3 Phil. 537

[G.R. No. 1413. March 30, 1904]

ANDRES VALENTON ET AL., PLAINTIFFS AND APPELLANTS, VS. MANUEL MURCIANO, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

I. The findings of fact made by the court below in its decision are as follows:

> "First. That in the year I860, the plaintiffs, and each one of them, entered into the peaceful and quiet occupation and possession of the larger part of the lands described in the complaint of the plaintiffs, to wit [description] :
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> "Second. That on the date on which the plaintiffs entered into the occupation and possession of the said lands, as above set forth, these lands and every part thereof were public, untilled, and unoccupied, and belonged to the then existing Government of the Philippine Islands. That immediately after the occupation and possession of the said lands by the plaintiffs, the plaintiffs began to cultivate and improve them in a quiet and peaceful manner.
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> "Third. That from the said year 1860, the plaintiffs continued to occupy and possess the said lands, quietly and peacefully, until the year 1892, by themselves, by their agents and tenants, claiming that they were the exclusive owners of said lands.
>
> "Fourth.

That on or about the 16th day of January, 1892, Manuel Murciano, defendant in this proceeding, acting on behalf of and as attorney in fact of Candido Capulong, by occupation a cook, denounced the said lands to the then existing Government of the Philippine Islands, declaring that the said lands and every part thereof were public, untilled, and unoccupied lands belonging to the then existing Government of the Philippine Islands, and petitioned for the sale of the same to him.

"Fifth. That before the execution of the sale heretofore mentioned, various proceedings were had for the survey and measurement of the lands in question at the instance of the defendant, Murciano, the latter acting as agent and attorney in fact of said Candido Capulong, a written protest, however, having been entered against these proceedings by the plaintiff Andres Valenton.

"Sixth.
That on the 14th day of July, 1892, Don Enrique Castellvi e Ibarrola, secretary of the treasury of the Province of Tarlac, in his official capacity as such secretary, executed a contract of purchase and sale, by which said lands were sold and conveyed by him to the defendant, Manuel Murciano, as attorney for the said Candido Capulong.

"Seventh.
That on the 19th day of July, 1892, said Candido Capulong executed a contract of purchase and sale, by which he sold and conveyed the said lands to the defendant, Manuel Murciano.

"Eighth. That from the said 14th day of July, 1892, Manuel Murciano has at no time occupied or possessed all of the land mentioned, but has possessed only certain in distinct and indefinite portions of the same. That during all this time the plaintiffs have opposed the occupation of the defendant, and said plaintiffs during all the time in question have been and are in the possession and occupation of part of the said lands, tilling them and improving them by themselves and by their agents and tenants.

> "Ninth.
> That never, prior to the said 14th day of July, 1892, has the defendant, Manuel Murciano, been in the peaceful and quiet possession and occupation of the said lands, or in the peaceful and quiet occupation of any part thereof."

Upon these facts the Court of First Instance ordered judgment for the defendant on the ground that the plaintiffs had lost all right to the land by not pursuing their objections to the sale mentioned in the sixth finding. The plaintiffs excepted to the judgment and claim in this court that upon the facts found by the court below judgment should have been entered in their favor. Their contention is that in 1890 they had been in the adverse possession of the property for thirty years; that, applying the extra-ordinary period of prescription of thirty years, found as well in the Partidas as in the Civil Code, they then became the absolute owners of the land as against everyone, including the State, and that when the State in 1892 deeded the property to the defendant, nothing passed by the deed because the State had nothing to convey.

The case presents, therefore, the important question whether or not during the years from 1860 to 1890 a private person, situated as the plaintiffs were, could have obtained as against the State the ownership of the public lands of the State by means of occupation. The court finds that at the time of the entry by the plaintiff in 1860 the lands were vacant and were public lands belonging to the then existing Government, The plaintiffs do not claim to have ever obtained from the Government any deed for
the lands, nor any confirmation of their possession.

