

**CONSUELO LEGARDA, WITH HER HUSBAND MAURO PRIETO,
PLAINTIFFS AND APPELLANTS, VS. N. M. SALEEBY, DEFENDANT AND
APPELLEE.**

G. R. No. 8936. October 02, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record the following facts appear:

First. That the plaintiffs and the defendant occupy, as owners, adjoining lots in the district of Ermita in the city of Manila.

Second. That there exists and has existed for a number of years a stone wall between the said lots. Said wall is located on the lot of the plaintiffs.

Third. That the plaintiffs, on the 2d day of March, 1906, presented a petition in the Court of Land Registration for the registration of their lot. After a consideration of said petition the court, on the 25th day of October, 1906, decreed that the title of the plaintiffs should be registered and issued to them the original certificate provided for under the torrens system. Said registration and certificate included the wall.

Fourth. Later the predecessor of the defendant presented a petition in the Court of Land Registration for the registration of the lot now occupied by him. On the 25th day of March, 1912, the court decreed the registration of said title and issued the original certificate provided for under the torrens system. The description of the lot given in the petition of the defendant also included said wall.

Fifth. Several months later (the 13th day of December, 1912) the plaintiffs discovered that the wall which had been included in the certificate granted to them had also been included in the certificate granted to the defendant. They immediately presented a petition in the Court of Land Registration for an adjustment and correction of the error committed by including said wall in the registered title of each of said parties. The lower court however, without notice to the defendant, denied said petition upon the theory that, during the pendency of the petition for the registration of the defendant's land, they failed to make any objection to the registration of said lot, including the wall, in the name of the defendant.

Sixth. That the land occupied by the wall is registered in the name of each of the owners of the adjoining lots. The wall is not a joint wall.

Under these facts, who is the owner of the wall and the land occupied by it?

The decision of the lower court is based upon the theory that the action for the registration of the lot of the defendant was a judicial proceeding and that the judgment or decree was binding upon all parties who did not appear and oppose it. In other words, by reason of the fact that the plaintiffs had not opposed the registration of that part of the lot on which the wall was situate they had lost it, even though it had been theretofore registered in

their name. Granting that theory to be the correct one, and granting even that the wall and the land occupied by it, in fact, belonged to the defendant and his predecessors, then the same theory should be applied to the defendant himself. Applying that theory to him, he had already lost whatever right he had therein, by permitting the plaintiffs to have the same registered in their name, more than six years before. Having thus lost his right, may he be permitted to regain it by simply including it in a petition for registration? The plaintiffs having secured the registration of their lot, including the wall, were they obliged to constantly be on the alert and to watch all the proceedings in the land court to see that some one else was not having all, or a portion of the same, registered? If that question is to be answered in the affirmative, then the whole scheme and purpose of the torrens system of land registration must fail. The real purpose of that system is to quiet title to land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, it would seem that once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the "mirador de su casa," to avoid the possibility of losing his land. Of course, it can not be denied that the proceeding for the registration of land under the torrens system is judicial (*Escueta vs. Director of Lands*, 16 Phil. Rep., 482). It is clothed with all the forms of an action and the result is final and binding upon all the world. It is an action in rem. (*Escueta vs. Director of Lands* (supra); *Grey Alba vs. De la Cruz*, 17 Phil. Rep., 49; *Roxas vs. Enriquez*, 29 Phil. Rep., 31; *Tyler vs. Judges*, 175 Mass., 71; *American Land Co. vs. Zeiss*, 219 U. S., 47.)

While the proceeding is judicial, it involves more in its consequences than does an ordinary action. All the world are parties, including the government. After the registration is complete and final and there exists no fraud, there are no innocent third parties who may claim an interest. The rights of all the world are foreclosed by the decree of registration. The government itself assumes the burden of giving notice to all parties. To permit persons who are parties in the registration proceeding (and they are all the world) to again litigate the same questions, and to again cast doubt upon the validity of the registered title, would destroy the very purpose and intent of the law. The registration, under the torrens system, does not give the owner any better title than he had. If he does not already have a perfect title, he can not have it registered. Fee simple titles only may be registered. The certificate of registration accumulates in one document a precise and correct statement of the exact status of the fee held by its owner. The certificate, in the absence of fraud, is the evidence of title and shows exactly the real interest of its owner. The title once registered, with very few exceptions, should not thereafter be impugned, altered, changed, modified, enlarged, or diminished, except in some direct proceeding permitted by law. Otherwise all security in registered titles would be lost. A registered title can not be altered, modified, enlarged, or diminished in a collateral proceeding and not even by a direct proceeding, after the lapse of the period prescribed by law.

