IMPORTANCE OF TORRENS TITLE AND PROCEDURE FOR SECURING THE SAME

Lecture Delivered by Enrique Altavas, Chief of the General Land Registration Office, before the Law Forum of the College of Law, University of the Philippines.

Mr. Dean, Fellow-Professors, and Students:

The distinguished Dean of the College of Law of this University has honored me with a request to deliver before you a lecture on the subject of Land Registration.

Before proceeding further, I frankly confess that I can find no words to express my sincere appreciation of the unmerited honor which such request confers upon me, and although I do not possess the oratorical gifts of some of my colleagues of this institution of learning, I will, however, take the liberty to address you on the following thesis, to wit: "Importance of the Torrens Title and the Procedure for Securing the Same."

There is so much said regarding the Torrens title nowadays, and this kind of title is mentioned with such frequency, not only among the landowners and capitalists, but also among the other members of the community, be they professionals or laymen, making one realize readily the popularity which is being acquired by the system of registration of lands known as the Torrens system, wisely established in these Islands by the present American sovereignty by virtue of the Land Registration Act, Act No. 496 of the Philippine Commission, that it is deemed profitable to discourse upon the same, in order to demonstrate its importance and the most expeditious and effective procedure to obtain such titles, for the good of the community.

It is very common to hear people inquire what the meaning is of the word "Torrens," and why the title which the Government grants, in conformity with the provisions of the Land Registration Act, is called Torrens title. The explanation of this is very simple. During the middle of the last century there lived in Australia a layman, called Robert Torrens. The condition of property in that country was then absolutely chaotic and the possession of a thing by the person who considered himself the owner thereof was held without guaranties of any sort, originating an endless number of suits which sometimes caused great troubles and dissensions in the family and disturbances among the inhabitants of those British possessions. Robert Torrens then conceived a plan for registering property through a judicial process, after which peaceful possession of the same was obtained. This plan was submitted to the government, which, finding it to be very convenient, adopted the same through proper legislation, and the results were so satisfactory in that country that many other States, both in America and in Europe, adopted the new system. In all of these countries, the Torrens system has always attained a brilliant success.

Robert Torrens was afterwards knighted for his distinguished work, and in order to honor his memory worthily, the titles issued under the new system of registration have been called Torrens titles and the system conceived by him, Torrens system.

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The primal basis upon which the Torrens system rests is the incontestability of the title, *i. e.*, once issued after due legal process, its validity cannot be contested by anybody.

In a lecture which I had the pleasure to give in this very place two years ago, speaking of those attributes of the Torrens title which comprise the principle of its incontestability, I mentioned the following:

1. That it is optional, *i. e.*, the property owner may submit his property to such system, or may have the same governed by any previous legislation, but once submitted by his own volition, he can not withdraw and go back to the old system.

2. The registration does not mean registration of acts, but registration of the title itself, and better than inscription, it is a reproduction of titles; since the originality of the system consists in the fact that once the registration is applied for by the property owner and after the appropriate proceedings are had, a decree is issued in his name, which decree is transcribed by the Register of Deeds in a book of registration, and a duplicate of the same issued to, and remains in the possession of, said property owner.

3. The issuance of a new certificate of title annulling and replacing the old one, takes place upon the transfer of the property described in the first certificate of title or when said property is subdivided into two or more parcels between two or more persons, in which latter case there are issued as many certificates of title as there are parcels.

4. The incontestability of the title, provided the possessor has not committed any wrongful act; to this end the government receives from the applicant, at the time of registration, a small fee, consisting, under our law, of one-tenth of one per cent of the valuation of the property. This constitutes what is termed the "Assurance Fund," from which indemnification is made to the party prejudiced by any cause independent of his will.

5. Greater economy in the expenses of the proceedings and brevity of transactions dealing with registered land.

It is certain that the advantages above stated necessarily give a great importance to the Torrens title.

We have said that the mere fact that a person holds a Torrens title for a certain property, makes him enjoy such a state of safety and tranquillity that it removes absolutely all worry or fear that sometime he might lose his tranquil and peaceful possession of his property, since his title is protected and guaranteed by the government.

