4 Phil. 33

[G.R. No. 1244. April 22, 1904]

THE COMPANIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. MIGUEL TOPIÑO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

The object of the complaint is the recovery of possession of certain parcels of land in the possession of the defendants and the ejectment of the latter, together with the sum of 9,000 pesos as damages and the costs of suit. In support of the complaint documentary evidence and oral testimony have been introduced.

That the parcels of land sued for are within the perimeter of the hacienda of San Luis y La Concepcion is one of the findings of fact included by the judge in his decision and against which we have not found in the course of our revision of the evidence anything to show the same erroneous. On the contrary, the correctness of this finding must have been recognized by the defendants, as their defense could not be taken into consideration except upon this assumption. The evidence introduced by the defendants in support of the alleged ownership attributed to Joaquin Guzman is adverse to their contention, because it shows that the area of that property is much less than that of the parcels of land sued for. With respect to the property alleged to belong to Manuel Dalanidao, all the documents offered have failed to show either the situation or area. This contention was made solely in opposition to the ownership alleged by the complaint, the defendants not having opposed the ownership alleged in the complaint by any right inherent in themselves. If they were merely tenants of the lands in question, holding under some other person whom they supposed to be the owner, they were not proper parties defendant, and this was a defense which

they should have made at the trial.

The defendants did not present any title deeds, nor did they prove an adverse possession on their own behalf sufficient to overcome the recorded title deeds which the plaintiff presented in support of the complaint.

After the inscription of title deeds in the register of property, the only owner of the recorded property is the one who appears as such on the books of the register until the record is canceled by a final judgment There is no reason for ordering the cancellation of the inscription unless this relief is prayed for and proof is made of a better right on the part of some other person who claims to be the lawful owner or possessor. In this case there has been no demand for the cancellation of the inscription in the registry of the hacienda of San Luis y La Concepcion in favor of the Compania General de Tabacos. It has been alleged that the inscription is defective, but no person entitled to maintain an action for the purpose has instituted proceedings for the cancellation of that inscription.

As long as the inscription subsists it must produce all its effects.

To allege the nullity of the original title deeds executed by the Spanish Government in favor of the original grantees of the lands in question] is to allege the nullity of the contract entered into between the Spanish Government as grantor and them as vendees, for the titles are simply evidenciary of the sale for a certain consideration of a specific thing. Under the provisions of article 1302 of the Civil Code, the action for the annulment of contracts can only be maintained by those who are bound, either principally or subsidiarily, by virtue thereof. The defendants not being persons bound either principally or subsidiarily by virtue of that contract of sale between the Spanish Government and those original grantees they can not maintain the action of nullity of which they seek to avail themselves as a defense in this suit. And it is logical that it should be so. The nullity of an obligation being declared, the contracting parties must reciprocally restore the things which have been the object of the contract. (Art. 1303.) If the nullity of the title deeds referred to should be declared in conformity with the contention of the defendants, the lands should be restored to the Spanish Government and the price paid for them should be restored by that Government to the original

grantees or their successors. It
would follow that the lands in question could not remain in the possession of the defendants, because they would have to be restored to the vendor, nor could the latter be compelled to restore the price, not having had an opportunity to be heard in this suit

We therefore affirm the judgment appealed, with the costs of this instance to the appellants. So ordered.

Torres and *Mapa, JJ.,* concur.

CONCURRING

JOHNSON, *J.:*

I conform in the opinion written by Chief Justice Arellano, but because it has been contended that his opinion is contrary to the weight of authority in the United States I desire to add to this opinion ‘a citation of American authorities upon the question presented here.

This was an action to recover possession of certain real estate by the plaintiff, located in the Province of Isabela, on the Island of Luzon, in the Philippine Archipelago.

The action was brought on the 20th day of October, 1902, and the trial was commenced on the 11th day of December and was terminated on the 24th day of December, 1902.

The cause was tried in the Court of First Instance of the Province of Isabela. After hearing the evidence, the court found that the plaintiff was entitled to the possession of the property, and issued an order directing that it be put in possession of the same.

The record discloses that on the 20th day of October, 1882, Doroteo Faustino and fifty-nine others denounced sixty separate parcels of land in the Province of Isabela, on the Island of Luzon, P.XL, and each were granted a right to the

several pieces of land, varying, to some extent, in dimensions only, the language of each grant being the same as that contained in the following documents:

> *"Joaquin Chinchilla y Diez de Onate, general intendent of the treasury department of these Islands;*
>
> "Whereas Doroteo Faustino has denounced the piece of public land situated at Mabantad, within the town of Cauayan, Province of Isabela de Luzon, the superficial area of which is 90 hectares 97 ares and 80 centares, or 32 quifiones 5 balitas and 5 loanes, bounded on the north by the Rio Grande de Cagayan, on the east by public lands denounced by Santiago Garcia, on the south by public lands denounced by Ponciano Hernandez, and on the west by the forest of the rancho Mabantad; and
>
> "Whereas, by decree of this office of July 6 last, the applicant was awarded the ownership of the land referred to, upon payment of its value, the fees of 'media anata, and other proper fees required by the law in force, and having paid me the sum of 191.95 pesos for the total value of the land, and the sum of 8.63 5/8 pesos for the fees of 'media anata/ and dispensation of the royal confirmation, Issue this title so that by virtue thereof the said Doroteo Faustino may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently
> presented to the politico-military government of Isabela de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government, and possession may be given in the usual legal form.
>
> "Done in Manila, the 20th of October, in the year one thousand eight hundred and eighty-two.

“JOA
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“Central Administrator of Government Monopolies.[1]

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“Signature fees, 5 pesos.”

To which document was attached a seal which reads:

> “General Office of the Public Treasury of the Philippines.”

Continuing, the document reads:

> “Title deed to a piece of public land situated at Mabantad, within the town of Cauayan, in the Province of Isabela de Luzon, issued in favor of Doroteo Faustino, by decree of the General Office of the Treasury of the 11th instant, in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay
> its value when the whereabouts of the document and the seals which the petitioner delivered to the suboffice of the Treasury Department in the province referred to, are discovered, with the corresponding effects themselves so recorded, in compliance with the said decree.
>
> “Dated Manila, October 20, 1882.

“CA
LVO
.”

A seal was attached to this document reading:

> “Central Administration of Government Monopolies, Philippine Islands.
>
> “Recorded in the Central Administration of Government Monopolies, Manila, the 26th of October, one thousand eight hundred and eighty-two.

“C A
L V O
.”

A seal was attached reading:

> “Central Administration of Government Monopolies, Philippine Islands.
>
> ” No. 745. In Manila, the 5th of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, licentiate of law and notary public of this city, and the witnesses hereinafter named, personally appeared Doroteo Faustino, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the executiotfi of this public instrument of sale, which I believe to be true} nothing to the contrary being known by me, deposed

and said;

” (1) *Property*.—That he is the owner of the piece of public land situated at Mabantad, Cauayan, Province of Isabela de Luzon, the area of which is 90 hectares 97 ares and 80 centares, or 32 quiiiones 5 balitas and 5 loanes, bounded on the north by the Rio Grande de Cagayan, on the east by public lands denounced by Santiago Garcia, on the south by public lands denounced by Ponciano Hernandez, and on the west by the forest of the rancho Mabantad.