For the difficulty involved in the present case the Act (No. 496) providing for the registration of titles under the torrens system affords us no remedy. There is no provision in said Act giving the parties relief under conditions like the present. There is nothing in the Act which indicates who should be the owner of land which has been registered in the name of two different persons.

The rule, we think, is well settled that the decree ordering the registration of a particular parcel of land is a bar to future litigation over the same between the same parties. In view of the fact that all the world are parties, it must follow that future litigation over the title is forever barred; there can be no persons who are not parties to the action.

This, we think, is the rule, except as to rights which are noted in the certificate or which arise subsequently, and with certain other exceptions which need not be discussed at present. A title once registered can not be defeated, even by an adverse, open, and notorious possession. Registered title under the torrens system can not be defeated by prescription (section 46, Act No. 496). The title, once registered, is notice to the world. All persons must take

notice. No one can plead ignorance of the registration.

The question, who is the owner of land registered in the name of two different persons, has been presented to the courts in other jurisdictions. In some jurisdictions, where the "torrens" system has been adopted, the difficulty has been settled by express statutory provision. In others it has been settled by the courts. Hogg, in his excellent discussion of the "Australian Torrens System," at page 823, says: "The general rule is that in the case of two certificates of title, purporting to include the same land, the earlier in date prevails, whether the land comprised in the latter certificate be wholly, or only in part, comprised in the earlier certificate. (*Oelkers vs. Merry*, 2 Q. S. C. R., 193; *Miller vs. Davy*, 7 N. Z. R., 155; *Lloyd vs. Mayfield*, 7 A. L. T. (V.) 48; *Stevens vs. Williams*, 12 V. L. R., 152; *Register of Titles vs. Esperance Land Co.*, 1 W. A. R., 118.)" Hogg adds however that, "if it can be clearly ascertained by the ordinary rules of construction relating to written documents, that the inclusion of the land in the certificate of title of prior date is a mistake, the mistake may be rectified by holding the latter of the two certificates of title to be conclusive." (See Hogg on the "Australian Torrens System," *supra*, and cases cited. See also the excellent work of Niblack in his "Analysis of the Torrens System," page 99.) Niblack, in discussing the general question, said: "Where two certificates purport to include the same land the earlier in date prevails. * *

* In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof. While the acts in this country do not expressly cover the case of the issue of two certificates for the same land, they provide that a registered owner shall hold the title, and the effect of this undoubtedly is that where two certificates purport to include the same registered land, the holder of the earlier one continues to hold the title" (p. 237).

Section 38 of Act No. 496, provides that; "It (the decree of registration) shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description 'To all whom it may concern.' Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree (of registration), provided no innocent purchaser for value has acquired an interest."

It will be noted, from said section, that the "decree of registration" shall not be opened, for any reason, in any court, except for fraud, and not even for fraud, after the lapse of one year. If then the decree of registration can not be opened for any reason, except for fraud, in a direct proceeding for that purpose, may such decree be opened or set aside in a collateral proceeding by including a portion of the land in a subsequent certificate or decree of registration? We do not believe the law contemplated that a person could be deprived of his registered title in that way.

We have in this jurisdiction a general statutory provision which governs the right of the ownership of land when the same is registered in the ordinary registry in the name of two different persons. Article 1473 of the Civil Code provides, among other things, that when one piece of real property has been sold to two different persons it shall belong to the person acquiring it, who first inscribes it in the registry. This rule, of course, presupposes that each of the vendees or purchasers has acquired title to the land. The real ownership in such a case depends upon priority of registration. While we do not now decide that the general provisions of the Civil Code are applicable to the Land Registration Act, even though we see no objection thereto, yet we think, in the absence of other express provisions, they should have a persuasive influence in adopting a rule for governing the effect of a double

registration under said Act. Adopting the rule which we believe to be more in consonance with the purposes and the real intent of the torrens system, we are of the opinion and* so decree that in case land has been registered under the Land Registration Act in the name of two different persons, the earlier in date shall prevail.