It is admitted that with a Torrens title in hand, the landowner may easily accomplish all sorts of transactions with his property, especially to obtain mortgage loans, since the bankers and capitalists have adopted the practice of requiring always, for the security of the money loaned, that the property mortgaged be provided with a Torrens title. We may affirm without any hesitation that the lack of a Torrens title has been the cause of many landowners failing in their efforts to obtain money.

But the best manner of disclosing the importance of the Torrens title is undoubtedly to bring to your notice what the highest authority of the Philippines has held with regard to this matter. That authority is the Supreme Court of the Islands, whose doctrines are set forth in the various decisions scattered both in the Philippine Reports and in the Official Gazette.

In the case of the Manila Railroad Company *vs.* María del Carmen Rodriguez and others, reported in the Official Gazette of February 24, 1915, wherein the question as to who had the right to receive the value of a piece of land expropriated by the Railroad Company was considered, and in which it was alleged by one of the parties that he had a title which had been recorded in the Registry of Property pursuant to the Spanish system prescribed by the Spanish Mortgage Law about thirty years prior to the time when the other party secured a Torrens title for the same land, and that, therefore, his title being older and having been recorded pursuant to the system in force during the Spanish régime, long before that of his contestant, it should enjoy preference over that of the contestant, and that, this being so, it should be held that he was the real owner of the land described in the deed of transfer and was, consequently, entitled to receive the value of the expropriation, while it was alleged on the other hand that the other party had a Torrens title to the same land, the Supreme Court in deciding the controversy solemnly declared that the contention of the first party was not well founded, and held that "A Torrens title is superior to every title preceding it. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exception stated in the following section (Sec. 39 of Act 496). It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description 'To all whom it may concern.' Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees."

Sustaining more emphatically the foregoing doctrine, said high tribunal, in the same case, has laid down the following principles relative to the importance of the Torrens title, which should be considered as fundamental, to wit: "A title once registered under the Torrens system, is good against everybody and cannot be attacked by any person claiming the same land under title anterior to the decrees of registration, and that a title duly registered during the Spanish régime under the system of registration then in vogue must yield to a title to the same land duly registered under Act No. 496, which is the Torrens Act."

As may be seen, the controversy in the case above mentioned was between a title registered in accordance with the Spanish Mortgage Law, and a Torrens title. In these cases you must keep in mind that the Torrens title always prevails, and that it would be a useless task on the part of a lawyer to pretend to win a case of this nature, basing his pretension on the existence of a title registered under the Spanish system, though it may have been registered one hundred years back.

Let us now see what the Supreme Court of the Philippines has to say in deciding a controversy between a party who possesses a Torrens title for a piece of land, and another one who also possesses a Torrens title for the same land, that is, each of the parties has in his possession a Torrens title for the very same property.

The decision in this case may be found in the Official Gazette of December 8, 1915. The case is entitled Consuelo Legarda *et al.*, applicants and appellants, *vs.* N. M. Saleeby, opponent and appellee.

To better understand the doctrines laid down by the Supreme Court in this case, we will first give the facts that gave rise to the controversy as they are stated in the opinion:

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

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

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

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

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

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

Now then, taking into consideration the facts above stated, a question may be asked, who is the owner of the wall and the land upon which the same is erected?

The answer to this question may be found wisely stated by the Supreme Court in the following paragraph:

> "The decision of the lower court is based upon the theory that the action for the registration of the lot of the defendant was a judicial proceeding and that the judgment or decree was binding upon all parties who did not appear and oppose it. In other words, by reason of the fact that the plaintiffs had not opposed the registration of that part of the lot on which the wall was situated they had lost it even though it had been theretofore registered in their name. Granting that theory to be the correct one, and granting even that the wall and the land occupied by it, in fact, belonged to the defendant and his predecessors, then the same theory should be applied to the defendant himself. Applying that theory to him, he had already lost whatever right he had therein, by permitting the plaintiffs to have the same registered in their name, more than six years before. Having thus lost his right, may he be permitted to regain it by simply including it in a petition for registration? The plaintiffs having secured the registration of their lot, including the wall, were they obliged to constantly be on the alert and to watch all the proceedings in the land court to see that some one else was not having all, or a portion of the same, registered? If that question is to be answered in the affirmative, then the whole scheme and purpose of the Torrens system of land registration must fail. The real purpose of that system is to quiet title to land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, it would seem that once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the 'mirador de su casa,' to avoid the possibility of losing his land. Of course, it can not be denied that the proceeding for the registration of land under the Torrens system is judicial (Escueta *vs.* Director of Lands, 16 Phil. Rep. 482). It is clothed with all the forms of an action and the result is final and binding upon all the world. It is an action *in rem* (Escueta *vs.* Director of Lands, *supra;* Grey Alba *vs.* De la Cruz, 17 Phil. Rep. 49; Roxas y Chuidian *vs.* Enriquez, 13 Off. Gaz. 231; Tyler *vs.* Judges, 175 Mass. 71; American Land Company *vs.* Zeiss, 219 U. S. 47)."