” (2) *Title*.—That the said land was purchased by the deponent from the royal treasury, for the sum of 191.95 pesos for the total value of the land, and 8.63 5/8 pesos for the fees of ‘media anata’ and the dispensation of the royal confirmation, which total sum of 200.58 5/8 pesos was paid by him as shown by the deed issued in his favor by his excellency the intendent Joaquin Chinchilla, on the 20th of October last, which was exhibited to me and to which I refer, as does the deponent; and

” (3) *Sale*.—That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vicinity, for the sum of 201 pesos and now carries the agreement into effect, and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses, and easements to Antonio Pascual Casal, for the sum of 201 pesos, the receipt of which he acknowledges hereby, in current coin, to his entire satisfaction ; as to which receipt, the same being true, and not having been made in my presence, he waives the acceptation of the money not paid in cash, and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights, and actions which he has or may have to the said land, authorizing him to take possession thereof, and disposing of it at his will, as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land, which he declares to be free of all encumbrance, binding himself to warrant and defend the same at all times.

“*Acceptance*.—The purchaser, Antonio Pascual Casal, of age, a

proprietor and a resident of this vicinity, personally known to me, to which I certify, and, I being present, said:

That he accepts the sale made to him by this instrument, in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

“Finally, both parties declare that no fraud or deceit of any kind has been present in this contract; that the 201 pesos which are the consideration of this sale are a just consideration, and that if the lands should be worth more, the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contract in which there may be damage in more or less than one-half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be recorded as completed and consummated upon the guaranty of all their property, present and future.

“So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, personally known to me; and all having been informed of their right to read this document for themselves, of which all the parties hereto have availed themselves; after which all sign and ratify the foregoing, to which I certify.

“D0R0TE0 FAUSTINO,
“ANTONIO P. CASAL,
“AMBROSIO
AQUINO,
“MARIANO PALACIO.

” In the presence of Licenciate Miguel Torres.

” Copy of the original, which appears on pages 2576 to 2579 of my public protocol for the present year, to which I refer. At the request of the parties I

> issue this first copy for delivery to the purchaser. Signed and sealed by me in Manila, the date of its execution; to which I refer,
>
> "[SEAL.] " LICENCIATE MIGUEL TORRES."

It will be noted that the foregoing quotation contains two deeds.

First. That of the Government to Doroteo Faustino. issued on the 21st day of October, 1882; and

Second. By Doroteo Faustino to Antonio Pascual Casal, dated the 5th of December, 1882.

On the same 5th day of December, 1882, and on other days of the same month each of the other fifty-nine persons also conveyed their respective parcels of land to Antonio Pascual Casal.

This action relates only to the possession of seven of said parcels of land, numbered respectively from one to seven, inclusive.

The foregoing documents, as well as those covering parcels two to seven, inclusive, were recorded in volume 1 of Cauayan, eleventh archive, folio 118, estate No. 75, and provincial volume 2 of Angadanan, archive 1, folio 7, property No. 182, both first inscriptions. Ilagan, September 17, 1898.

Antonio Pascual Casal, on a later date—to wit, on the 1st day of August, 1882—entered into a contract to sell all of the said parcels.of land to the plaintiff in this cause, but before the contract was finally executed he died. By his will Jose Clavet was appointed as his executor. On the 29th of August, 1884, Jose Clavet duly qualified as said executor.

On the 31st day of October, 1887, by proper deeds of conveyance, the executor of the estate of Antonio Pascual Casal, Jose Clavet, conveyed to the plaintiff the lands involved in this litigation—to wit, parcels one to seven,inclusive.

On the 9th day of March, 1895, the plaintiff presented its title to the register of property of the Province of Isabela, to be registered by him. The

registrar of property refused to register the title of the plaintiff, because the title of the plaintiff was defective on account of the want of personality of the corporation.

However, on a later date, to wit, the 17th day of September, 1898, the title deeds of the plaintiff, and also certain documents relating to its incorporation, were duly registered in the ” Registry of Property of La Isabela.”

On the 19th day of April, 1901, the title deeds and documents relating to the. title of the plaintiff to the lands in question were also recorded in book 1, No. 92, of the registry, in the Forestry Bureau of the Philippine Islands.

The evidence shows that the plaintiff went into possession of the lands in question in 1883, and has continued in possession with more or less molestation since that date. It is assumed, without deciding it, there being no evidence to the contrary, that the plaintiff went into possession of the land by virtue of the contract of sale dated August 1, 1882, between Antonio Pascual Casal and the plaintiff, a portion of the contract price having been then and there paid.

Prior to the sale by the executor of the estate of Antonio Pascual Casal to the plaintiff, a survey of the land had been made. The evidence shows that at the time the deed of conveyance was delivered by the executor to the plaintiff a map or plan of the lands was also delivered to the plaintiff.

The evidence further shows that the plaintiff exercised ownership over the lands, by establishing boundary lines. The plaintiff, in 1888, had the lands surveyed by expert surveyors called Basa and Baldomero Guillen. In 1894 another survey was made by Enrique T. cte Andrade and Manuel Rodriguez on behalf of the plaintiff. In 1901 still another survey was made by Gregorio Soriano. In all of these different surveys of the land no opposition was met with on the part of the defendants, or of any other third persons.

The plaintiff exercised further acts of possession andownership over the lands by cultivating parts of the same and by cutting timber on the same, and without opposition on the part of any of the defendants or on the part of the Government.

The evidence further shows that some of the defendants acknowledged the right of ownership on the part of the plaintiff, as early as the year 1896, by entering into a contract for the cultivation of a part of the lands in question.

It is contended on the part of the defendants that the original deed from the Government to the original denouncers had never been complied with, and that therefore the title never passed out of the Government, the condition being a condition precedent.

The condition in the original grant is as follows:

> "This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form."

It has been asserted that under the doctrine of the decisions of the Supreme Court of the United States this condition is a condition precedent, and therefore the title to the lands in question never passed from the Government, and that the plaintiff, therefore, has no title.

A question similar to the one presented here, which has arisen under various Spanish land grants in territory acquired by the United States Government from Spain, has been presented to the Supreme Court of the United States on many occasions.

Among the first cases presented to the Supreme Court of the United States involving substantially this same question was that of the United States *vs*. Arredondo, decided at the January term, 1832, and reported in 6 Peters, 691. In this case Arredondo & Sons petitioned the authorities of the Spanish Government, located at Havana, in the Island of Cuba, to grant to them an undivided parcel of land containing 289,645 acres, situated in the county of Alachua in the Eastern District of Florida, about 36 miles west of the St. Johns River and about 52 miles west of the city of St. Augustine. Later the said tract

of land was granted to the said petitioners by the Spanish Government, with all the formalities and solemnities used by it in such cases, on the 22d day of December, 1817. The grant contained the following statements and conditions:

> "And with the precise condition, to which they obligate themselves, to establish thereon two hundred families; the said establishment to begin to be carried into effect in the term of three years, at farthest, without which this grant will be null and void. Let this expediente pass to the surveyor-general, above mentioned, in order that he may make the corresponding plat in Conformity
> to his information, to avoid future doubts and litigations; which being done, let the title in form be executed, with the same plat annexed thereto, a copy of which will remain in the expediente, with the provision that the said three years allowed to commence the establishment of families, are to run and be counted from this date; and that on the first families being prepared and disposed, the grantees will give notice of it, together with a list of the individuals, and mention made of the places of which they are natives, of their occupations, in order that the orders and instructions which the Government and the superintendency of the royal domain in East Florida may see fit to give, be issued, in order that an account of the whole be given in proper time to His Majesty."