In reaching the above conclusion, we have not overlooked the forceful argument of the appellee. He says, among other things; "When Prieto et al. were served with notice of the application of Teus (the predecessor of the defendant) they became defendants in a proceeding wherein he, Teus, was seeking to foreclose their right, and that of others, to the parcel of land described in his application. Through their failure to appear and contest his right thereto, and the subsequent entry of a default judgment against them, they became irrevocably bound by the decree adjudicating such land to Teus. They had their day in court and can not set up their own omission as ground for impugning the validity of a judgment duly entered by a court of competent jurisdiction. - To decide otherwise would be to hold that lands with torrens titles are above the law and beyond the jurisdiction of the courts."

As was said above, the primary and fundamental purpose of the torrens system is to quiet title. If the holder of a certificate cannot rest secure in his registered title then the purpose of the law is defeated. If those dealing with registered land cannot rely upon the certificate, then nothing has been gained by the registration and the expense incurred thereby has been in vain. If the holder may lose a strip of his registered land by the method adopted in the present case, he may lose it all. Suppose within the six years which elapsed after the plaintiff had secured their title, they had mortgaged or sold their right, what would be the position or right of the mortgagee or vendee? That mistakes are bound to occur cannot be denied, and sometimes the damage done thereby is irreparable. It is the duty of the courts to adjust the rights of the parties under such circumstances so as to minimize such damages, taking into consideration all of the conditions and the diligence of the respective parties to avoid them. In the present case, the appellee was first negligent (granting that he was the real owner, and if he was not the real owner he can not complain) in not opposing the registration in the name of the appellants. He was a party-defendant in an action for the registration of the lot in question, in the name of the appellants, in 1906. "Through his failure to appear and to oppose such registration, and the subsequent entry of a default judgment against him, he became irrevocably bound by the decree adjudicating such land to the appellants. He had his day in court and should not be permitted to set up his own omissions as the ground for impugning the validity of a judgment duly entered by a court of competent jurisdiction." Granting that he was the owner of the land upon which the walk is located, his failure to oppose the registration of the same in the name of the appellants, in the absence of fraud, forever closes his mouth against impugning the validity of that judgment. There is no more reason why the doctrine invoked by the appellee should be applied to the appellants than to him.

We have decided, in case of double registration under the Land Registration Act, that the owner of the earliest certificate is the owner of the land. That is the rule between original parties. May this rule be applied to successive vendees of the owners of such certificates? Suppose that one or the other of the parties, before the error is discovered, transfers his original certificate to an "innocent purchaser." The general rule is that the vendee of land has no greater right, title, or interest than his vendor; that he acquires the right which his vendor had, only. Under that rule the vendee of the earlier certificate would be the owner as against the vendee of the owner of the later certificate.

We find statutory provisions which, upon first reading, seem to cast some doubt upon the rule that the vendee acquires the interest of the vendor only. Sections 38, 55, and 112 of Act No. 496 indicate that the vendee may acquire rights and be protected against defenses which the vendor would not. Said sections speak of available rights in favor of third parties which are cut off by virtue of the sale of the land to an "innocent purchaser." That is to say, persons who had had a right or interest in land wrongfully included in an original certificate would be

unable to enforce such rights against an "innocent purchaser," by virtue of the provisions of said sections. In the present case Teus had his land, including the wall, registered in his name. He subsequently sold the same to the appellee. Is the appellee an "innocent purchaser," as that phrase is used in said sections? May those who have been deprived of their land by reason of a mistake in the original certificate in favor of Teus be deprived of their right to the same, by virtue of the sale by him to the appellee? Suppose the appellants had sold their lot, including the wall, to an "innocent purchaser," would such purchaser be included in the phrase "innocent purchaser," as the same is used in said sections? Under these examples there would be two innocent purchasers of the same land, if said sections are to be applied. Which of the two innocent purchasers, if they are both to be regarded as innocent purchasers, should be protected under the provisions of said sections? These questions indicate the difficulty with which we are met in giving meaning and effect to the phrase "innocent purchaser," in said sections.