Whether in the absence of any special legislation on the subject a general statute of limitations in which the State was not expressly excepted would run against the State as to its public lands we do not find it necessary to decide. Reasons based upon public policy could be adduced why it should not, at least as to such public lands as are involved in this case. (See Act No. 926, sec. 67.) We are, however, of

the opinion that the case at bar must be decided, not by the general statute of limitation contained in the Partidas, but by those special laws which from the earliest "times have regulated the disposition of the public lands in the colonies.

Did these special laws recognize any right of prescription against the State as to these lands; and if so, to what extent was it recognized? Laws of a very early date provided for the assignment of public lands to the subjects of the Crown. Law 1, title 12, book 4 of the *Recopilacion de Leyes de las Indias* is an example of them, and is as follows:

> "In order that our subjects may be encouraged to undertake the discovery and settlement of the Indies, and that they may live with the comfort and convenience which we desire, it is our will that there shall be distributed to all those who shall go out to people the new territories, houses, lots, lands, *peonias,* and *caballerias* in the towns and places which may be assigned to them by the governor of the new settlement, who, in apportioning the lands, will distinguish between gentlemen and peasants, and those of lower degree and merit, and who will add to the possessions and better the condition of the grantees, according to the nature of the services rendered by them, and with a view to the promotion of agriculture and stock raising. To those who shall have labored and established a home on said lands and who shall have resided in the said settlement for a period of four years we grant the right thereafter to sell and in every other manner to exercise their free will over said lands as over their own property. And we further command that, in accordance with their rank and degree, the governor, or whoever may be invested with our authority, shall allot the Indians to them in any distribution made, so that they may profit by their labor and fines in accordance with the tributes required and the law controlling such matters.
>
> "And in order that, in allotting said lands, there may be no doubt as to the area of each grant we declare that a *peonia* shall consist of a tract fifty feet in breadth by one hundred in length, with arable land capable of producing one hundred bushels of

> wheat or barley, ten bushels of maize, as much land for an orchard as two yokes of oxen may plough in a day, and for the planting of other trees of a hardy nature as much as may be plowed with eight yokes in a day, and including pasture for twenty cows, five mares, one hundred sheep, twenty goats, and ten breeding pigs. A *caballeria* shall be a tract one hundred feet in breadth and two hundred in length, and in other respects shall equal five *peonias*—that is, it will include arable land capable of producing five hundred bushels of wheat or barley and fifty bushels of maize, as much land for an orchard as may be ploughed with ten yokes of oxen in a day, and for the planting of other hardy trees as much as forty yokes may plough in a day, together with pasturage for one hundred cows, twenty mares, five hundred sheep, one hundred goats, and fifty breeding pigs. And we order that the distribution be made in such a manner that all may receive equal benefit therefrom, and if this be impracticable, then that each shall be given his due."

But it was necessary, however, that action should in all cases be taken by the public officials before any interest was acquired by the subject.

Law 8 of said title 12 is as follows:

> "We command that if a petition shall be presented asking the grant of a lot or tract of land in a city or town in which one of our courts may be located, the presentation shall be made to the municipal council. If the latter shall approve the petition, two deputy magistrates will be appointed, who will acquaint the viceroy or municipal president with the council's judgment in the matter. After consideration thereof by the viceroy or president and the deputy magistrates, all will sign the grant, in the presence of the clerk of the council, in order that the matter may be duly recorded in the council book. If the petition shall be for the grant of waters and lands for mechanical purposes, it shall be presented to the viceroy or municipal president, who will transmit it to the council. If the latter

> shall vote to make the grant, one of the magistrates will carry its decision to the viceroy or president, to the end that, upon consideration of the matter by him, the proper action may be taken."