It will be noticed that this grant contained three principal conditions:

(1) That the grantee was to establish upon said land two hundred families;
(2) That the said establishment should begin to be carried into effect within the term of three years, at farthest ; and
(3) In case these conditions were not complied with, that the grant should be null and void.

The lands claimed by the petitioner Arredondo were within the territory of Florida ceded to the United States by the treaty with Spain dated the 22d of February, 1819.

On the 11th of November, 1828, Arredondo & Sons and others, their

grantees, filed their petition in the Superior Court of the Eastern District of Florida, against the United States, setting up the grant from the Spanish Government, and prayed that their title be confirmed, under the provisions of section 6 of an act of Congress passed May 23, 1828, entitled “An act supplemental to the several acts providing for the settlement and confirmation of private land claims in Florida.”

To this petition the Attorney-General of the United States for the District of Forida filed an answer at the May term, 1829, and, among other things, stated in the answer that if it (the grant) was so made by the Spanish Government to the said Arredondo & Sons, it was made upon the precise obligation and express condition of their binding themselves to establish there, to wit, on the said tract of land, 200 Spanish families, with all the requisites which were pointed out to them by the superintendency, etc., to wit, on their beginning their establishment on the said tract of land within three years at most from the date of said grant, without which the said grant was to be considered null and void; which condition the said Arredondo & Sons accepted and engaged to perform; that the said Arredondo & Sons did not commence their said establishment on the said tract of land within the said three years; and they had not established on the lands two hundred families, according to their engagement, and had wholly failed so to do; and further that the said condition and obligation had not been complied with and fulfilled, either by the said Arredondo & Sons or by any other person or persons in their behalf, nor by the said petitioners, so far from it, that the said Arredondo & Sons, after the time when the said grant was supposed to have been made as aforesaid, and without having in any manner complied with the condition thereof, removed their families from the province of East Florida to the Island of Cuba, then and still one of the dependencies of the Crown of Spain, and did then totally abandon the said tract of land, and that if the said grant was made as was alleged, and upon the condition mentioned, the performance of the said condition was a matter of special trust and confidence reposed by the said Spanish Government in the said Arredondo & Sons, which could not have been delegated by them to any other person or persons j and that the sale and conveyance of said tract of land, or of parts thereof, in manner and form as is in said bill alleged, without having first performed the said condition, was a violation of the special trust and confidence ho reposed in them as aforesaid, and rendered the said grant (if any

such was ever made) by the laws then in force in East Florida entirely null and void.

The answer of the United States Government further stated:

> "That the United States claimed title to the said tract of land, by virtue of the second article of the treaty of amity, settlement, and limits between the United States and His Catholic Majesty, which was made, concluded,, and signed between their respective representatives at the city of Washington on the 22d day of February, in the year of our Lord 1819, and which was accepted, ratified, and confirmed by the President of the United States, by and with the advice and consent of the Senate thereof, on the 22d day of February, in the year of our Lord 1821, by which His Catholic Majesty ceded to the United States, in full property and sovereignty, all the territories which then belonged to him situated to the eastward of the Mississippi, known by the name of East Florida, in which East Florida the said tract of land was situated."

The supplemental answer of the United States Government contains the further allegation :

> "That if any such grant of further time was given by the Spanish Government to Arredondo & Sons to perform the conditions of the said supposed grant, the grant of further time was equivalent to a new grant for the said lands, and that it was made contrary to and in violation of the laws, ordinances, and royal regulations, and without any power or authority on the part of the said Spanish Government."

And further:

> "That if the said extension of time was made, that it was made after the 24th day of January, 1818, and was rendered wholly null and void by the provisions of the latter clauses of the eighth article of the treaty."

To the answer of the United States Government, the petitioner filed a general

replication, and the case was regularly proceeded in to a hearing. On the 1st day of November, 1830, a decree was given in favor of the petitioners, from which decree the United States appealed to the Supreme Court.

The court, in considering the condition upon which the grant was made to Arredondo & Sons, through Justice

Baldwin, said :

> "We now consider the conditions on which the grants were made. According to the rules and the law by which we are directed to decide this case, there can be no doubt that they are subsequent, the grantee is in full property, in fee and interest vested on its execution, which could only be divested by the breach or nonperformance of the conditions, which were that the grantees should establish on the lands two hundred Spanish families."

After a very extended argument of the facts and the law governing such cases, the Supreme Court of the United States affirmed the judgment of the court below and gave to Arredondo & Sons title to the lands.

The cause of the United States, as appellant, vs. John Percheman, appellee {7 Peters, 51), came before the Supreme Court of the United States in 1833 on appeal from the superior court for the eastern district of Florida.

On the 8th day of December, 1815, the appellee petitioned his excellency the governor to grant to him (the petitioner) 2,000 acres of land in the place called Ockliwaha, situated along the St. Johns River in East Florida.

On the 12th day of December, 1815, Estrada, then governor of East Florida, granted to the petitioner the 2,000 acres of land which he solicited.

On the 31st day of December, 1815, Percheman petitioned the governor to order a survey of the said land. On the same day the governor granted the petition. In pursuance of said petition, Robert McHardy was appointed to survey the lands.

On the 20th day of August, 1819, Me Hardy filed his report with the governor,

stating that he had surveyed the said lands and had prepared a plat of the same.

On the 17th of September, 1830, John Percheman filed in the clerk's office of the superior court for the eastern district of Florida a petition, setting forth his claim to a tract of land containing 2,000 acres within the district of East Florida, .situated at a place called Ockliwaha, on the St. Johns River.

The petitioner stated that he derived his title to the said tract of land under a grant made to him on the 12th day of December, 1815, by Governor Estrada, then Spanish governor of East Florida, and while East Florida belonged to Spain.

On the 2d day of October, 1830, the attorney of the United States for the district of East Florida filed an answer to the petition of Percheman, in which it was stated that on the 28th day of November, 1823, Percheman sold, transferred, and conveyed to one Francis P. Sanchez all his rights, title, and interest in the tract of land claimed by him.

The answer further alleges that if Governor Estrada did make the grant or concession set forth by the petitioner at the time "and in the manner alleged in the said petition or complaint, he made it contrary to the laws, ordinances, and royal regulations of the Government of Spain, which were then in force in East Florida, on the subject of granting lands, and without any power or authority to do so, and that the said grant was and is therefore null and void."

This being the issue, the court proceeded to trial, and adjudged that the grant was valid * * * and was confirmed, from which judgment the United States appealed to the Supreme Court of the United States.

Chief Justice Marshall delivered the opinion of the court, and the court was unanimous in confirming the judgment of the lower court.

