purchase and sale of personal property impossible or the title thereto insecure; and the volume of the business of buying and selling personal property is many times that which relates to real estate for any given period. I have never heard that the right of the owner to retake a stolen automobile has impeded the automobile business anywhere. It is clear that, as a practical matter, the requirement that the innocent purchaser and not the owner of real estate lose in

cases of forgery will not affect the practical value of the system.

I do not discuss the assurance fund. It has no bearing on the question involved. If it had it would be far more just that the innocent purchaser rather than the innocent owner be required to go to it. Besides, if an owner be outraged by a forgery of titles to his lands, that fact furnishes no reason why the State should outrage him again by taking advantage of the forgery to deprive him of those lands and turn them over to another, offering him in place thereof the privilege of beginning a lawsuit to see if he can get pay from the assurance fund for the lands of which the Government materially assisted in robbing him.

Judgment reversed.

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