Summing up, therefore, all that has been stated, and having due regard for the doctrines laid down by the Supreme Court, we can say, in harmony with our proposition relative to the importance of Torrens title, that when two certificates of title cover the same land, the one of anterior date should prevail as between the original parties, no matter whether the land comprised in the posterior certificate may be found included in whole or in part in the anterior certificate. In subsequent registrations in which more than one certificate is issued with respect to a certain interest in land, the person who possesses an anterior certificate has a better right to the land

than the person who obtains a later certificate. The decree of registration is conclusive upon all and against all. This means that a Torrens title once obtained, the owner may rest secure, without the necessity of watching at the doors of the courts to avoid the possibility of losing his land or part thereof should another person take a notion to have it included in an application for registration of title. The tranquility of the holder of a Torrens title must, therefore, be absolute.

In the firm belief that the foregoing has convinced us of the importance of the Torrens title, we will now consider the procedure provided by the existing laws for obtaining a title of this nature.

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The procedure for the registration of a title to land may be stated as follows:

1. Survey of the land.
2. Filing of application for registration of title in court.
3. Hearing of the application.
4. Decision of the case.
5. Issuance of decree of registration.
6. Issuance of certificate of title with its duplicate.

The first step is that which refers to the survey of the property. The law requires and it is absolutely necessary that the application for registration of title be accompanied by a plan which must be the result of a scientific survey thereof, made by a surveyor duly qualified and authorized to make surveys. We said "scientific" in order to make it understood that it is not enough to describe the land by mentioning the *sitio*, barrio, town or province where it is found; the number of meters which its sides may have, calculated at hazard, and the area of the land computed at a glance, as well as the names of the adjoining owners; but that it should be a survey in which the bearings, distances and area are given, as a result of a survey and demarcation by means of scientific apparatus, besides the designation of the *sitio*, barrio, town, province, etc., and of the adjoining owners.

The survey once made, the surveyor prepares the plan, in accordance with the data obtained. After the plan is finished, it is presented to the Director of Lands for his verification and approval. The plan once verified and approved, said Director of Lands returns it to the surveyor who in turn delivers the same to the owner. Surveys may also be made by surveyors of the Bureau of Lands.

Act 1875 provides that the surveyor who may make surveys of lands for registration purposes, should be a surveyor qualified in accordance with the provisions of said law and must show the corresponding certificate issued by the Director of Lands and recorded by the Chief of the General Land Registration Office. It is obvious, therefore, that, without such requisites, no surveyor can make surveys of lands for the purpose above mentioned. The clerks of the Courts of First Instance, who are the persons to receive applications for registration of title, have definite instructions from the General Land Registration Office not to admit any application which is not accompanied by a plan made and prepared by a duly qualified surveyor, and which is not verified and approved by the Director of Lands.

In the case of Aguillon *vs.* the Director of Lands, 17 Phil. Rep. 506, this question was discussed by the Supreme Court of these Islands. In this case a plan not prepared in accordance with the provisions of Sections 4 and 5 of Act 1875, was presented. The Director of Lands opposed the registration of the land covered by said plan, and, notwithstanding said opposition, the Court of Land Registration decreed in favor of the applicant the registration of said land. From this decision, the Director of Lands appealed, and the Supreme Court, after reviewing the facts of the case, declared:

> "We are of the opinion that the judgment of the lower court should be reversed and stand reversed until the plaintiff or petitioner presents plans in accordance with the provisions of Act No. 1875, and the case is hereby ordered to be returned to the lower court with direction that the petitioner present his plans in accordance with said Act. If, however, when the plans shall have been presented, the lower court finds that the same conform to the plans already presented, then the judgment heretofore rendered may be affirmed without further procedure. If, however, the new plans when presented do not conform to the plans heretofore presented and shall affect the rights of any persons who have not heretofore been heard, then notice shall be given them and an opportunity to present whatever opposition they may have to the registration of the land included in the new plans."