May the purchaser of land which has been included in a "second original certificate" ever be regarded as an "innocent purchaser," as against the rights or interest of the owner of the first original certificate, his heirs, assigns, or vendee? The first original certificate is recorded in the public registry. It is never issued until it is recorded. The record is notice to all the world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses. This rule is so well established that it is scarcely necessary to cite authorities in its support (*Northwestern National Bank vs. Freeman*, 171 U. S., 620, 629; *Delvin on Real Estate*, sections 710, 710 [a]).

When a conveyance has been properly recorded such record is constructive notice of its contents and all interests, legal and equitable, included therein. (*Grandin vs. Anderson*, 15 Ohio State, 286, 289; *Orvis vs. Newell*, 17 Conn., 97; *Buchanan vs. International Bank*, 78 111., 500; *Youngs vs. Wilson*, 27 N. Y., 351; *McCabe vs. Grey*, 20 Cal., 509; *Montefiore vs. Browne*, 7 House of Lords Cases, 341.)

Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.

While there is no statutory provision in force here requiring that original deeds of conveyance of real property be recorded, yet there is a rule requiring mortgages to be recorded. (Arts. 1875 and 606 of the Civil Code.) The record of a mortgage is indispensable to its validity. (Art. 1-875.) In the face of that statute would the courts allow a mortgage to be valid which had not been recorded, upon the plea of ignorance of the statutory provision, when third parties were interested? May a purchaser of land, subsequent to the recorded mortgage, plead ignorance of its existence, and by reason of such ignorance have the land released from such lien? Could a purchaser of land, after the recorded mortgage, be relieved from the mortgage lien by the plea that he was a bona fide purchaser? May there be a bona fide purchaser of said land, bona fide in the sense that he had no knowledge of the existence of the mortgage? We believe the rule that all persons must take notice of what the public record contains is just as obligatory upon all persons as the rule that all men must know the law; that no one can plead ignorance of the law. The fact that all men know the law is contrary to the presumption. The conduct of men, at times, shows clearly that they do not know the law. The rule, however, is mandatory and obligatory, notwithstanding. It would be just

as logical to allow the plea of ignorance of the law affecting a contract as to allow the defense of ignorance of the existence and contents of a public record. In view, therefore, of the foregoing rules of law, may the purchaser of land from the owner of the second original certificate be an "innocent purchaser," when a part or all of such land had theretofore been registered in the name of another, not the vendor? We are of the opinion that said sections 38, 55, and 112 should not be applied to such purchasers. We do not believe that the phrase "innocent purchaser" should be applied to such a purchaser. He cannot be regarded as an "innocent purchaser" because of the facts contained in the record of the first original certificate. The rule should not be applied to the purchaser of a parcel of land the vendor of which is not the owner of the original certificate, or his successors. He, in no sense, can be an "innocent purchaser" of the portion of the land included in another earlier original certificate. The rule of notice of what the record contains precludes the idea of innocence. By reason of the prior registry there cannot be an innocent purchaser of land included in a prior original certificate and in a name other than that of the vendor, or his successors. In order to minimize the difficulties we think this is the safer rule to establish. We believe the phrase "innocent purchaser," used in said sections, should be limited only to cases where unregistered land has been wrongfully included in a certificate under the torrens system. When land is once brought under the torrens system, the record of the original certificate and all subsequent transfers thereof is notice to all the world. That being the rule, could Teus even be regarded as the holder in good faith of that part of the land included in his certificate which had theretofore been included in the original certificate of the appellants? We think not. Suppose, for example, that Teus had never had his lot registered under the torrens system. Suppose he had sold his lot to the appellee and had included in his deed of transfer the very strip of land now in question. Could his vendee be regarded as an "innocent purchaser" of said strip? Would his vendee be an "innocent purchaser" of said strip? Certainly not. The record of the original certificate of the appellants precludes the possibility. Has the appellee gained any right by reason of the registration of the strip of land in the name of his vendor? Applying the rule of notice resulting from the record of the title of the appellants, the question must be answered in the negative. We are of the opinion that these rules are more in harmony with the purpose of Act No. 496 than the rule contended for by the appellee. We believe that the purchaser from the owner of the later certificate, and his successors, should be required to resort to his vendor for damages, in case of a mistake like the present, rather than to molest the holder of the first certificate who has been guilty of no negligence. The holder of the first original certificate and his successors should be permitted to rest secure in their title, against one who had acquired rights in conflict therewith and who had full and complete knowledge of their rights. The purchaser of land included in the second original certificate, by reason of the facts contained in the public record and the knowledge with which he is charged and by reason of his negligence, should suffer the loss, if any, resulting from such purchase, rather than he who has obtained the first certificate and who was innocent of any act of negligence.

