LAND REGISTRATION

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A survey of 1956 decisions on Land Registration shows how our laws, as interpreted by our Supreme Court, maintain stability of ownership of real property.

LAND REGISTRATION PROPER

I. ACQUISITION AND REGISTRATION OF TITLES AND DEEDS UNDER THE SPANISH LAND LAWS.

The case of *Tuason v. Santiago et al.*[1] gives in a nutshell a historical account of our land laws under the Spanish regime. Under the laws of the Indies, the government officers authorized to make land grants were (1) the Governors of newly discovered lands; (2) the Viceroys and Presidents with the advice of the chapters of cities and villages; and (3) the Presidents and *Audiencias*, if they were in charge of the government, by adjustment and sale at public auction. Any unauthorized land grants (those issued by ministers who were not authorized and those made by chapters of cities) were invalid, unless confirmed by the King in council, and to be annulled by the protecting fiscals, and in their absence by the fiscals of the *audiencias* (court), to whom the viceroys and presidents and *audiencias* were to lend their aid and assistance to carry out such revocation. Parcels of land were granted to subjects as well as to natives in the territory and were of two kinds: (1) *caballerias* and *peonias;* and (2) lands and waters found in places suitable for the establishment of towns. The grantee must take possession within three (3) months. Title would vest on the grantee after four (4) years of continuous residence and cultivation. There was no such period, however, for land and water grants in places suitable for the establishment of towns which were held subject to the King's will, because no title could vest in the grantee. The power of Governors and Chapters to make land grants was later revoked and vested in the Royal Officers[2]; and grants of lands, the value of which exceeded 200 pesos, were to be made at public auction.[3] Possession of public lands by private persons must be confirmed by the King within a certain period of time and a failure to do so resulted in the reversion thereof to the Crown.[4] The Royal Cedula of October 15, 1754 provided for the confirmation of land grants by adjustment and sale from 1700 to 1754 upon

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1 G.R. No. L-5079, July 31, 1956.

2 Royal Cedula of Nov. 1, 1591.

3 Royal Cedula of Feb. 16, 1858.

4 Royal Cedula of Nov. 24, 1735.

examination and appraisal. The Royal Decree of June 25, 1880 approved the rules for the adjustment of public lands in the Philippines in the possession of private persons.

An *informacion posesoria* proceedings under the Maura Law[5] ripened into title of ownership. On the other hand *informacion posesoria* proceedings under the provisions of the Mortgage Law alone (effective 1889) did not ripen into ownership except under certain conditions, the most important of which was the expiration of 20 years after entry of the record in the Registry of Deeds of the possessory information proceedings. The entry or record of possession in the Registry of Deeds did not prejudice the owners who held or had a better right to the ownership of the property although his title had not been recorded, unless prescription had confirmed and secured the claim recorded.

The *Composicion con el Estado* title was that granted by the Spanish Government through the "Direccion General de Administracion Civil" pursuant to the provisions of the Royal Decree of June 25, 1880; that granted by the Chief of the Province by delegation pursuant to the provisions of Royal Decree of August 31, 1888; and that granted under the Maura Law.

II. REGISTRATION UNDER THE TORRENS SYSTEM.

A. Nature of Proceedings

By the description in the notice "To whom it may concern," all the world are made parties defendant and shall be concluded by default and order.[6] Land registration proceeding is a proceedings *in rem*, according to the *Tuason* case and the cases prior to it.[7]

In the Tuason case, plaintiff brought an action to recover a parcel of land, part of a tract of land decreed to the plaintiff by land registration proceedings in 1914. The defendant Santiago aside from claiming the parcel of land by means of documents which he believed to be *informacion posesoria* and *composicion con el Estado* questioned the land registration proceedings in 1914 on the ground that he was not notified of it. The Supreme Court held that decree of registration could not be assailed because the proceedings was *in rem* and the reopening thereof on the ground of fraud could only be had within one year from the date of the decree.[8] The action under Section 55, Act No. 496, as amended by Act 3322, could not be invoked because fraud was not proved. The court said that the testi-

[5] Royal Decree of Feb. 13, 1894.
[6] § 35, Act No. 496.
[7] Grey Alba v. de la Cruz, 17 Phil. 49 (1910).
[8] § 38, Act 496.

mony of the defendant could not prevail over the presumption of regularity of proceedings in a land registration case, not only because the return of the clerk of court is conclusive proof of such service[9] but also because the defendant's father who was still living at that time might have been notified.