The cause of the United States, appellant, *vs.* Clark, appellee (8 Peters, 434), came before the Supreme Court of the United States in 1834.

On the 4th day of April, 1829, Clark filed a petition in the superior court for the eastern district of Florida, praying that court to decree a confirmation

of his title to 16,000 acres of land granted to him on the 6th day of April, 1816, by Jose Coppinger, then acting governor of the Province of East Florida, to which petition was annexed the following documents:

(1) His petition to Governor Coppinger, to be granted 16,000 acres of land on the west side of St. Johns River, near and at Black Creek, and at a place called White Spring, and a copy of the grant by his excellency Governor Coppinger, dated on the same day.

(2) A supplemental petition to Governor Coppinger, dated the 25th day of January, 1819, praying to be allowed to survey 8,000 acres of said grant on other vacant lands, and a copy of the grant made by Governor Coppinger to said supplemental petition, dated the same day.

(3) Three reports of a survey, dated respectively the 24th of February, 1819, 10th of March, 1819, and the 12th of March, 1819, showing the survey of three tracts of land for Mr. Clark.

An examination of these differing surveys shows that but 8,000 acres of land, petitioned for by the plaintiff, was surveyed in the place designated in the original petition. To which petition the United States filed an answer, in which it was denied that "by and under the usages, customs, laws, and ordinances of the Kingdom of Spain, the petitioner is entitled to and vested with a full and complete title in fee simple, or any other title whatever to the said land, and that the supposed grant to the said petitioner is entirely null and void."

The answer further denies that Governor Coppinger had any power or authority whatever to make such a grant; and that if such a grant was ever made to the petitioner, it was made in violation of the laws, ordinances, and royal regulations of the Spanish Government.

The United States Government further contended that if Governor Coppinger possessed the power of making said grant on the 6th day of April, 1816, the eighth article of the treaty having barred all grants made subsequent to the 24th day of January, 1819, he had no power on the 25th of January, 1819, to substitute other lands at a remote distance for those which were granted to the petitioner on the 6th day of April, 1816. And further, that the change of location on the 25th day of January, 1819, was equivalent to the making of a new

grant, and the act is void under the provisions of the treaty. The lands claimed by the petitioner, and embraced in the second and third surveys were vacant lands on the 24th of January, 1819, and were, by the second article of the treaty of 1819, transferred to the United States. The superior court of the eastern district of Florida, by decree, affirmed the title of Clark, and the United States appealed to the Supreme Court of the United States.

Chief Justice Marshall delivered the opinion of the court, and, in a most instructive opinion, affirmed the title of Clark to the lands in the original grant, and denied his
title to the lands surveyed on the 10th and 12th of
March, 1819, respectively.

The case of the United States, as appellant, vs. Chas. F. Sibbald, appellee (10th Peters, 313), came before the Supreme Court of the United States in 1836. It was an appeal from the eastern district of Florida. This was a claim to land in East Florida presented to the superior court of East Florida, by the appellee, founded on the petition for 16,000 acres of land, made by Jose Coppinger, governor of the Province of East Florida, to Charles F. Sibbald, the claimant, on the 2d day of August, 1816.

On the 16th day of July, 1816, Sibbald presented his petition to Governor Coppinger, setting forth that he was desirous of erecting machinery for sawing timber on Little Trout Creek, on the north side of the St. Johns and Nassau Rivers. He further petitioned, with corresponding surety, for the grant of a tract of land 5 miles square, or its equivalent, in the event that the situation would not permit the said form, which land will insure the continuous supply of timber.

On the 2d day of August, 1816, the governor granted “the permission solicited, without injury to third persons, under the express condition, that until the establishment of the mill, the grant of the land which will be a square of 5 miles, in order that he may use the timber, shall be of no effect, etc.”

Pursuant to this grant, a survey was made on the 2d day of May, 1819, of 10,000 acres, at the place named in the petition. In February, 1820, 4,000 acres

more were surveyed in another place called Turnbull Swamp, at the distance of 30 miles from the first survey; and afterwards a residue of 2,000 acres was surveyed at a place called Bow Legs Hammock, at the distance of 20 or 30 miles.

In answer to the petition of Sibbald in the court below, the attorney for the United States denied the power of Governor Coppinger to make the grant, and insisted that the grantee, Sibbald, had not complied with the condition of the concession. There was some evidence to show that Sibbald had expended in the year 1819 several thousand dollars in the erection of a water sawmill, which was nearly completed, but that owing to various difficulties and the disturbed conditions in said province the mill did not go into operation. This was three years after the date of the grant.

By the decree of the superior court the claim of the petitioner was confirmed as to the 10,000-acre survey on Trout Creek, and rejected as to the two remaining surveys of 4,000 and 2,000 acres, respectively, from which decree both parties appealed.

In the Supreme Court of the United States the attorney for the United States contended that the condition in the grant was a condition precedent, and which was not begun to be performed until the grant became positive by the order of the governor made the 29th of October, 1819, declaring all grants made in consideration of mechanical improvements to be made to be void, if the conditions were not performed in six months.

The decision of the court was written by Justice Baldwin and concurred in by all the judges. In the opinion Justice Baldwin said:

> "The evidence in this and the other cases which have been decided is very full and clear that no grant has ever been annulled or revoked by the Spanish authorities for any cause; and that there is no instance of a governor having granted land which had been before granted on condition; and it may well be doubted whether it would have been reannexed to the royal domain had the province remained under the dominion of the King of Spain; nor is there any provision of any law of Congress which specially requires the court to inquire into the performance of conditions on which grants were

made."

The court continues :

> "We are of opinion that the title of the petitioner to the whole quantity of land specified in the grant is valid, by the law of nations, of Spain, the United States, and the stipulations of the treaty between Spain and the United States for the cession of the Floridas to the latter; and ought to be confirmed to him according to the several surveys made, as returned with the record. We do therefore order, adjudge, and decree that the decree of the court below, confirming the title of the petitioner to the 10,000 acres on Trout Creek, be, and the same is hereby, confirmed, and this court doth further order, adjudge, and decree that the decree of the court below rejecting the claim of the petitioners to the land embraced in the surveys of 4,000 acres and of 2,000 acres, as returned with the record, be, and the same is hereby, reversed and annulled."

(See also the causes of the United States vs. Levi, 8 Peters, 479; United States vs. Bernardo Segui, J.0 Peters, 306; United States vs. Benjamin Chaires, 10 Feters, 308, and United States vs. Charles Seton, 10 Peters, 309, decided at the same term of court with that of the United States vs. Sibbald.)

The case of the United States vs. Boisdore et al. (11 How., 63), decided in 1850, is sometimes cited as contrary authority for the proposition contended for here. In that case Boisdore had obtained authority; or a concession, to a certain tract of land, on which he relied, in the year 1783, from the Spanish Government, as it was then constituted in the Louisiana territory. He had never caused a survey to be made during the existence of the Spanish Government, although twenty years had elapsed before its cession to the United States. Nor was any step taken by him to obtain title from the United States, nor any claim legally brought forward for seventeen years after the territory had been ceded to the United States. And nothing like any serious attempt had been made by him to fulfill the conditions upon which he had obtained the concession. This case was decided by a divided court. Justice Wayne, dissenting from the opinion of the majority of the court, said:

> "In my opinion, the opinion of the court is a departure from all heretofore adjudged by the court in respect to the right of property secured by our treaties with Prance and Spain to the inhabitants of Louisiana and Florida."