The foregoing decision does not solve, nor pretend to solve, all the difficulties resulting from double registration under the torrens system and the subsequent transfer of the land. Neither do we now attempt to decide the effect of the former registration in the ordinary registry upon the registration under the torrens system. We are inclined to the view, without deciding it, that the record under the torrens system must, by the very nature and purposes of that system, supersede all other registries. If that view is correct then it will be sufficient, in dealing with land registered and recorded under the torrens system, to examine that record alone. Once land is registered and recorded under the torrens system, that record alone can be examined for the purpose of ascertaining the real status of the title to the land.

It would seem to be a just and equitable rule, when two persons have acquired equal rights in the same thing, to hold that the one who acquired it first and who has complied with all the requirements of the law should be protected.

In view of our conclusions, above stated, the judgment of the lower court should be and is hereby revoked. The

record is hereby returned to the court now having and exercising the jurisdiction heretofore exercised by the land court, with direction to make such orders and decrees in the premises as may correct the error heretofore made in including the land in question in the second original certificate issued in favor of the predecessor of the appellee, as well as in all other duplicate certificates issued. Without any finding as to costs, it is so ordered.

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

Carson J., with whom concurs

CARSON J., with whom concurs TRENT, J., dissenting:

I dissent.

In cases of double or overlapping registration, I am inclined to agree with the reasoning and authority on which it is held in the majority opinion (first) that the original holder of the prior certificate is entitled to the land as against the original holder of the later certificate, where there has been no transfer of title by either party to an innocent purchaser; both, as is shown in the majority opinion, being at fault in permitting the double registration to take place; (second) that an innocent purchaser claiming under the prior certificate is entitled to the land as against the original holder of the later certificate, and also as against innocent purchasers from the holder of the later certificate; the innocent purchaser being in no wise at fault in connection with the issuance of the later certificate.

But I am of opinion that neither the authorities cited, nor the reasoning of the majority opinion sustains the proposition that the original holder of the prior certificate is entitled to the land as against an innocent purchaser from the holder of the later certificate.

As to the text-book authorities cited in the majority opinion, it is sufficient to say that the rules laid down by both Hogg and Niblack are mere general rules, admittedly subject to exception, and of course of no binding force or authority where the reasoning upon which these rules are based is inapplicable to the facts developed in a particular case.

In its last analysis the general rule laid down in the majority opinion rests upon the proposition set forth in the last page of the opinion wherein it is said that "it would seem to be a just and equitable rule, when two persons have acquired equal rights in the same thing, to hold that the one who acquired it first and who has complied with all the requirements of the law should be protected." The rule, as applied to the matter in hand, may be stated as follows: It would seem to be a just and equitable rule when two persons have acquired separate and independent registered titles to the same land, under the Land Registration Act, to hold that the one who first acquired registered title and who has complied with all the requirements of the law in that regard should be protected, in the absence of any express statutory provision to the contrary.

Thus stated I have no quarrel with the doctrine as a statement of the general rule to be applied in cases of double or overlapping registration under the Land Registration Act; for it is true as stated in the majority opinion that in the adjudication and registration of titles by the Courts of Land Registration "mistakes are bound to occur, and sometimes the damage done thereby is irreparable;" and that in the absence of statutory provisions covering such cases, "it is the duty of the courts to adjust the rights of the parties, under such circumstances, so as to minimize such damages, taking into consideration all of the conditions, and the diligence of the respective parties to avoid them."

But like most such general rules, it has its exceptions and should not be applied in a case wherein the reasons on which it is based do not exist, or in cases wherein still more forceful reasons demand the application of a contrary

rule.