In *Garchitorena v. Cledera*,[10] Cledera filed a petition for registration of two parcels of urban land in 1950. This was opposed by Garchitorena on the ground that the house on the said land violated the legal easement in her favor as an adjoining owner because the windows in the walls were less than the distance prescribed by law. The court granted the registration of said land on March 13, 1952 and ordered the owner to close the windows. On April 18, 1952 the court gave an order for the expedition of the corresponding decree. However Garchitorena, filed an amended opposition on June 7 of the same year asking for the exclusion of 24 sq. meters from the decree of registration on the ground that said portion was hers and that she was not notified. This opposition was withdrawn because the parties agreed to a resurvey. The survey was favorable to Garchitorena. The trial court reopened the case on December 24, 1952 and set aside the decision of March 13 on the ground that the former trial was held without notice to Garchitorena. The Court of Appeals reversed the decision because the original decision had long become final and although the record did not show notice to Garchitorena, there was a presumption of the performance of official functions. The Court of Appeals, however, went further and discussed the merits of Garchitorena's claim. The question, therefore, of whether the original decision had already become final was raised in the Supreme Court. The tribunal refused to decide on the procedural aspect stating that the question was moot since the Court of Appeals already decided the merits of Garchitorena's claim on the facts presented.

In order that judgment in a registration proceedings could be annulled on the ground of fraud, such fraud must be extrinsic to the litigation. To adopt a different rule would result in endless litigation, perjury being of such common occurrence in trials.[11]

In an action to annul judgment in registration proceedings in the case of *Tarca and Tarca v. Cason Vda. de Carretero*[12] the plaintiffs based their cause of action on the concealment by the defendant of the original traces of the old sugar mill and of the house of their predecessors-in-interest by indicating some big stones in the ocular

[9] § 32, *id.*
[10] G.R. No. L-9420, Dec. 18, 1956.
[11] See Anuran v. Aquino and Ortiz, 38 Phil. 29 (1918); Almeda v. Cruz, 47 O.G. No. 3, 1179, 1180 (1951).
[12] G.R. No. L-8222, June 25, 1956.

inspection conducted by the court and on the mysterious disappearance of the record of the proceedings concerning the ocular inspection. All these facts having transpired in the ocular inspection and passed upon by the judge, it was evident that such was not extrinsic or collateral but intrinsic fraud in the sense that they had not only been raised but were the subject of adjudication of both the trial court and the Court of Appeals.

The authority of the court in land registration cases to order the registered owner to surrender his duplicate certificate of title, pursuant to Section 111 of the Land Registration Act[13] (Act No. 496) does not constitute reopening of the decree entered as a result of proceedings *in rem* for the confirmation of imperfect title under the said Act. Such authority to order surrender must be predicated upon the determination of whether the registered owner had been lawfully divested of his title thereto. Such being an inquiry to title of registered property, has the cadastral court any jurisdiction to thresh out title to such registered land? Our Supreme Court in the case of *Ruiz, et al. v. Paguio, et al.*[13a] disposed of such question without deciding on that point squarely by saying that the petitioner failed to object to the jurisdiction of the cadastral court citing by analogy Section 11, Rule 40.[14]

In this case, Paguio was a purchaser in a public auction of property registered in the name of Barrera but was conveyed to Ruiz. Ruiz had a transfer certificate of titles but she failed to declare in her name said lots for assessments. For failure to pay taxes said lots were sold to Paguio. Pursuant to Section 111 of the Land Registration Act (Act 496) Paguio filed a petition in the cadastral court for the surrender of duplicate transfer certificate titles. The cadastral court decided the petition adversely but upon appeal such petition was granted over the objections of Ruiz on the ground of fraud in the auction sale. Ruiz brought the present action for annulment

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13 "In every case where the clerk or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing, may order the registered owner or any persons withholding the duplicate to surrender the same, and direct entry of a new certificate upon such surrender."