The case of Glenn et al. *vs.* the United States (13 How., 250), decided in 1851, might also be cited by those who maintain a contrary doctrine. In that case the grant was obtained in 1796, and no possession was taken and no survey had, nor had any of the conditions into which he had entered been complied with while the Spanish Government lasted. Nor, indeed, was any claim made to it for several years after the cession to the United States; nor until the country in which it was situated was filling up with an industrial population and the land becoming of great value.

So also might those who maintain a contrary doctrine cite the case of Vilemont *vs.* the United States (13 How., 266), decided in 1851. In this case the grant was made by the governor-general of Louisiana in 1795, upon condition that a road and clearing should be made within one year and an establishment made upon the land within three years; neither of these conditions was complied with, nor was possession taken under the grant until after the cession of the country to the United States. He did nothing during the continuance of the Spanish Government, although it lasted eight years afterwards; and the excuse of Indian hostility could hardly avail him, because no difficulty of that kind is suggested in his petition to have his title confirmed; and from the character of the improvements he promised to make it would seem that one of the objects of this large grant of several thousand acres of land was to form an establishment which would be useful in repelling Indian hostilities from the neighboring Spanish settlements.

The court denied his petition to have his title confirmed for the reason that he made no attempt to comply with the conditions of his grant. He had not even taken possession of the land.

The next case of importance which came before the Supreme Court of the United States, that of Fremont *vs.* the

United States (17 How., 542-576), was decided in 1854. Chief Justice Taney delivered the opinion of the court. Chief Justice Taney was especially well qualified to discuss the rights, titles, and interests involved in the Spanish land grants, he having been Attorney-General of the United States and represented the United States Government in much of the litigation which had gone before involving the interpretation and application of these grants. This case was originally tried in the district court of the United States for the northern district of California.

On February 23, 1844, Juan B. Alvarado made his petition in writing to the then governor of California, Manuel Micheltorrena, for a grant of ten square leagues of land described in said petition.

On the 29th of February, 1844, the governor, Manuel Micheltorrena granted the petition of Alvarado, in the following language and with the following condition, among others:

> "I declare Don Juan B. Alvarado the owner in fee of the tract of land known by the name of 'Mariposas' within the boundaries of the Snow Mountains, the rivers called Chonchillas, Merced, and San Joaquin * * *. I have granted to him the aforesaid tract of land, declaring the
> same by these presents, his
> property in fee, subject to the approbation of the most excellent, the department assembly, and to the following conditions:
>
> "(1) He shall not sell, alienate, nor mortgage the same, nor subject it to taxes, entail, or any other incumbrance.
>
> "(3) He shall solicit from the proper magistrate, judicial possession of the same, by virtue of this patent, by which the boundaries shall be marked out, on the limits of which he (the grantee) shall place proper landmarks.
>
> "(4) The tract of land granted is ten square leagues, as aforementioned. The magistrate who may give him possession shall cause the same to be surveyed, according to the ordinances, the surplus remaining to the nation for the proper purposes.

> "(5) Should he violate these conditions, he will lose his right to the land, and it will be subject to be denounced by another."

In the month of February, 1847, while California was occupied by the American forces, Alvarado conveyed the lands contained in the grant to Colonel Fremont, an American citizen.

On the 27th day of December, 1852, the board of commissioners provided for, and, acting under an act of Congress of 1851, signed their final decree confirming the grant.

On the 7th day of December, 1853, the district court for the northern district of California decreed that the decision of the commissioners be reversed and that the claim be held invalid and rejected, whereupon the claimant appealed to the Supreme Court of the United States.

Upon reading conditions three and five above noted, it will be seen that they, read together, are much like the conditions imposed in the case at bar.

Chief Justice Taney, in considering these conditions, said:

> "There can be no question as to the power of the governor of California to make the grant. And it appears to have been made according to the regular forms and usages of the Mexican law. It has conditions attached to it; but these are conditions subsequent. And the first point to be decided is, whether the grant vested in Alvarado any present and immediate interest. And if it did, then, second, whether anything done or omitted to be done by him, during the existence
> of the Mexican Government in California forfeited the interest he had acquired and revested it in the Government. For if, at the time the sovereignty of the country passed to the United States, any interest, legal or equitable, remained vested in Alvarado or his assigns, the United States are bound in good faith to up hold and protect it. * * *
>
> "It is argued that the description is so vague and uncertain that nothing passed by the grant; and that he had no vested interest until the land was

surveyed, and the part intended to be granted severed by lines or known boundaries from the public domain. But this objection can not be maintained * * * as between him (Alvarado) and the Government, who had a vested interest in the
quantity of land mentioned in the grant. The right to so much land, to be afterwards laid off by official authority, in the territory described, passed from the Government to him by the execution of the instrument granting it. * * *

"The principles decided in this case appear to the court to be conclusive as to the legal effect of the grant to Alvarado. It recognizes as a general principle of justice and municipal law, that such a grant, for a certain quantity of land, by the Government, to be afterwards surveyed and laid off, within a certain territory, vests in the grantee a present and immediate interest."

Chief Justice Taney, discussing the effects of the conditions contained in the original grant, said:

"Regarding the grant to Alvarado, therefore, as having given him a vested interest in the quantity of land therein specified, we proceed to inquire whether there was any breach of the conditions annexed to it, during the continuance of the Mexican authority, which forfeited his right and revested the title in the Government.

"The main objection on this ground is the omission to take possession, to have the land surveyed, and to build a house on it within the time limited in the conditions. It is a sufficient answer to this objection to say that negligence in respect to these conditions and others annexed to the grant does not, of itself, always forfeit his right. * * *

"The omission or inability of the public authorities to perform their duty can not, upon any sound principle of law or equity, forfeit the property of the individual to the State. It undoubtedly disabled him from obtaining what is called a definitive title, showing that all the conditions had been performed; but it could not divest him of the right of property he had already acquired by

> the original grant, and revest it in the State. * * *
>
> "The only question before this court is the validity of the title. * * *
>
> "Upon the whole, it is the opinion of the court that the claim of the petitioner is valid and ought to be confirmed. The decree of the district court must, therefore, be reversed and the case remanded, with directions to the district court to enter a decree conformable to this opinion."

The question in the case of Pacheco et al. m'The United States (68 U. S., 282) (17 Law Edition, p. 594), decided in 1863, was not a question whether or not the conditions contained in the original grant had been performed, but whether or not the original grant had not been fraudulently altered, increasing the amount of land included in the original grant. Upon that question the court held that there had been no alteration, and confirmed the title of the original grantee.

In the case of Bouldin et al. *vs.* Phelps (30 Fed. Rep., 547), decided in 1887, the question was not whether the conditions contained in the original grant by the Spanish Government had been performed, but whether any grant at all had been made. Upon that question the court held that the Spanish Government had never made a valid grant of the lands in question, and therefore those who succeeded to the interest of the original alleged grantee had no interest. (See also Carpenter vs. Montgomery, 13 Wallace, 480.)