The general rule relied upon in the majority opinion is a mere application of a well settled equity rule that: "Where conflicting equities are otherwise equal in merit, that which first accrued will be given the preference." But it is universally laid down by all the courts which have had occasion to apply this equity rule that "it should be the last test resorted to," and that "it never prevails when any other equitable ground for preference exists." (See 19 Cent. Dig., tit. Equity, par. 181; and many cases cited in 16 Cyc, 139, note 57.) It follows that the general rules, that in cases of double or overlapping registration the earlier certificate should be protected, ought not to prevail so as to deprive an innocent purchaser under the later certificate of his title in any case wherein the fraud or negligence of the holder of the earlier certificate contributed to the issuance of the later certificate. Hence the holder of the earlier certificate of title should not be heard to invoke the "just and equitable rule" as laid down in the majority opinion, in order to have his own title protected and the title of an innocent holder of a later certificate cancelled or annulled, in any case wherein it appears that the holder of the later certificate was wholly without fault, while the holder of the earlier certificate was wholly or largely to blame for the issuance of the later certificate, in that he might have prevented its issuance by merely entering his appearance in court in response to lawful summons personally served upon him in the course of the proceedings for the issuance of the second certificate, and pleading his superior rights under the earlier certificate, instead of keeping silent and by his silence permitting a default judgment to be entered against him adjudicating title in favor of the second applicant.

The majority opinion clearly recognizes the soundness-of the principles I am contending for by the reasoning (with which I am inclined to agree) whereby it undertakes to demonstrate that as between the original holders of the double or overlapping registration the general rule should prevail, because both such original parties must be held to have been at fault and, their equities being equal, preference should be given to the earlier title.

The majority opinion further recognizes the soundness of my contention by the reasoning whereby it undertakes to sustain the application of the general rule in favor of the original holder of the earlier certificate against purchasers from the original holder of the later certificate, by an attempt to demonstrate that such purchasers can in no event be held to be innocent purchasers: because, as it is said, negligence may and should always be imputed to such a purchaser, so that in no event can he claim to be without fault when it appears that the lands purchased by him from the holder of a duly registered certificate of title are included within the bounds of the lands described in a certificate of title of an earlier date.

At considerable length the majority opinion (in reliance upon the general rule laid down under the various systems of land registration, other than those based on the torrens system insists that a purchaser of land duly registered in the Land Registration Court, is charged with notice of the contents of each and every one of the thousands and tens of thousands of certificates of registry on file in the land registry office, so that negligence may be imputed to him if he does not ascertain that all or any part of the land purchased by him is included within the boundary lines of any one of the thousands or tens of thousands of tracts of land whose original registry bears an earlier date than the date of the original registry of the land purchased by him. It is contended that he cannot claim to be without fault should he buy such land because, as it is said, it was possible for him to discover that the land purchased by him had been made the subject of double or overlapping registration by a comparison of the description and boundary lines of the thousands of tracts and parcels of land to be found in the land registry office.

But such a ruling goes far to defeat one of the principal objects sought to be attained by the introduction and adoption of the so-called torrens system for the registration of land. The avowed intent of that system of land registration is to relieve the purchaser of registered lands from the necessity of looking farther than the certificate of title of the vendor in order that he may rest secure as to the validity of the title to the lands conveyed to him. And yet it is said in the majority opinion that he is charged with notice of the contents of every other certificate of

title in the office of the registrar so that his failure to acquaint himself with its contents may be imputed to him as negligence.

If the rule announced in the majority opinion is to prevail, the new system of land registration, instead of making transfers of real estate simple, expeditious and secure, and instead of avoiding the necessity for expensive and oftentimes uncertain searches of the land records and registries, in order to ascertain the true condition of the title before purchase, will, in many instances, add to the labor, expense and uncertainty of any attempt by a purchaser to satisfy himself as to the validity of the title to lands purchased by him.

As I have said before, one of the principal objects, if not the principal object, of the torrens system of land registration upon which our Land Registration Act is avowedly modelled is to facilitate the transfer of real estate. To that end the Legislature undertakes to relieve prospective purchasers and all others dealing in registered lands from the necessity of looking farther than the certificate of title to such lands furnished by the Court of Land Registration, and I cannot, therefore, give my consent to a ruling which charges a purchaser or mortgagee of registered lands with notice of the contents of every other certificate of title in the land registry, so that negligence and fault may be imputed to him should he be exposed to loss or damages as a result of the lack of such knowledge.