13a G.R. No. L-7466, June 30, 1956.

14 "A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to trial without any objection to such jurisdiction."

Sinapilo v. Garcia, 28 Phil. 269 (1914); Nolan v. Montelibano, 29 Phil. 236 (1915); Amor v. Krummer, 76 Phil. 481 (1946).

of sale to Paguio. Defendant claimed *res judicata*. The Supreme Court decided the case in favor of Paguio, the decision of petition to surrender transfer certificate being a bar to the present suit, because such petition had determined that Ruiz was lawfully divested of her title.

B. Effects of Registration

Upon the issuance of the certificate of title, (1) the land is placed under the operation of the Torrens System[15]; (2) the land is relieved of all claims except those noted therein[16] and those mentioned in Sections 39 and 70 of Act 496; and (3) the title is rendered non-prescriptible.[17]

1. *Non-prescriptibility of title under the Torrens System*

The cases of *Montinola v. City of Iloilo*[18] and *Tuason v. Santiago, supra* reiterate the doctrine of non-prescriptibility of land covered by a Torrens title. In the *Montinola* case, Valeria Ledesma, made a donation of a portion of her land in 1909 in favor of the City of Iloilo for widening 3 streets. The remainder was cadastrally surveyed and upon the death of Valeria in 1923, 4 lots went to the plaintiff and 2 lots to E. Ledesma. In 1920 the defendant took possession of the whole parcel of Valeria's land including the lots of the plaintiff. In 1938 the City of Iloilo paid for the 2 lots of the plaintiff and 2 lots of E. Ledesma. Plaintiff made a demand for the payment of the other lots used by the city to widen 2 other streets. The defendant claimed donation of the whole parcel by Valeria Ledesma but failed to explain the need for subsequent sale in 1938 of 2 lots of the plaintiff covered by the whole parcel. The remaining lots were occupied only in 1920 while the original donation took place in 1909. There was no evidence of subsequent donation. Inasmuch as the 2 lots were registered lands with Torrens title in the name of the plaintiff, they were not subject to prescription in favor of the defendants although they were occupied by it since 1920.

In the *Tuason* case, the possession of the defendant dated since 1915 as a mere tenant but during the Japanese time the defendant claimed the land as his. Such prescription and adverse possession could not be availed of when the land was registered.

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[15] § 45, Act 496.

[16] Blas v. de la Cruz, 37 Phil. 1 (1917); *in re* Building and Loan Association and Peñalosa, 13 Phil. 575 (1909).

[17] § 46, Act 496; Corporacion de PP. Agustinos v. Crisostomo, 32 Phil. 427 (1915); Dimson v. Rural Progress, G.R. No. L-3783, Jan. 28, 1952.

[18] G.R. No. L-8941, May 16, 1956.

Registration of a parcel of land for the purpose of taxation exclusively in the name of a co-heir does not make him the owner thereof; possession in common is not adverse.[19]

2. *Registration of Simulated Sale*

In the case of *Malong and Malong v. Ofilada, et al.*[20] the plaintiffs acquired the land of Doce and Golfardo on September 5, 1951. On November 1, 1951 Doce was adjudged guilty of malversation and said lands were attached. The plaintiffs brought this action to secure a declaration that they were the owners in fee simple of the land attached. The defense of the sheriff was that the sale was simulatd because prior to the sale investigation for malversation of Doce was already in progess. The trial court dismissed the case holding that since no one claimed adverse title thereto, the plaintiffs being registered owners thereof, there was no need for a declaration as to who were the true owners. The trial court considered it improper to inquire into the writ of attachment. The Supreme Court held that there was an adverse claim to the title of the plaintiffs because it was claimed that the sale was in fraud of the creditor — the Republic of the Philippines. The trial court had jurisdiction to inquire into the writ as a corollary to the determination of the main issue *i.e.*, whether sale was simulated to defraud the Republic. The case was ordered remanded to the lower court.