The second step, as before stated, is the filing of the application for registration of the title in the Court. Act No. 2347, which reorganized the Courts of First Instance and the Court of Land Registration, provides that the application for registration of title shall be presented to the clerk of the Court of First Instance in the province where the land is situated, and in Manila, to the Chief of the General Land Registration Office.

The application must be accompanied by a plan, technical description of the land, surveyor's certificate and all muniments of title proving the ownership of the property. The application, plan, technical description and surveyor's certificate should be presented in duplicate, in order that the original copies may remain for file in the clerk's office of the corresponding court, together with the muniments of title, and the duplicate copies be forwarded to the Chief of the General Land Registration Office, so that he may have a complete record of the case for file in his office.

The clerks have instructions from the General Land Registration Office not to receive or admit applications for registration of title if they are not presented in the form we have just indicated.

The requirement that the application should be accompanied by the documents proving ownership is based on the provisions of Section 26 of the Land Registration Act, which clearly states that the applicant should file with the application all the original title deeds which he may have in his possession which justify his right to the land claimed by him.

The application must be signed by the owner or his duly authorized agent, and must be sworn to before a Notary Public. The requisite as to the oath is based on the necessity of guaranteeing all the declarations and statements contained in the application, which in many instances, serve as a basis for the decision of the court.

The application once filed, the interested party or his lawyer should request the court to set a date for the hearing of the same. In many courts this is not even necessary, because the clerks are instructed to set applications for hearing in the order they are presented.

Many believe that the hearing of an application can take place on the day following its presentation in court, and after fifteen or twenty days have elapsed without the hearing taking place, they become impatient and begin to think that the delay is due to the lack of attention or diligence on the part of the clerk or of the General Land Registration Office. Such conduct and way of thinking is very unjust to such clerks and the General Land Registration Office, inasmuch as the applicants and the lawyers as well should know that the law clearly provides that the courts shall set the date for the hearing of a case by means of a notice to the Chief of the General Land Registration Office, which notice must be received by the latter official sixty days before the date designated. Therefore, the most that an applicant can expect is to have his application heard sixty days after filing.

The General Land Registration Office, upon receipt of said order for setting date of hearing, prepares a notice relative to the application, which notice must be published in the Official Gazette, and posted on the land by the sheriff of the province, at the same time that a copy of said notice is sent to each one of the persons mentioned in the application, whether occupants or adjoining owners or in any way interested in the case. The due publication of said notice in the form above mentioned is what gives jurisdiction to the court to take cognizance of the case.

According to this, the publication of the notice in due form is what gives jurisdiction to the court to hear, take cognizance of, and decide a land registration case. The object of the notice being, therefore, to confer jurisdiction, and knowing that its absence is fatal, as the Supreme Court of the Philippines has constantly declared in its decisions, in such a way that it renders null and void all that has been done, it is evident that the procedure relative to the publication of the notice in question must be strictly complied with in accordance with the law.

On the other hand, our own Supreme Court and those of the various States of America where there are in force laws based on the Torrens system, have repeatedly declared that the due publication of the notice in question includes the whole world, and affects all, and no allegation to the contrary can be admitted. This clearly shows that without due publication no one is deemed to have been notified or prejudiced and therefore any allegations tending to nullify the proceedings can be admitted.

In the case of Grey Alba *vs.* de la Cruz, 17 Phil. Rep. 49, the Supreme Court of these Islands laid down the following doctrine: "The decree of registration issued in a land registration case is conclusive not only against the opponent, notwithstanding the fact that he has proven that he was not served personally with a copy of notice, but also against the whole world, if it can be shown positively that said notice was duly published, in accordance with the law, since the mere fact of its publication made him a party defendant in the case."

According to this, it can be affirmed that the due publication of the notice relative to the application for registration is what supports the validity of the proceedings, and consequently that of the decree of registration which by virtue of a valid proceeding is issued.