Suppose a prospective purchaser of lands registered under the Land Registration Act desires to avoid the imputation of negligence in the event that, unknown to him, such lands have been made the subject of double or overlapping registration, what course should he pursue? What measures should he adopt in order to search out the information with notice of which he is charged? There are no indexes to guide him nor is there anything in the record or the certificate of title of the land he proposes to buy which necessarily or even with reasonable probability will furnish him a clue as to the fact of the existence of such double or overlapping registration. Indeed the only course open to him, if he desires to assure himself against the possibility of double or overlapping registration, would seem to be a careful, laborious and extensive comparison of the registered boundary lines contained in the certificate of title of the tract of land he proposes to buy with those contained in all the earlier certificates of title to be found in the land registry. Assuredly it was never the intention of the author of the new Land Registration Act to impose such a burden on a purchaser of duly registered real estate, under penalty that a lack of the knowledge which might thus be acquired may be imputed to him by this court as negligence in ruling upon the respective equities of the holders of lands which have been the subject of double or overlapping registration.

On the other hand, I think that negligence and fault may fairly be imputed to a holder of a registered certificate of title who stood supinely by and let a default judgment be entered against him, adjudicating all or any part of his registered lands to another applicant, if it appears that he was served with notice or had actual notice of the pendency of the proceedings in the Court of Land Registration wherein such default judgment was entered.

The owner of land who enjoys the benefits secured to him by its registry in the Court of Land Registration may reasonably be required to appear and defend his title when he has actual notice that proceedings are pending in that court wherein another applicant, claiming the land as his own, is seeking to secure its registry in his name. All that is necessary for him to do is to enter his appearance in those proceedings, invite the court's attention to the certificate of title registered in his name, and thus, at the cost of the applicant, avoid all the damage and inconvenience flowing from the double or overlapping registration of the land in question. There is nothing in the new system of land registration which seems to render it either expedient or necessary to relieve a holder of a registered title of the duty of appearing and defending that title, when he has actual notice that it is being attacked in a court of competent jurisdiction, and if, as a result of his neglect or failure so to do, his lands become subject to double or overlapping registration, he should not be permitted to subject an innocent purchaser, holding under

the later certificate, to all the loss and damage resulting from the double or overlapping registration, while he goes scottfree and holds the land under a manifest misapplication of the equitable rule that "where conflicting equities are otherwise equal in merit, that which first accrued will be given the preference." It is only where both or neither of the parties are at fault that the rule is properly applicable as between opposing claimants under an earlier and a later certificate of registry to the same land.

Of course all that is said in the briefs of counsel and the majority opinion as to the right of the holder of a certificate to rest secure in his registered title so that those dealing with registered lands can confidently rely upon registry certificates thereto is equally forceful by way of argument in favor of the holder of one or the other certificate in case of double or overlapping registration. The problem is to determine which of the certificate holders is entitled to the land. The decision of that question in favor of either one must necessarily have the effect of destroying the value of the registered title of the other and to that extent shaking the public confidence in the value of the whole system for the registration of lands. But, in the language of the majority opinion, "that mistakes are bound to occur cannot be denied and sometimes the damage done thereby is irreparable. It is the duty of the courts to adjust the rights of the parties under such circumstances so as to minimize the damages, taking into consideration all the conditions and the diligence of the respective parties to avoid them."

It will be observed that I limit the exception to the general equitable rule, as laid down in the majority opinion, to cases wherein the holder of the earlier certificate of title has actual notice of the pendency of the proceedings in the course of which the later certificate of title was issued, or to cases in which he has received personal notice of the pendency of those proceedings. Unless he has actual notice of the pendency of such proceedings I readily agree with the reasoning of the majority opinion so far as it holds that negligence, culpable negligence, should not be imputed to him for failure to appear and defend his title so as to defeat his right to the benefit of the equitable rule. It is true that the order of publication in such cases having been duly complied with, all the world is charged with notice thereof, but it does not necessarily follow that, in the absence of actual notice, culpable negligence in permitting a default judgment to be entered against him may be imputed to the holder of the earlier certificate so as to defeat his right to the land under the equitable rule favoring the earlier certificate. Such a holding would have the effect (to quote the language of the majority opinion) of requiring the holder of a certificate of title to wait indefinitely "in the portals of the court" and to sit in the "mirador de su casa" in order to avoid the possibility of losing his lands; and I agree with the writer of the majority opinion that to do so would place an unreasonable burden on the holders of such certificate, which was not contemplated by the authors of the Land Registration Act. But no unreasonable burden is placed upon the holder of a registered title by a rule which imputes culpable negligence to him when he sits supinely by and lets a judgment in default be entered against him adjudicating title to his lands in favor of another applicant, despite the fact that he has actual knowledge of the pendency of the proceedings in which such judgment is entered and despite the fact that he has been personally served with summons to appear and default his title.