It happened, in the course of time, that tracts of the public land were found in the possession of persons who either had no title papers therefor issued by the State, or whose title papers were defective, either because the proper procedure had not been followed or because they had been issued by persons who had no authority to do so. Law 14, title 12, book 4 of said compilation (referred to in the regulations of June 25, 1880, for the Philippines) was the first of a long series of legislative acts intended to compel those in possession of the public lands, without written evidence of title, or with defective title papers, to present evidence as to their possession or grants, and obtain the confirmation of their claim to ownership. That law is as follows:

> "We having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us according as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.
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> "We therefore order and command that all viceroys and presidents of pretorial courts designate, at such time as shall to them seem most

> expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them, and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will."

While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.

In the preamble of this law there is, as is seen, a distinct statement that all those lands belong to the Crown which have not been granted by Philip, or in his name, or by the kings who preceded him. This statement excludes the idea that there might be lands not so granted, that did not belong to the king. It excludes the idea that the king was not still the owner of all ungranted lands, because some private person had been in the adverse occupation of them. By the mandatory part of the law all the occupants of the public lands are required to produce before the authorities named, and within a time to be fixed by them, their title papers. And those who had good title or showed prescription were to be protected in their holdings. It is apparent that it was not the intention of the law that mere possession for a length of time should make the possessors the owners of the lands possessed by them without any action on the part of the authorities. It is plain that they were required to present their claims to the authorities and obtain a confirmation thereof. What the period of prescription mentioned in this law was does not appear, but later, in 1646, law 19 of the same title declared "that no one shall be 'admitted to adjustment' unless he has possessed the lands for ten years,"

In law 15, title 12, book 4 of the same compilation, there is a command that those lands as to which there has been no adjustment with the Government be sold at auction to the highest bidder. That law is as

follows:

> "For the greater good of our subjects, we order and command that our viceroys and governing presidents shall do nothing with respect to lands the claims to which have been adjusted by their predecessors, tending to disturb the peaceful possession of the owners thereof. As to those who shall have extended their possessions beyond the limits fixed in the original grants, they will be admitted to a moderate adjustment with respect to the excess, and new title deeds will be issued them therefor. And all those lands as to which no adjustment has been made shall, without exception, be sold at public auction to the highest bidder, the purchase price therefor to be payable either in cash or in the form of quitrent, in accordance with the laws and royal ordinances of the kingdoms of Castile. We leave to the viceroys and presidents the mode and form in which what is here ordered shall be carried into effect in order that they may provide for it at the least possible cost; and in order that all unnecessary expense with respect to the collections for said lands may be avoided, we command that the same be made by our royal officers in person, without the employment of special collectors, and to that end availing themselves of the services of our royal courts, and, in places where courts shall not have been established, of the town mayors.
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> "And whereas, title deeds to land have been granted by officers not authorized to issue them, and such titles have been confirmed by us in council, we command that those holding such a certificate of confirmation may continue to possess the lands to which it refers, and will, within the limits stated in the confirmation certificate, be protected in their possession; and with respect to any encroachment beyond such limits will be admitted to the benefit of this law."

Another legislative act of the same character was the royal cedula of October 15, 1754 (4 *Legislacion Ultra marina*, Rodriguez San Pedro, 673). Articles 3, 4, and 5 of this royal cedula are as follows:

"3. Upon each principal subdelegate's appointment, which will be made in the manner prescribed in article 1 of this cedula, and upon his receipt of these instructions, of which every principal subdelegate already designated or who may hereafter be appointed shall be furnished a copy, said subdelegate will in his turn issue a general order to the courts in the provincial capitals and principal towns of his district, directing the publication therein, in the manner followed in connection with the promulgation of general orders of viceroys, presidents, and administrative courts in matters connected with my service, of these instructions, to the end that any and all persons who, since the year 1700, and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not the same shall be cultivated or tenanted, may, either in person or through their attorneys or representatives, appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. Said subdelegates will designate as the period within which such documents must be presented a term sufficient in length and proportionate to the distance the interested party may haye to travel for the purpose of making the presentation. Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and valid reason therefor, they will be-deprived of and evicted from their lands, and they will be granted to others.