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On the day set for the hearing of the case, the applicant or his lawyer or his duly authorized agent will have to appear before the court to prove the allegations made in the application, and principally the ownership of the property. Likewise, in case of controversy, that is, when an opposition to the application is presented, the opponent must appear before the court and prove the allegations made in his opposition and, principally, his adverse right to the property.

The Supreme Court, in the case of Inocencio *vs.* Gat-Pandan, 14 Phil. Rep. 491, has laid down the following doctrine with regard to the duty of proving ownership: "If the person who makes application as owner for the registration of property is under obligation satisfactorily to prove that he is the proprietor, those who oppose the said registration must in turn establish their claims; if neither party succeed in so doing, their respective claims must be dismissed."

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The next step after the hearing of a registration case is the decision of the same.

In practice, we have seen that in the majority of cases, especially when no opposition has been filed, the judges decide the case immediately. The decision is delayed only when the case has become complicated on account of oppositions filed, creating a controversy, the decision of which always requires some study on the part of the court.

The decision of the court must either decree registration of title applied for in the application or deny the same. In the first case, the court shall order the adjudication of the land in favor of the applicant and the issuance of a decree of registration of title of said land in his name. In the second case the court shall order dismissal of the application.

Any person (or party) who is not satisfied with the decision of the court, may appeal from that decision to the Supreme Court of the Philippine Islands, and in order that the appeal may be accepted, it is absolutely necessary that the same be filed within the period of thirty days, counting from the date on which the interested party receives a certified copy of the decision.

Regarding the right of appeal, we should say that only those persons who have intervened in the case, that is, those who have taken part in the controversy either as applicant or opponent, are entitled to it; and with respect to the latter, in order that he may be considered a party to the case, it is necessary for him to file an opposition claiming the whole or part of the property in question. (See Couto *vs.* Cortes, 8 Phil. Rep. 459.)

The above doctrine has been applied later on by the same Supreme Court in the case of Cabañas *vs.* Director of Lands, 10 Phil. Rep. 393, where the following rule was laid down: "A person who has not challenged an application for registration of land, even if the appeal afterwards interposed is based on the right of dominion over the same land, can not allege damage or error against the judgment ordering the registration, inasmuch as he did not allege or pretend to have any right to such land, and no right has been infringed by an error which should be corrected by the court of appeal in the second instance. Therefore, the appeal should not have been admitted."

If no appeal is taken from the decision, the same becomes final at the expiration of the period of thirty days counting from the date on which the interested parties have received certified copies of said decision.

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Upon the decision becoming final, if the case has been dismissed, the same will be filed and kept as such without any further proceedings; and if it has been favorably decided, adjudicating the property to the applicant, then, the decree of registration of title will be issued.

The General Land Registration Office is in charge of issuing decrees in accordance with the decision. Before the decree is issued, the surveyor of said office examines the plans filed with the application as well as the plans of the adjoining properties in order to be sure that the latter plans are not in conflict with the former ones, and in case of conflict, the applicant will be directed to make the boundary lines of his land to agree with those of the adjoining decreed properties, because these necessarily have to be respected and protected.

The decree once issued, the law establishes a perpetual tie or vinculum, binding the property and its owner to the precepts of the Land Registration Act, in such a way that said property will always be subject to the provisions of this Act, and its owner may never restore said property to its previous status, that is, the status before its registration under said Land Registration Act. In other words, a parcel of land once registered under said Act remains registered land forever.

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Immediately after the issuance of decree, the General Land Registration Office prepares the certificate of title and its duplicate, both of which contain an exact and literal copy of the contents of said decree. Then such decree, certificate of

title and its duplicate are sent to the Registrar of Deeds for the province where the land is situated, so that said official may file the decree, number and sign the certificate of title and its duplicate, filing the original certificate in a binder, especially prepared for the purpose, and delivering its duplicate to the registered owner, upon payment of the fees for the assurance fund and for the issuance of said certificates.

The said certificate of title is what we called at the beginning "Torrens title," the importance and transcendence of which we have extensively spoken of in the first part of this lecture.

Here you have, then, briefly outlined the procedure followed in obtaining a "Torrens title."

I thank you.