"Taking into consideration all of the conditions and the diligence of the respective parties," it seems to me that there is no "equality in merit" between the conflicting equities set up by an innocent purchaser who acquires title to the land under a registered certificate, and the holder of an earlier certificate who permitted a default judgment to be entered against him, despite actual notice of the pendency of the proceedings in the course of which the later certificate was issued.

I am convinced, furthermore, that aside from the superior equities of the innocent purchaser in cases such as that now under discussion, there are strong reasons of convenience and public policy which militate in favor of the recognition of his title rather than that of the holder of the earlier title.

One ruling exposes all persons purchasing or dealing in registered lands to unknown, unspecified and uncertain

dangers, to guard against which all such persons will be put to additional cost, annoyance and labor on every occasion when any transaction is had with regard to such lands; while the other ruling tends to eliminate consequences so directly adverse to the purpose and object for which the land registration law was enacted, and imposes no burden upon any holder of a certificate of registered lands other than that of defending his title on those rare, definite and specific occasions wherein he has actual notice that his title is being challenged in a Court of Land Registration, a proceeding in which the cost and expense is reduced to the minimum by the conclusive character of his certificate of title in support of his claim of ownership. Furthermore, judgment against the innocent purchaser and in favor of the holder of the earlier certificate in a case such as that under consideration must inevitably tend to increase the danger of double or overlapping registrations by encouraging holders of registered titles, negligently or fraudulently and collusively, to permit default judgments to be entered against them adjudicating title to all or a part of their registered lands in favor of other applicants, despite actual notice of the pendency of judicial proceedings had for that purpose, and this, without adding in any appreciable degree to the security of their titles, and merely to save them the very slight trouble or inconvenience Incident to an entry of appearance in the court in which their own titles were secured, and inviting attention to the fact that their right, title and ownership in the lands in question has already been conclusively adjudicated.

The cases wherein there is a practical possibility of double or overlapping registration without actual notice to the holder of the earlier certificate must in the very nature of things be so rare as to be practically negligible. Double or overlapping registration almost invariably occurs in relation to lands held by adjoining occupants or claimants. It is difficult to conceive of a case wherein double registration can take place, in the absence of fraud, without personal service of notice of the pendency of the proceedings upon the holder of the earlier certificate, the statute requiring such notice to be served upon the owner or occupant of all lands adjoining those for which application for registration is made; and the cases wherein an adjoining land owner can, even by the use of fraud, conduct proceedings for the registration of his land to a successful conclusion without actual notice to the adjoining property owners must be rare indeed.

In the case at bar the defendant purchased the land in question from the original holder of a certificate of title issued by the Court of Land Registration, relying upon the records of the Court of Land Registration with reference thereto and with no knowledge that any part of the land thus purchased was included in an earlier certificate of title issued to plaintiff. The plaintiff, the holder of the earlier certificate of title, negligently permitted a default judgment to be entered against him in the Court of Land Registration, adjudicating part of the lands included in his own certificate of title in favor of another applicant, from whom the defendant in this action acquired title, and this despite the fact that he was an adjoining land owner, had actual notice of the pendency of the proceedings and was personally served with summons to appear and defend his rights in the premises. It seems to me that there can be no reason for doubt as to the respective merits of the equities of the parties, and further that the judgment of the majority in favor of the plaintiff will inevitably tend to increase the number of cases wherein registered land owners in the future will fail to appear and defend their titles when challenged in other proceedings in the Courts of Land Registration, thereby enormously increasing the possibility and probability of loss and damage to innocent third parties and dealers in registered lands generally, arising out of erroneous, double or overlapping registration of lands by the Courts of Land Registration.

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