A simulated sale made by the defendant to a third person of the land subject of the litigation cannot deprive the plaintiff of his right to recover said land after judgment in his favor. More so if there is a notice of his predecessors duly recorded.[21]

C. Effect of transfer by private instrument of registered land

Land registered under the Torrens system should be dealt with in accordance with the Land Registration Law, Act No. 496. Registration is the operative act that conveys and binds land covered by Torrens title.[22] In the case of *Betia, el al. v. Gabito, et al.*[23] the defendant's predecessor acquired the land in question in 1919 long before the sale to the predecessor of the plaintiff but since such acquisition was not registered the sale to the predecessor of the plaintiff was recognized, such sale being registered. It is not enough, however, that the sale be registered but such registration must be in good faith. In the *Betia* case, the plaintiffs learned of the prior sale in

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[19] De Guzman v. Court of Appeals, G.R. No. L-8101, May 18, 1956.
[20] G.R. No. L-7532, May 25, 1956.
[21] Correa v. Pascual, G.R. No. L-9317, July 31, 1956.
[22] §§ 50 and 51, Act 496.
[23] G.R. No. L-7677, Feb. 18, 1956.

1948 after the death of their predecessor. This knowledge, according to the Supreme Court, which was acquired after, not before, the purchase did not constitute bad faith so as to qualify the character of the acquisition.

The case of *Defensor, et al. v. Brillo, et al.*[24] is a reiteration of the settled doctrine that a levy on execution duly registered takes preference over a prior unregistered sale.[25] That doctrine holds true even if the prior sale is subsequently registered, before the sale in execution but after the levy was duly made and registered, because the execution sale retroacts to the date of the levy[26] otherwise the preference created by the levy would be meaningless. The Supreme Court differentiated this said case from the case of *Potenciano v. Dineros*[27] and *Barredo v. Barretto*,[28] where the sales by the registered owners were duly presented for registration before the land was levied upon by the creditor.

An incomplete registration of a transfer of registered lands has the same effect as a transfer by private instrument. The case of *Barreto v. Arevalo*,[29] *et al.* is illustrative of such ruling. The *pacto de retro* sale to the plaintiff in this case was incompletely registered since there was no surrender of title of the owner Arevalo. In voluntary registration the presentation and entry in the day book without surrender of the title does not operate to convey and affect the land sold or conveyed.[30] On the other hand the second purchaser, Nicanor Padilla, was without knowledge of such prior sale, the property appearing to be registered in the name of Arevalo free from any encumbrance except a mortgage in favor of Pedro Reyes which was duly paid by Padilla. Such second sale was registered and a transfer certificate of title was issued in favor of Padilla. The attempted registration by Barreto could not prevail over that of Padilla.

Likewise a mere "Miscellaneous Sales" application cannot prevail over registered title.[31]

The *Defensor* and *Betia* cases dealt with unregistered transfers of registered land. If the land was not registered under the Torrens system, still transfers need be registered to affect third persons. Such is the implication in the case of *Guinto, et al. v. Ortiz, et al.*[32]

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24 G.R. No. L-7255, Feb. 21, 1956.
25 Gomez v. Levy Hermanos, 67 Phil. 134 (1939).
26 Vargas v. Tansioco, 67 Phil. 308 (1939); Chin Liu v. Mercado, 67 Phil. 409 (1939); Executice Commission v. Abadilla, 74 Phil. 68 (1942).
27 G.R. No. L-7614, May 31, 1956.
28 72 Phil. 187 (1942).
29 G.R. No. L-7748, Aug. 27, 1956.
30 Villasor v. Cannon, *et al.*, G.R. No. L-8851, June 29, 1951.
31 De la Cruz v. Boca, *et al.*, G.R. No. L-8814, June 30, 1956.
32 G.R. No. L-9332, Nov. 28, 1956.

citing Section 194 of the Revised Administrative Code as amended by Act No. 3344 providing that "no instrument or deed establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate not registered under the provisions of Act 496, its amendments or under the Spanish Mortgage Law shall be valid except as between the parties thereto, until such instrument or deed has been registered in the manner prescribed in the Office of the Register of Deeds for the province or city where the real estate lies." The rule is different under the Spanish Mortgage Law where such transactions are valid without registration.[33]