In the case of More *vs.* Steinbach (127 U. S., 70), decided in 1887, the question presented for determination related to the effect of proceedings taken under the act of March 3, 1851, of the Congress of the United States, to ascertain and settle private land claims in California, upon the claims of parties holding concessions of land in that State under the Spanish or the Mexican Governments. By this act a board of commissioners was created, to which all persons claiming land by virtue of any right or title derived from the Mexican or Spanish Governments could present their claims and have them examined and their validity determined; and the claimants could appear by counsel and produce documentary evidence and witnesses in support of their claims. The act required all persons thus claiming lands in California to present their claims to the board within two years from its date, and declared in substance that if,

upon examination, they were found by the board, and by the courts of the United States, to which an appeal was allowed, to be valid, the claims should be affirmed and surveyed and patents issued therefor to the claimants. The act also declared that all lands, the claims to which were not presented to the board within that period, should be considered as part of the public domain of the United States.

Under these provisions the Mexican grantee applied to the commission to have his title affirmed, which the commission did. However, the title affirmed by the commission, for some reason or other, did not cover all of the lands included within the original grant by the Mexican Government. Subsequently patents were issued to other parties to the lands included in the original grant, but outside of the land to which he had his title affirmed by the commission. Later an action was brought to eject these latter parties from the land. The court refused to eject them.

The following cases also contain discussions by the courts of the United States of the rights of grantees under Spanish land grants: Malarin *vs.* United States, 1 Wallace, 290; United States *vs.* Workman, 1 Wallace, 761; Graham *vs.* United States, 4 Wallace, 261; Beard *vs.* Federy, 3 Wallace, 490; Hornsby *vs.* United States, 10 Wallace, 238; United States *vs.* Cambuston, 20 Howard, 61; United States *vs.* Halleek, 1 Wallace, 455; United States *vs.* Billing, 2 Wallace, 448; Higueras *vs.* United States, 5 Wallace, 827; St. Louis Smelting Company *vs.* Kemp, 104 U. S., 641; Steel *vs.* St. Louis Smelting Company, 106 U. S., 454; United States *vs.* Sepulveda, 1 Wallace, 104.

It is maintained in the case at bar that the lands surveyed and occupied by the plaintiffs do not conform to the original grant on the part of the Spanish Government in the Philippine Islands. This question is not a judicial question. That question must be settled by the executive branch of the Government and not by the court. (U. S. *vs.* Flint, 4 Sawyer, 61; Beard *vs.* Federy, 3 Wallace, 492;U. S. *vs.* Sepulveda, 1 Wallace, 108.)

In the present case the grant was made by the proper authorities of the Spanish Government in the Philippine Islands. The Government received full

compensation for the land, and delivered to the plaintiffs a grant as evidence of their title, under which grant the plaintiffs, through conveyances from the original grantees, went into possession of the land, and had the land surveyed and properly segregated from the public domain. If it be true that the plaintiffs were occupying more land than was originally granted by the Government, or are not occupying the same lands so granted, that is a question for the executive branch of the Government.

The condition in the original. grant of the Government is a condition subsequent, and the grantee, by a failure to comply with the said condition, does not lose his right to the land ipso facto. The lands do not revert per se to the Government. The Government must take the necessary steps to forfeit the grant. (Bybee *vs.* Oregon Railway Company, 139 U. S., 663.)

No one but the grantor can raise the question of the performance of a condition subsequent. (U. S. *vs.* So. Pac. Ry. Co., 146 U. S., 570.)

If the grantor makes no effort to enforce the forfeiture of the property by reason of the nonperformance of the condition, the property remains wholly in the grantee.

No case has been found, and it is believed that there are none, where the Spanish Government or the Mexican Government has forfeited a title under a grant, where the Government has received a consideration, and where the party has actually gone into possession, whether the party has gone into possession in the regular way provided for by the condition named in the deed, or whether he has taken possession on his own account.

It has been contended here that no authority was shown giving the Spanish officials in these Islands power to make the original grant. In the absence of proof to the contrary this fact will be presumed.

We believe that the condition of the grant in this case is a condition subsequent. An estate on a condition expressed in the grant itself is where an estate is granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, on the performance or breach of such qualification or condition. These conditions are either precedent or subsequent. A condition

precedent is a condition which must happen or be performed before the estate can vest or be enlarged. A condition subsequent is a condition by the failure or nonperformance of which an estate already vested may be defeated. For example: If an estate for life be granted to A, upon condition that he marry B, the marriage is a precedent condition, and until that condition happens no estate is vested in A; but, if a man grants to estate in fee simple, reserving to himself a certain rent or annuity, if such rent be not paid at the times limited, it shall be lawful for him and his heirs' to reenter and avoid the estate. It is an estate upon condition subsequent, which is defeasible if the condition is not strictly performed. (Schulenberg vs. Harriman, 21 Wall., 44; Holden *vs.* Joy, 17 Wall., 211; Ruch *vs.* Rock Island, 97 U. S., 693; Van Wyke *vs.* Knevals, 106 U. S., 360; Northern Pac. Ry. Co. *vs.* Majors, 5 Montana, 111; Railroad Land Co. *vs.* Courtwright, 21 Wall., 316; U. S. *vs.* C. P. Ry. Co., 118 U. S., 238; St. Louis Ry. Co. *vs.* McGee, 115 U. S., 473; Pac. Ry. Co. *vs.* U. S., 124 U. S., 129.)

There are no technical words to distinguish conditions precedent from conditions subsequent; whether they be one or the other is a matter of construction and depends upon the intention of the party creating the estate. Justice Marshall, in the cause of Pinlay vs. King (3 Peters, 345) in discussing the distinction between a condition precedent and a condition subsequent, said:

> " There are no technical, appropriate words which always determine whether a condition be a condition precedent or subsequent. The same words have been determined differently, and the question is always one of intention. If the language of the particular clause, or of the whole document, shows that the act on which the estate depends must be performed before the estate can vest, the condition is, of course, precedent; and unless it be performed, the grantee or devisee can take nothing. If, on the contrary, the act does not necessarily precede the vesting of the state, but may accompany or follow it, and this is to be collected from the whole document, the condition is subsequent"

By referring to the grant in this case by the Government, we find the

following language, after a description of the property granted:

> ” And whereas, by decree of this office of July 6th last (1882) the applicant was awarded the ownership of the land referred to upon payment of its value.”

This language clearly indicates that the Government had parted with its title to the land, and the only thing remaining to be done on the part of the Government was to point out the lands to the grantee, and have them properly segregated from the public domain. If the grantee knew the lands and was able to go into the possession of them without the aid of governmental agencies, and there has been no mistake, then certainly the Government has no grounds upon which to base an avoidance of the title; and if the Government, then, can not avoid the title, certainly private persons may not.

Many cases haven been decided by the Supreme Court of the United States involving the same question, arising in cases of grants made in Florida, Louisiana, and California. There is, however, no case which I have seen or which has been called to my attention where the grant has been rejected for the nonperformance of the conditions, except when a time has been limited in the grant for the performance, of the Condition and it had never been performed. (U. S. *vs.* Mills’ Heirs, 12 Peters, 215; U. S. *vs.* Kingley, 12 Peters, 476; U. S. *vs.* Drummond, 13 Peters, 84; U. S. *vs.* Buregevin, 13 Peters, 85; U. S. *vs.* Wiggins, 14 Peters, 334.)