"4. If it shall appear from the titles or instruments presented, or if it shall be shown in any other legal manner that said persons are in possession of such royal lands by virtue of a sale or adjustment consummated by duly authorized subdelegates prior to the said year 1700, although such action may not have been confirmed by my royal person, or by a viceroy or president, they shall in no wise be molested, but shall be left in the full and quiet possession of the same; nor shall they be required to pay any fee on account of these proceedings, in accordance with law 15, title 12, book 4 of the *Recopilacion de las Indias,*

above cited. A note shall be made upon said title deeds to the effect that this obligation has been complied with, to the end that the owners of such royal lands and their successors may hereafter be free from denunciation, summons, or other disturbance in their possession.

"Where
such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription; provided, however, that if the lands shall not be in a state of cultivation or tillage, the term of three months prescribed by law 11 of the title and book cited, or such other period as may be deemed adequate, shall be designated as the period within which the lands must be reduced to cultivation, with the warning that in case of their failure so to do the lands will be granted, with the same obligation to cultivate them, to whomsoever may denounce them.

"5.
Likewise neither shall possessors of lands sold or adjusted by the various subdelegates from the year 1700 to the present time be molested, disturbed, or denounced, now or at any other time, with respect to such possession, if such sales or adjustments shall have" been confirmed by me, or by the viceroy or the president of the court of the district in which the lands are located while authorized to exercise this power. In cases where the sales or adjustments shall not have been so confirmed, the possessors will present to the courts of their respective districts and to the other officials hereby empowered to receive the same, a petition asking for the confirmation of said sales and adjustments. After the proceedings outlined by the sub delegates in their order with respect to the measurement and valuation of the said lands, and with reference to the title issued therefor, shall have been duly completed, said courts and officials will make an examination of the same for the purpose of ascertaining whether the sale or adjustment has been made without fraud and collusion, and for an adequate and equitable price, and a similar examination shall be made by the prosecuting attorney of the district, to the end that, in view of all the proceedings and the purchase or adjustment price of the land, and the *media anata* having been duly, etc., paid into

> the royal treasury, as well as such additional sum as may be deemed proper, there will be issued to the possessor, in my royal name, a confirmation of his title, by virtue of which his possession and ownership of lands and waters which it represents will be fully legalized, to the end that at no time will he or his heirs or assigns be disturbed or molested therein."

The wording of this law is much stronger than that of law 14. As is seen by the terms of article 3, any person whatever who occupied any public land was required to present the instruments by virtue of which he was in possession, within a time to be fixed by the authorities, and he was warned that if he did not do so he would be evicted from his land and it would be granted to others. By terms of article 4 those possessors to whom grants had been made prior to 1700, were entitled to have such grants confirmed, and it was also provided that not being able to prove any grant it should be sufficient to prove "that ancient possession," as a sufficient title by prescription, and they should be confirmed in their holdings. "That ancient possession" would be at least fifty-four years, for it would have to date from prior to 1700. Under article 5, where the possession dated from 1700, no confirmation could be granted on proof of prescription alone.

The length of possession required to be proved before the Government would issue a deed has varied in different colonies and at different times. In the Philippines, as has been seen, it was at one time ten years, at another time fifty-four years at least. In Cuba, "6y the royal cedula of April 24, 1833, to obtain a deed one had to prove, as to
uncultivated lands, a possession of one hundred years, and as to cultivated lands a possession of fifty years. In the same island, by the royal order of July 16, 1819, a possession of forty years was sufficient.

In the Philippines at a later date royal order of September 21, 1797 (4 *Legislacion Ultramarina* Rodriguez San Pedro, p. 688), directed the observance of the said royal cedula of 1754, but apparently without being subject to the period of prescription therein

assigned.