D. Writ of Possession

Under the Torrens system, a writ of possession is an order issued by the Court of First Instance directing the sheriff of the province to place the applicant or oppositor in possession of the property which is ordered registered in his name.[34] A writ of possession may be issued not only against the person defeated in the registration proceedings but also against adverse possessor during registration proceedings.[35] It is part of the registration proceedings.[36]

The case of *Abulocion, et al. v. Court of First Instance of Iloilo*[37] is authority for the holding that where land is declared public, the government can ask for writ of possession for its lessee. The facts of said case are as follows: Apurado filed a petition for registration of Lots 1 and 2 (fishponds). The petition for Lot 2 was granted but Lot 1 was declared public land. The plaintiff, the possessor, claiming conveyance to him by Apurado of said fishponds, applied for fishpond permit for Lot 1 after he had learned of the decision declaring Lot 1 a public land. This was denied because a permit was already granted in favor of Legislador. A writ of possession prayed by Legislador was granted. The petitioner cited the case of *Dancel and Mina v. Ventura*[38] which held that when other persons have subsequently entered the property claiming the right of possession thereto, the owner of registered land, or his successor, cannot dispossess such persons by merely asking for a writ of possession. The Supreme Court said that such ruling was not applicable in this case for it was prior to the decision of the court declaring Lot No. 1 as public land that Abulocion allegedly derived his pretended rights from Apurado.

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[33] Mota v. Concepcion, 56 Phil. 712 (1932).
[34] § 17, Act No. 496 as amended by Act No. 1108.
[35] Pasay Estate Co. v. Del Rosario, 11 Phil. 391 (1908); Manlapas v. Llorente, 48 Phil. 298 (1925).
[36] Demora v. Ibañez, *et al.*, G.R. No. L-7595, May 21, 1955.
[37] G.R. No. L-9953, Dec. 26, 1956.
[38] 24 Phil. 421 (1913).

E. Dismissal of Application for Registration

The rule that a dismissal of an application for registration of a parcel of land does not bar the filing of another application for registration does not apply where the dismissal is with prejudice and is an adjudication upon ownership or title of the litigated land by the same parties and a judgment rendered for one party against the other.[39] In the case of *Heirs of Marquez v. Valencia*,[40] an application for registration of two parcels of land was filed by Valencia who claimed title by virtue of Marquez's failure to repurchase — in a pacto de retro sale. Marquez opposed the petition on the ground of a pending civil action between them which Marquez brought to annul the pacto de retro sale. The application was postponed by agreement of both parties. The court declared the pacto de retro sale as one of equitable mortgage. In view of such decision Valencia changed his application for registration stating that he inherited the land from his maternal grandfather.

According to the Supreme Court the civil action involved ownership or title because whether the contract was antichresis, sale or mortgage the only inference that could be drawn from it was that the plaintiff was the owner of the land. If aside from relying solely on the validity of the pacto de retro sale the defendant had set up an alternative inconsistent defense[41] the overruling of the first would not bar the second.

On the ground of equity, a dismissal by the trial court for failure of the applicants to comply with the order for specification may be revoked and a new trial granted.[42] In the case of *Valdez, et al v. Director of lands, et al.*[43] the dismissal by the trial court was justified since it was within the power of the court to order specification by virtue of the discretion granted to the land registration court in certain matters of procedure.[44] The basis of equity in this case was the fact that the court in a previous decision[45] held that the petitioners were entitled to register a part of the whole tract of land they sought to register. What was left for the trial court to determine was the specific portion covered by nineteen Spanish titles presented by the petitioners.