The Supreme Court of the United States has confirmed these grants, even in the face of the fact that the grant contained no description of the land, no boundaries, and even no designated point for the commencement of the survey.

The case of Wherry *vs.* United States (10 Peters, 338) was a grant for 1,600 arpents of land near the Eivers Bardennes and Mississippi, in the vacant lands of the Kingdom.

The case of John Smith *vs.* The United States was a case of 10,000 arpents, with permission to locate in separate places, anywhere that was suitable to the grantee.

The case of Buyck *vs.* The United States (15 Peters, 215) was for lands at Mosquito, south and north of said place. The case of O'Hara *vs.* The United States (15 Peters, 275) was a grant for land in the district of Nassau.

The case of The United States *vs.* Delespine (15 Peters, 319) was a grant for land at New River.

The case of the United States *vs.* Miranda (16 Peters, 153) was a grant for "eight leagues square on the waters of Hillsborough and Tampa Bays."

The grants were equally uncertain and indefinite in the cases of the United States *vs.* Boisdore (11 Peters, 63[1]), United States *vs.* Lawton (5 How., 10), and Lecompte *vs.* United States (11 How., 115).

In all of these cases and in many others no land is pointed out by the grant as subject to individual ownership, and there was, in fact, no separation of any portion from the public lands.

In the Arredondo case it was held that want of survey did not interfere with the title of the grantee.

If the grantee neglected any of the directions or conditions imposed by the terms of the grant, there is no doubt that the land might have been denounced and granted to another, and probably by some other proceedings forfeited to the Government, But as long as there was no denouncement by another, and no forfeiture by the Government as long as the Government did not complain of his inaction or neglect, or limit the performance of the condition within any given time, so long did his right to the whole grant remain perfect and complete against the whole world. No third person had the right to come in and determine that his possession contained more than the quantity granted nor that he had not complied with the conditions imposed in his grant.

As confirmatory of the doctrine laid down by the court in this case we cite the following decisions: Vanderslice *vs.* Julian Hanks, 3 Cal., 27 (1852); Ferris *vs.* Coover, 10 Cal., 589 (1858) (this is a very instructive case); Estrada *vs.* Murphy, 19 Cal., 249 (1861) ; Rico

vs. Spence, 21 Cal., 504 (1863); Banks *vs.* Moreno, 39 CaL, 233 (1870); Steinbach *vs.* More, 30 Cal., 498 (1866) (this same case is found in 127 U. &, 70); Hartley *vs.* Brown, 46 Cal., 201 (1873); see same case 51 Cal., 465 (1876); Hancock *vs.* McKinney, 7 Tex., 384 (1851), and cases cited; Rivers *vs.* Foote, 11 Tex., 662 (1854); Johnson *vs.* Smith, 21 Tex., 722 (1858).

This is an action of ejectment. The doctrine is well established that in an action of ejectment, the plaintiff seeking to recover possession of land occupied by another, must recover upon the strength of his own title rather than upon the weakness of the title of the defendant, and the burden of showing his title rests upon him who asserts it. Ordinarily, the plaintiff may prove his title by showing grants direct from the Government, or by a connected chain of title back to the Government, or to some grantor in possession.

In the present case the plaintiff proved a direct grant from the Commonwealth through his grantors. He thereby acquired a *prima facie* title to the land which can not be defeated by a defendant entering upon the land without" title or claim, or color of title. (Holloran *vs.* Meisel, 87 Va.,398.)

Neither can the defendant defeat the title of the plaintiff who holds his title through a chain of title from the Government by showing a prescriptive title. Inhabitants of the Philippine Islands can not obtain a prescriptive title against the Government, and therefore can not impose such a title against those holding grants from the Government, providing the grantees from the Government have maintained possession or *quasi* possession of the land. (Valenton et al. *vs.* Murciano, decided by the Supreme Court in March, 1904.[1])

From the evidence in this case we are justified in the following conclusions:

(1) That the plaintiff holds a grant, through other grantees, directly from the Government.

(2) That the condition found in the original grant from the Government is a condition subsequent.

(3) That grants to land by the Government containing conditions subsequent can only be forfeited by the Government in an action brought for that purpose.

(4) That the Government in this case received a consideration for the land.

(5) That the plaintiff and his grantors-(the grantees from the Government) went into possession of the land contained in the original grant and have maintained actual or quasi possession of the land.

(6) That the defendants have no title or color of title, either by prescription or otherwise, against the plaintiff.

(7) That the plaintiff has shown sufficient title to maintain an action of ejectment against the defendants.

Therefore the judgment of the court below should be affirmed.

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[1] Rentas Estancadas

[1] Howard, 63

[1] 3 Phil. Rep., 357

McDONOUGH, J., with whom concurs COOPER, J., dissenting:

The plaintiff claimed to be the owner of the lands in question, which it purchased in 1883; that the defendants were illegally in possession thereof; and prays that the defendants be evicted from said lands that plaintiff may be placed in possession thereof and that damages be adjudged to be paid to plaintiff.

The answer controverts the boundaries, as set forth in the complaint, and denies the ownership of the plaintiff in and to the lands in controversy.

The plaintiff claims title to this land in dispute, being included in grants numbered one to seven, inclusive, through conveyances from those who purchased the same as public lands from the royal treasury in the year 1882.

Each of these deeds from the Government contains the following provision:

> "I issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon, *under pain of nullity* if the contrary is done, so that it may be entered in the official records and possession may be given in the usual legal form."

No survey of the lands was made by the Government; the grantees were not placed in possession in the usual legal form; and the grants were not presented to the politico-military government of Isabela for entry.

At the trial the defendants made objection to the receiving of these grants in evidence on the ground that they were null for the reason that they were never presented to the politico-military government of Isabela de Luzon, that they were not entered in the official records, and that possession was not given to the grantees in the usual legal form.

Other questions are in dispute, particularly the question of boundaries, which need not now be considered, inasmuch as if this point of the defendants, that the grants are null, be well taken, that disposes of the case.

It is of course primary doctrine that in a possessory action of this nature, the plaintiff must rely on the strength of his own title, not on the weakness of that of the defendants, and so he must show here that he has a valid title as against the defendants, and, to show that fact, it was necessary to prove that the Government grants, made to the grantors of the plaintiff, were valid. And the validity of these grants from the Government, for the purpose of this action, depends upon whether the conditions requiring them, under pain of nullity, to be presented to the government of Isabela, to be entered therein and legal possession given in the usual legal form, are conditions precedent or are

conditions subsequent. If they be conditions precedent, the grantees from the Government did not acquire a valid title, and could not until the conditions were complied with. And, inasmuch as in each grant it is provided that it shall be null if the requirements are not complied with, I am of opinion that the grantees did not acquire a valid title.

It can not be reasonably said that these requirements were not of importance to the Government as well as to the grantee.