The royal order of July 5, 1862 (*Gaceta de Manila,* November 15, 1864), also ordered that until regulations on the subject could be prepared the authorities of the Islands should follow strictly the Laws of the Indies, the Ordenanza of the Intendentes of 1786, and the said royal cedula of 1754.

The royal order of November 14, 1876 (*Guia del Comprador de Terrenos*, p. 51), directed the provincial governors to urge those in unlawful possession of public lands to seek an adjustment with the State in accordance with the existing laws. The regulations as to the adjustment (*composicion*) of the titles to public lands remained in this condition until the regulations of June 25,1880. This is the most important of the modern legislative acts upon the matter of "adjustment" as distinguished from that of the sale of the public lands.

The royal decree approving these regulations is dated June 25, 1880, and is as follows:[1]

> "Upon the suggestion of the colonial minister, made in conformity with the decree of the full meeting of the council of state, I hereby approve the attached regulations for the adjustment of royal lands wrongfully occupied by private individuals in the Philippine Islands."

Articles 1, 4, 5, 8, and part of article 6 are as follows:

> "Art. 1. For the purposes of these regulations and in conformity with law 14, title 12, book 4 of the Be compilation of Laws of the Indies, the following will be regarded as royal lands: All lands whose lawful ownership is not vested in some private person, or, what is the same thing, which have never passed to private ownership by virtue of cession by competent authorities, made either gratuitously or for a consideration."
>
> "Art.
> 4. For all legal effects, those will be considered. proprietors of the

royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years, by virtue of a good title and in good faith.

"Art. 5. In the same manner,
those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years if uncultivated, shall be regarded as proprietors thereof. In order that a tract of land may be considered cultivated, it will be necessary to show that it has been broken within the last three years.

"Art.
6. Interested parties not included within the two preceding articles may legalize their possession and thereby acquire the full ownership of the said lands, by means of adjustment proceedings, to be conducted in the following manner: * * *

"(5)
Those who, entirely without title deeds, may be in possession of lands belonging to the State and have reduced said lands to a state of cultivation, may acquire the ownership thereof by paying into the public treasury the value of the lands at the time such pessessors or their representatives began their unauthorized enjoyment of the same.

"(6)
In case said lands shall never have been ploughed, but are still in a wild state, or covered with forests, the ownership of the same may be acquired by paying their value at the time of the filing of the claim, as stated in the fourth paragraph."

"Art. 8. If the
interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise, by paying the proper sum into the treasury, the latter will, by virtue of

> the authority vested in it, reassert the ownership of the State over the lands, and will, after fixing the value thereof, proceed to sell at public auction that part of the same which either because it may have been reduced to cultivation or is not located within the forest zone is not deemed advisable to preserve as the State forest reservation."

The other articles of the regulations state the manner in which applications should be made for adjustment, and the proceedings thereon.

Do these regulations declare that those who are included in articles 4 and 5 are the absolute owners of the land occupied by them without any action on their part, or that of the State, or do they declare that such persons must seek an adjustment and obtain a deed from the State, and if they do not do so within the time named in article 8 they lose all interest in the lands?

It must be admitted from the wording of the law that the question is not free from doubt. Upon a consideration, however, of the whole matter, that doubt must, we think, be resolved in favor of the State. The following are some of the reasons which lead us to that conclusion:

(1) It will be noticed that article 4 does not say that those persons shall be considered as owners who have occupied the lands for ten years, which would have been the language naturally used if an absolute grant had been intended. It says, instead, that those shall be considered owners who *may prove* that they have been in possession ten years. Was this proof to be made at any time in the future when the question might arise, or was it to be made in the proceedings which these very regulations provided for that purpose? We think that the latter is the proper construction.

