

**FRANK W. TOWLE, PETITIONER AND APPELLANT, VS. THE
DIRECTOR OF LANDS, RESPONDENT AND APPELLEE.***G.R. No. 8384. October 24, 1913*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of Land Registration decreeing the registration of the title to the land described in the petition and ordering the petitioner, as a condition precedent to such registration, to pay P5 per hectare for the land so registered under section 65 of Act No. 926 of the Philippine Commission.

On the 23d of July, 1910, the appellant presented to the Court of Land Registration a petition asking for the registration of his title to certain lands situated in the municipality of Buena Vista, Province of Iloilo, The Government of the Philippine Islands, Raymundo Melliza, Rufino Mula, and Ciriaca Lacson responded to the petition and entered their opposition to the registration. Subsequently, and during the trial, Raymundo Melliza withdrew his opposition. The case having been tried, the court on the 12th of March, 1912, overruling the opposition of the respondents, decreed the registration of the title to the land in question, basing the judgment upon the ground that it had been clearly demonstrated by the evidence in the case that the petitioner and his predecessors in interest had been in open, peaceful, notorious and uninterrupted possession of the land in question for more than twenty years; that said land was agricultural land; and that, by reason of these facts, the case fell within the provisions of subdivision 6 of section 54 of Act No. 926. From this decision the Director of Lands took an appeal, which was subsequently withdrawn. None of the other respondents appealed.

On the 8th of July, 1912, the court, without notice to the appellant, made and entered what it termed "an additional decision," finding and holding that that portion of the land in question designated as parcel B was acquired by its original possessor under circumstances requiring payment therefor to the Government under the provisions of article 14 of the royal decree of January 26, 1889, and section 65 of Act 926 already referred to, and declaring that, as a condition precedent to the registration, the petitioner must pay P5 per hectare.

The original possessor of the greater part of the land in question was one Dimas Enriquez, who acquired part of it in the year 1889 and other parts in 1890 and 1891. The tract in question, parcel B, was acquired by occupation in 1891, it being at that time Government land. Enriquez sold the land to one Fitzgerald, who subsequently sold it to a Doctor Martin, who, in turn, conveyed it to the appellant. These persons possessed and cultivated the land continuously, peacefully, openly, and notoriously for more than twenty years prior to the filing of the petition for registration.

The Government relies upon section 65 of Act No. 926 to sustain the amended judgment of the Court of Land Registration requiring the payment of P5 per hectare as a condition precedent to the registration of the title to the land. The appellant, on the other hand, relies upon the provisions of paragraph 6 of section 54 of the same Act.

We are of the opinion that section 65 is not applicable to this case as it is made up by the evidence before us. That section applies to a case where, under the Spanish regime, a proceeding was begun in accordance with the law

then in force to obtain title to lands for which applicant must, before obtaining title, pay a sum specified by law. To bring the case necessarily within section 65, not only must such proceeding have been brought, but it must further appear that the proceeding thus begun, and the facts upon which it was based, constitute the only title or claim which petitioner has to the land sought to be registered under the section. Where, as in the case at bar, the petitioner for registration under Act No. 926 has a title or rights apart from and independent of the proceedings to obtain title above referred to, he may elect whether he will base his rights on the proceeding begun under the Spanish law, as provided in section 65, or whether he will abandon his rights under that proceeding and stand upon a title or rights which he has acquired in some other manner and which bring him within some other provision of the Act. In the case before us the petitioner comes within the provisions of Act No. 926 independently of the proceeding to obtain title begun under the Spanish regime. He comes within that Act by virtue of possession and cultivation of agricultural land for the required time, and not by virtue of any proceeding which he may have begun prior to the American occupation. While, possibly, he could have elected to stand upon the proceeding begun under the Spanish regime to obtain title to the land in question and thereby have brought himself under the provisions of section 65, he did not do so, but, on the contrary, elected to abandon the rights which he had obtained under that proceeding and to stand upon possession and cultivation. By so doing, he brought himself within paragraph 6 of section 54 of said Act No. 926. He had a perfect right to do this, and having done it, he obtained his registration not by virtue of section 65, but by virtue of paragraph 6 of section 54. That being the case, he was entitled to have his title registered without the payment of the P5 per hectare which the court imposed upon him.

The judgment of the Land Court is modified by striking out the provision for the payment of P5 per hectare, and, as so modified, is affirmed, without costs in this instance.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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