In order that the government of Isabela might know what land was granted in that province, it was necessary to have a record of it entered therein, and in order to prevent disputes and litigation regarding boundaries, such as has happened in this case, it was the wise practice to have the grantee placed in possession in a legal form.

The laws relating to and authorizing the sale of these public lands are not contained in the briefs, nor have they been presented to this court. On account of their absence, I may assume that the practice here was similar to that under which grants were made in other Spanish colonies, and which grants contained similar conditions.

The Supreme Court of the United States has had occasion to pass upon the validity of many such grants made in California and other territory when under the jurisdiction of Mexico.

The importance of the proceedings relative to the delivery of possession in the "usual legal form" are described by Justice Field in the case of Pacheco[1] et al. *vs.* The United States (68 U. S., 282) as follows:

> "When the grant to Pacheco was issued there still remained another proceeding to be taken for the investiture of the title. Under the civil, as at the common law, a formal transfer or livery of seisin of the property was necessary.
>
> "As a preliminary to this proceeding the boundaries of the quantity granted had to be established when there was any uncertainty in the description of the premises. Measurements and segregation in such cases, therefore,

preceded the final delivery of possession.

"By the Mexican law various regulations were prescribed for the guidance, in these matters, of the magistrates of the vicinage.

"The conditions annexed to the grant in the case at bar required the grantee to solicit legal possession from the proper judge.

"In compliance with this requirement, within four months after the issuance of the grant, he presented the instrument to the judge of the district and requested him to designate a day for delivering the possession. The judge designated a day, and directed that the adjoining proprietors be cited, and that surveyors and counters be appointed.

"On the day designated the proprietors appeared, and two surveyors and two counters were appointed and sworn for the faithful discharge of their duties.

"A line provided for the measurement was produced, and its precise length ascertained. The surveyors then proceeded to measure off the land, the judge and
the proprietors accompanying them.

"The measurement being effected, the parties went to the center of the land, and there the judge directed the grantee to enter into the possession, which he did, and gave evidence of the fact 'by pulling up grass and making demonstrations as owner of the land.'

"Of the various steps thus taken * * * a complete record was kept by the judge in the 'book of possessions.' * * *

"The ownership, extent, and general location of the land were matters thus brought within the knowledge of the neighborhood, and were no doubt afterwards
the subjects of frequent reference among the adjoining
proprietors."

It has been held in several reported cases that after execution of grants in

terms similar to those in this case, that the entry of the grant and the delivery of formal possession of the land granted was essential for the investiture of title.

In the case of Bouldin *vs.* Phelps (30 Fed. Rep., 547, 548, the court said:

> "There was no record made of the grant as required by law; the public record thereof, and not the document delivered to the party, was the effective grant. There was no legal possession. The title, therefore, did not become definitely vested. A grant can not perfect or complete the title where anything remains to be done to perfect it."

This question was considered in the case of More *vs.* Steinbach (127 U. S., 70), and it was there held that the grant vested no title until the grantee was placed in possession according to law. That was a suit in equity to determine the adverse claims to certain lands in California.

The plaintiffs claimed to be owners in fee under a patent from the United States. The defendants claimect an estate in a part of the property, adverse to plaintiffs, under a Mexican grant.

In the decision, it was said by the court, in discussing the defendants' grant:

> "Upon the cession of the country there remained a further proceeding to be had with respect to the grant before any indefeasible title could vest in the grantee. A formal transfer of the property to the grantee by officers of the Government was necessary.
>
> "The proceeding was termed a judicial delivery of possession. Until it was had the grant was an imperfect one.
>
> "As preliminary to, or as part of, the official delivery, the boundaries of the land were to be established after summoning the neighboring proprietors as witnesses to the proceedings."

So such official delivery of possession was had under the former Government to the grantee Jimeno, though the grant to him contained these conditions:

(1) He shall petition the proper judge to put him in legal possession, the boundaries to be first marked out, and on the limits shall be placed land marks.

(2) The judge shall have it measured.

And consequently the court held:

> "That the grant under which they claimed to have acquired a perfect title conferred none. The grantees were not invested with such title and could not be without an official delivery of possession under the Mexican Government; and such delivery was not had and could not be had after the cession of the country except by the American authorities acting under a law of Congress."

This case was cited with approval in the case of Ainsa *vs.* United States (161 U. S., 208).

It has been suggested that the Supreme Court in the case of Fremont vs. The United States (58 U. S., 542) held that conditions of the nature discussed here were conditions subsequent and that, therefore, title vested in the grantees. The answer to this is that if that case be in conflict with the More case, supra, it is by implication repealed by this later decision. But an examination of the Fremont case shows that it turned on other questions involving the construction of an act of Congress and the waiver of certain conditions by the Mexican authorities.

It appears in that case that a Mexican grant was made of a tract of ten square leagues of land known as "Mariposas" to Col. Juan B. Alvarado for patriotic services. Grant made in 1844, and land situate in California.

The grant recited that "the necessary requirements according to the laws and regulations having been previously complied with," the grant is made. Alvarado transferred his interest to Fremont.

The grant was made on the conditions:

First. That the grantee was not to sell, alienate, nor mortgage the same.

Second. That he was to enclose it and to build a house on it within one year.

Third. That he was to solicit from the proper magistrate judicial possession of the same by virtue of this patent, by which the boundaries shall be marked out.

Fourth. That the magistrate who may give possession shall cause same to be surveyed, and

Fifth. That should the conditions be violated he was to lose his right to the land and it was to be subject to be denounced (petitioned for) by another.

The board of commissioners, acting under the act of Congress of the year 1851, confirmed the claim as described in the grant and map filed in the office of the surveyor general.

The conclusion of the commissioners was confirmed.

In reaching this result the court laid stress on the fact that this grant was confirmed pursuant to the act of Congress of 1851, which was intended to place the titles to land in California upon a stable foundation, and embraced not only inchoate or equitable titles, but legal titles also, and in this respect differed from the Mexican act of 1824, under which the claims in Louisiana and Florida were decided.

These grants it was said were almost always made upon condition of settlement, or some other improvement by which the interest of the colony, it was supposed, would be promoted.

> "But," said the court, "until the survey was made, *no interest, legal or equitable passed in the land.* The original concession granted a naked authority or permission and nothing more. * * * The examination of the surveyor, the actual survey, and the return of the plot were conditions precedent, and he

> had no equity against the Government and no just claim to a grant until they were performed."

The court, however, held that in this Alvarado grant the condition requiring a survey was not made by the grant a *condition precedent.*

> "According to the regulations for the granting of lands," said the court, "it was necessary that a plan or sketch of its lines and boundaries should be presented with the petition, but in the construction of these regulations, the governors appear to have exercised a discretionary power to dispense with it under certain circumstances. It was not required in the present instance. The reason assigned for it in the petition was the difficulty of preparing it, the land lying in a wilderness bordering upon the Indian country. This reason was deemed by the governor sufficient, and the grant issued without it."

In view of these decisions I am of opinion that the grantees in this case did not acquire a legal title; that they could grant no better title than they had; that through their conveyances the plaintiff acquired no legal title; and that therefore the judgment of the Court of First Instance should be reversed.

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[1] Malarin *vs.* U. S.

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