(2) Article 1 declares in plain terms that all those lands as to which the State has never executed any deeds are the property of the State—that is, that on June 25, 1880, no public lands belonged to individuals unless they could exhibit a State deed therefor. This is entirely in consistent with the idea that the same law in its article 4

declares that the lands in question in this case became the property of the plaintiffs in 1870, and were not in 1880 the property of the State, though the State had never given any deed for them.

(3) The royal decree, by its terms, relates to lands *wrongfully* withheld by private persons. The word *detentados* necessarily implies this. This is inconsistent with the idea that by article 4 the plaintiffs, in 1870, became the absolute owners of the lands in question, and were not, therefore, in 1880, withholding what did not belong to them.

(4) In the preface to this decree and regulations, the following language is used:

> "Sir : The uncertain, and it may be said the precarious, state of real property in various parts of the Philippine Islands, as yet sparsely populated; the necessity for. encouraging the cultivation of these lands; the advantage of increasing the wealth and products of the Archipelago; the immense and immediate profit which must result to all classes of interests, public as well as private, from the substitution of full ownership, with all the privileges which by law accompany this real right, for the mere possession of the lands, have long counseled the adoption of the provisions contained in the following regulations, which, after consultation with the Philippine council, and in conformity with an order passed at a full meeting of the council of state, the subscribing minister has the honor to submit for the royal approval. These regulations refer not only to tenants of royal lands in good faith and by virtue of a valid title, but also to those who, lacking these, may, either by themselves reducing such lands to cultivation or by the application of intelligence and initiative, causing their cultivation by others who lack these qualities, be augmenting the wealth of the Archipelago."[1]

This preface is the most authoritative commentary on the law, and shows without doubt that those who held with color of title and good faith were, notwithstanding, holding wrongfully, and that true ownership should be substituted for their possession.

(5) This doubt suggested by the wording of the law was the subject of inquiries directed to the officers in Manila charged with its execution. These inquiries were answered in the circular of August 10, 1881, published in the *Gaceta de Manila* August 11, 1881, as follows:

> "Should possessors of royal lands under color of title and in good faith seek adjustment?
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> "It is evident that they must do so, for it is to them that article 4 of the regulations refers, as also the following article covers other cases of possession under different circumstances. It should be well understood by you, and you should in turn have it understood by others, that the adjustment of lands whose ownership has not passed to private individuals by virtue of cession by competent authorities, is optional only for those within the limits of the common district (*legua comunal*) as provided by article 7. In all other cases where the interested parties shall fail to present themselves for the adjustment of the lands occupied by them they shall suffer the penalties set forth in article 8 of said regulations."

In determining the meaning of a law where a doubt exists the construction placed upon it by the officers whose duty it is to administer it is entitled to weight.

(6) There is, moreover, legislative construction of these regulations upon this point found in subsequent laws. The royal decree of December 26, 1884, (*Berriz Anuario,* 1888, p. 117), provides in article 1 that—

> "All those public lands wrongfully withheld by private persons in the Philippines which, in accordance with the regulations of June 25, 1880, are subject to adjustment with the treasury, shall be divided into three groups, of which the first shall include those which, because they are included in articles 4 and 5, and the first paragraph of article 7, are entitled to free adjustment."

There were exceptions to this rule which are not here important. Article 10 provides that if the. adjustment is free for those mentioned in articles 4 and 5, who are included in the second group, the deed shall be issued by the governor of the province. Article 11 says that if the adjustment is not free, because the applicant has not proved his right by prescription, then no deed can be issued until the proper payment has been made. The whole decree shows clearly that the legislator intended that those mentioned in articles 4 and 5 should apply for a confirmation of their titles by prescription, as well as those mentioned in article 6. In fact, for the adjustment of those of the first group, which necessarily included only those found within articles 4 and 5, a board was organized (art. 15) in each pueblo whose sole duty it was to dispatch applications made under said two articles.

