LAND LEGISLATION

A lecture delivered by Under-Secretary Rafael Corpus before the Law Forum, College of Law, University of the Philippines, September, 1917.

(*Continued from November number*)

This Royal Decree was afterwards superseded by the Royal Decree of January 26, 1889, promulgated in Manila on May 2, 1889, which substantially reproduced the provisions of the preceding one; this is the same case with the Royal Decree of February 13, 1894, published in the Official Gazette of April 17 of the same year, this being the last one promulgated on sales during the Spanish regime.

In regard to composition, the Royal Decree of June 28, 1880, in force in the Philippines on September 10 of the same year, superseded the provisions which were enforced previous to that year. Composition which, as the Decree itself explains has for its object the legalizing of the legal possession of state lands, has as much importance in the land legislation of the Philippines as the fact, to which I have already called your attention, that the people persistently clung to occupation as a mode of acquiring government land.

"Ownership in the Philippines" said the Director General de Administración Civil in 1881, "may be said not to have existed. Except in very rare cases, occupation had been the only means employed for acquiring possession, and as this possession as well as the exercise of the same was not under the law, the possessor * * * * was simply an unlawful possessor or a usurper." Whether he was an unlawful possessor or a usurper, the Government of Spain observed toward him the most generous of considerations. Said a report approved in the Royal Decree of the 27th of November 1880: "It would not be equitable, and would perhaps bring about complications, to eject the unlawful possessors from the lands which they are enjoying"; and the "Dirección General de Administración Civil" in 1883 said, on its part, that those who had arbitrarily staked their claims to public lands should be maintained in their possession and enjoyment. It is because by the very Laws of the Indies, originally promulgated for Spanish America, composition was instituted before hand in these Islands, which composition is based on the principle of prescription, and the latter according to Manresa, "is a social necessity founded upon reasons of public order."

The Royal Decree of June 25, 1880 above mentioned, drew a distinction between occupants with or without just title, and with or without good faith, and between cultivated and uncultivated lands, in order to classify the grants into gratuitous and onerous, and in order to establish the schedule of payment if the grant was onerous, because in the language of the report already referred to, of the Consejo de Filipinas,

"the doctrines of the law can never countenance the placing of the possessor with title and the one without it on the same level, and the one who with his work has in some measure atoned for the vice in the acquisition, contributing moreover to the increase of wealth, should be rewarded."

In virtue of this royal decree, the compositions of lands should be made till Sept. 10, 1881, but the composition of cultivated lands was indefinitely extended till April 17, 1894, the date on which the Royal Decree of February 13, 1894 was promulgated. But although this Royal Decree put an end to composition, the Spanish government again adopted a benevolent policy towards the legal occupants and granted a period of one year—till April 17, 1895—in order that by means of summary information, which is substantially based on that provided for in the Mortgage Law of 1889, said occupants may legalize their possession. But side by side with the summary information which was at bottom a composition, as has been said by our Supreme Court in the case of Cariño *vs.* Insular Government, 8 Phil. 150, the Mortgage Law which took effect on Oct. 15, 1894, provides for the "información posesoria", which opened the doors for all time to the legalization of possession.

The last stage, to mind, of land legislation under the Spanish sovereignty, is the period of broad and liberal colonization, and belongs to the year 1884, when by the Royal Decree of the ..... of the same year, the Spanish Law of Agricultural Colonies of 1868 was extended to the Philippines. It coincides with the period when the Philippines fully enters upon its economic development. Freedom of commerce was in full swing, and capital from abroad flowed into the country. The Spanish Government responding to this general movement begins the year before, that is, in 1883, to authorize foreigners individually but not collectively to buy public lands from the State, but with rather heavy restrictions, although the "Ley Extrangería" of 1870 had already authorized foreigners to acquire and possess in the Philippines all kinds of private property, real and personal.

As will be seen, the policy of Spanish legislation is one of full liberality. Peoples as well as government, being human as the members constituting them, upon seeing such vast stretches of land without the possibility of their being used by the small population, make haste to convert them into private property both for economic development and for financial reasons, although history shows that for economic purposes, intense cultivation is better, and that for revenue purposes, the nationalization of the soil is the most expedient method.

The reason is that peoples as well as governments, in the infancy of their agrarian economy, in trying to solve the problem of economic development of a country, are also susceptible to that psychological prejudice of man who considers ownership as the greatest aim in regard to land, and therefore, in order to attract capital to the field, the best means that can be offered to it is an easy and cheap acquisition. To me, it has always been a question of difficult settlement beforehand whether these

liberalities of young governments in converting as soon as possible their public domain into private property, have been wise or not. Theoretically speaking, they seem to be wise, and theoretically speaking also, the advanced legislative mesaures of New Zealand on this subject seem to me excellent. But in practice, New Zealand has had to modify her radical land laws, by making them more conservative. For governments do not live by theory alone but also by reality.

In their infancy, governments have need of embarking upon innumerable improvements in order to give society the greatest measure of civilization possible. For this purpose the greatest possible development of their natural resources is necessary. In order to promote agricultural development, there are only two ways: Either to develop the soil with local efforts alone, or to develop it with local efforts with the help of outside enterprise. The first means is long, the second is rapid.

And almost all modern governments have adopted the second method, that is rapid development. And to this end, they have been constrained to facilitate the disposition of their public lands because capital and labor both national and foreign are thereby attracted to agriculture, as I have said. And by this means, new countries believe they can find in the process of the sale of lands rapid income with which to remedy their poverty, as in this period lands have scarcely any value. Finally, by this same means, for State reasons, it is also believed that terrible agrarian crises can be forestalled by making everybody a land owner. Bearing these theories and considerations in mind, it is easy to understand the spirit and purposes of the present public land law (Act No. 926 which spirit is in itself liberal, and it must be admitted that it is based on a sane public land policy, which is to encourage small land-holding, the basis of the social stability of the country. For this purpose, the gratuitous grant to individuals is limited to sixteen hectares. This gratuitous and limited grant is the homestead, which can be applied for only by citizens of the United States or of the Philippines who have no other lands of more than sixteen hectares, and who must cultivate it for five consecutive years and build their home thereon.

The Act, however, recognizes the need of attracting large capital to agriculture and provides for two forms of grant for valuable consideration: sale and lease. But even in sale the law makes a distinction between an individual buyer and a corporation, giving the former only 16 hectares, and the latter 1024 hectares. In the lease, which may last up to fifty years, this distinction is ignored, perhaps because ownership is retained by the State.

The law again recognizes mere occupancy of public land, and for the public good again provides for two forms of composition: the free patent and unperfected titles. The former is always gratuitous, and refers to lands possessed since the year 1894 at the latest, and not exceeding sixteen hectares, and is applied for till the year 1923; and the unperfected titles refer to lands possessed since the year 1898 at the latest, and may be for valuable consideration, if in the judgment of the court, the applicant should pay a certain sum as a price for the land. The difference between

the one and the other is that free patent has for its purpose rather the giving of title to the small farmer and therefore the procedure is more summary because everything is administrative and gratuitous; while the unperfected titles refer to land whose area is more than sixteen hectares, and the whole procedure is judicial and in accordance with the land registration law. The spirit which underlies the present legislation is to organize and establish small land-holding, sixteen hectares being considered as the minimum type. Wise and far-sighted as this measure is, there is lacking, however, another which should supplement it; that is to preserve and maintain this small ownership in the hands of the small proprietor.