(7) The royal decree of August 31, 1888 (*Berriz Anuario,* 1888, p. 120), is another legislative construction of this regulation. That decree repealed the decree of 1884, and divided all lands subject to adjustment under the regulations of June 25, 1880, into two groups. In the first group were all those lands which bordered at any point on other State lands, and those which, though not bordering on State lands, measured more than 30 hectares. In the second group were those which were bounded entirely by lands of private persons and did not exceed 30 hectares. For the second group a provincial board was organized, and article 10 provides a hearing before this board, and declares—

> "If no protest or claim shall be filed, and the adjustment must be free because the occupant has proved title by prescription, as provided in articles 4 and 5 of the regulations promulgated June 25, 1880, the proceedings shall be duly approved, and the head officer of the province will, in his capacity of deputy director general of the civil administration, issue the corresponding title deed."

The policy pursued by the Spanish Government from the earliest

times, requiring settlers on the public lands to obtain deeds therefor from the State, has been continued by the American Government in Act No. 926, which takes effect when approved by Congress. Section 54, sixth paragraph of that act, declares that the persons named in said paragraph 6 "shall be conclusively presumed to have performed all the conditions essential to a Government grant and to have received the same." Yet such persons are required by section 56 to present a petition to the Court of Land Registration for a confirmation of these titles.

We have considered the regulations relating to adjustment—that is, those laws under which persons in possession might perfect their titles. But there were other laws relating to the sale of public lands which contained provisions fatal to the plaintiffs' claims. The royal decree of January 26, 1889 (*Gaceta de Manila,* March 20, 1889), approved the regulations for the sale of public lands in the Philippines, and it was in accordance with such regulations that the appellee acquired his title. Article 4 of those regulations required the publication in the *Gaceta de Manila* of the application to purchase, with a description of the lands, and gave sixty days within which anyone could object to the sale. A similar notice in the dialect of the locality was required to be posted on the municipal building of the town in which the land was situated, and to be made public by the crier. Articles 5 and 6 declared to whom such objections shall be made and the course which they should take. Article 8 is as follows:

> "Art. 8. In no case will the judicial authorities take cognizance of any suit against the decrees of the civil administration concerning the sale of royal lands unless the plaintiff shall attach to the complaint documents which show that he has exhausted the administrative remedy. After the proceedings in the executive department shall have been terminated and the matter finally passed upon, anyone considering his interests prejudiced thereby may commence a suit in court against the State; but in no case shall an

action be brought against the proprietor of the land."

Similar provisions are found in the regulations of 1883, approved the second time by royal order of February 16 (*Gaceta de Manila,* June 28, 1883). Articles 18 and 23 of said regulations are as follows:

"Art. 18. Possessors of such lands as may fall within the class of alienable royal lands shall be obliged to apply for the ownership of the same, or for the adjustment thereof within the term of sixty days from the time of the publication in the Bulletin of Sales of the notice of sale thereof."

"Art. 23. The judicial authorities shall take cognizance of no complaint against the decrees of the treasury department concerning the sale of lands pertaining to the state unless the complainant shall attach to the complaint documents which prove that he has exhausted the administrative remedy."

This prohibition appears also in the royal order of October 26, 1881 (*Gaceta de Manila*, December 18, 1881), which relates evidently both to sales of public lands and also to the adjustments with the occupants.

Article 5 of this royal order is as follows:

"During the pendency of proceedings in the executive department with respect to grants of land, interested parties may present through executive channels such protests as they may deem advisable for the protection of their rights and interests. The proceedings having once been completed, and the grant made, those who consider their interests prejudiced thereby may proceed in court against the State, but under no circumstances against the grantees of the land."

The American legislation creating the Court of Land Registration is but an application of this same principle. In both systems the title is

guaranteed to the petitioner, after examination by a tribunal. In the Spanish system this tribunal was called an administrative one, in the American a judicial one.

The court finds that the plaintiffs made a written protest against the sale to the defendants while the proceedings for the measurement and survey of the land, were being carried on, but that they did not follow up their protest. This, as held by the court below, is a bar to their recovery in this action, under the articles above cited.

The plaintiffs state in their brief that a great fraud was committed on them and the State by the defendant in applying for the purchase of these lands as vacant and belonging to the public, when they were in the actual adverse possession of the plaintiffs.

We have seen nothing in the regulations relating to the *sale* of the public lands which limited their force to vacant lands. On the contrary there are provisions which indicate the contrary. In the application for the purchase the petitioner is by article 3 of the regulations of 1889 required to state whether any portion of the land sought has been broken for cultivation, and to whom such improvements belong. Article 9 provides that if one in possession applies to purchase the land, he renounces his right to a *composicion* under the laws relating to that subject. By article 13 the report of the officials making the survey must contain a statement as to whether any part of the land is cultivated or not and if the applicant claims to be the owner of such cultivated part.

In the regulations of January 19, 1883 (*Gaceta de Manila*, June 28,1883), is the following article:

> "Act. 18. Possessors of such lands as may fall within the class of royal alienable lands shall be obliged to apply for the ownership of the same, or for the adjustment thereof, within the term of sixty days from the time of the publication in the Bulletin of Sales of the notice of sale thereof."

In view of all of these provisions it seems impossible to believe that the legislators ever intended to leave the validity of any *sale* made by the State to be determined at any time in the future by the ordinary courts on parol testimony. Such would be the result if the contention of the plaintiffs is to be sustained. According to their claim, this sale and every other sale made by the State can be set aside if at any time in the future it can be proved that certain persons had been in possession of the land for the term then required for prescription.

If this claim is allowed it would result that even though written title from the State would be safe from such attack by parol evidence, by means of such evidence damages could have been recovered against the State for lands sold by the State to which third persons might thereafter prove ownership by prescription. The unreliability of parol testimony on the subject of possession is well known. In this case in the report which the law required to be made before a sale could be had it is stated by an *Ayudante de Montes* that the tract had an area of 429 hectares, 77 ares, and 96 centares uncultivated, and 50 hectares, 19 ares, and 73 centares broken for cultivation. The official report also says (1890) that the breaking is recent. Notwithstanding this official report, the plaintiffs introduced evidence from which the court found that the greater part of the tract had been occupied and cultivated by the plaintiffs since 1860.

It is hardly conceivable that the State intended to put in force legislation under which its property rights could be so prejudiced.

We hold that from 1860 to 1892 there was no law in force in these Islands by which the plaintiffs could obtain the ownership of these lands by prescription, without any action by the State, and that the judgment below declaring the defendant the owner of the lands must be affirmed.

II. What has been said heretofore makes it unnecessary to consider the motion for a new trial, made by the defendant on the ground that the findings of fact are not supported by the evidence.

III. The exception of the defendant to the order vacating the appointment of the receiver can not be sustained. The defendant at no time made any showing sufficient to authorize the appointment of a receiver.

The case does not fall under No. 4 of section 174 of the Code of Civil Procedure. Neither party in his pleadings asked any relief as to the crops. They were not, therefore, "the property which is the subject of litigation."

Neither does the case fall under No. 2 of section 174, for the same reason.

Moreover, under No, 2 it must be shown that the property is in danger of being lost. There was no showing of that kind. The pleadings say nothing upon the subject.In the motion for the appointment of the receiver it said that the plaintiffs are insolvent. There is no evidence, by affidavit or otherwise, to support this statement. A bare, unsworn statement in a motion that the adverse party is insolvent is not sufficient to warrant a court in appointing a receiver for property in his possession.

The judgment of the court below is affirmed. Neither party can recover costs in this court.

Arellano, C. J., Torres, Cooper, McDonough, and *Johnson , JJ.,* concur.

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[1] Gaceta de Manila, Sept. 10, 1880.

[1] Disposiciones oficiales del Ramo de Montes de Filipinas, p. 34.

Date created: January 22, 2019