Registration of a parcel of land will not be allowed if the area is clearly in excess of that covered by Spanish title presented in the

[39] § 37, Act 496 as amended by § 2, Act 3061.
[40] G.R. No. L-7328, Aug. 21, 1956.
[41] §9, Rule 9, Rules of Court.
[42] Valdez, *et al.* v. Director of Lands, *et al.*, G.R. Nos. L-39765 and 48063, Sept. 26, 1956.
[43] G.R. Nos. L-39765 and 48063, Sept. 26, 1956.
[44] *See* §§ 24 and 28, Act 492.
[45] Valdez, v. Director of Lands, 62 Phil. 362 (1935).

registration proceedings.[46] It is true that what really defines a piece of land is not the area mentioned in its description but rather the boundaries therein laid. The area need not be stated with mathematical accuracy. It is sufficient that its extent is objectively indicated with sufficient precision to identify it.[47] Such ruling holds true only when the boundaries given are sufficiently certain and the identity of the land clearly proved by boundaries thus indicated so that an erroneous statement concerning the area can be disregarded or ignored.[48]

The rules in revival of judgment in civil procedure is likewise applicable in land registration cases. In an action to revive a judgment in a land registration case, the facts of the original judgment may not be reexamined since a judgment sought to be revived after the lapse of five years must necessarily be final and executory.[49] If the winning party fails to ask for the reconstitution of records of the case wherein such favorable judgment was rendered, he impliedly waives his right to such favorable judgment; and if the period for such reconstitution has already expired the parties have the right to file their respective claims anew.[50]

III. ASSURANCE FUND — VENUE OF ACTION

Assurance funds is the special fund created under the Torrens system for the compensation of certain persons for losses sustained by operations under the system.[51]

The action for recovery of damages from the assurance fund should be filed, according to Section 101 of Act No. 496, in any court of competent jurisdiction. In the case of *Hodges v. Treasurer of the Philippines*,[52] it was held that the action should be brought in the province where the defendant or plaintiff resides at the election of the latter. The ruling in the Hodges case is not applicable when the principal action is to quiet the title to immovable property, so that the venue of a real action is where the land lies. Such was the holding in the case of *Navarro v. Lucero, et al.*[53] That case was for the an-

[46] Intestate Estate of Bayot v. Director of Lands, G.R. No. L-8536, April 28, 1956.

[47] Layola v. Bartolome, 39 Phil. 544 (1919); *See* also Government v. Franco, 49 Phil. 328, 329 (1926); Prieto v. Director, 50 Phil. 921, 973 (1926); Government v. Abaya, 52 Phil. 261, 265 (1928).

[48] Sanchez v. Director, 63 Phil. 378 (1936). This exception was illustrated in the cases of Pamintuan v. Insular Government, 8 Phil. 512 (1907); Paras v. Insular Lumber, 11 Phil. 378 (1908); Waldroop v. Castañeda, 25 Phil. 30 (1913).

[49] Francisco, *et al.* v. de Borja, G.R. No. L-7953, Feb. 27, 1956.

[50] Mayol and Mayol v. Piccio, *et al.*, G.R. No. L-8749, May 31, 1956, citing Ambat v. Director, 49 O.G. 129 (1952).

[51] VENTURA, LAND TITLES AND DEEDS 216 (1955).

[52] 50 Phil. 16 (1927).

[53] G.R. No. L-9340, Oct. 24, 1956.

nullment of the Transfer Certificate of Title in Navarro's name with an alternative prayer for recovery of damages from the assurance fund. The action was brought in Manila while the land covered by the T.C.T. was located in Pasay. Venue, therefore, was improperly laid.

IV. CADASTRAL SYSTEM

The cadastral proceeding is compulsory, because the owner of the lots surveyed must lay claim thereto and prove their ownership thereof and their failure to do so authorizes the court to declare the same as public lands.[54] The proceeding is judicial because it is the court that settles and adjudicates the titles to the lands. And the proceeding is *in rem* because it is instituted to bar indifferently all who might object to the right sought to be established.[55] The case of *Director of Lands v. Corro, et al.*[56] is illustrative of the extent of the conclusiveness of a judgment in a cadastral proceedings. In the said case, a certain Lot 48 was claimed by Corro and Abasolo on one hand and Sanciago on the other side. The cadastral court adjudicated the parcel to Corro and Abasolo but excluded a portion of it (lot 48-C) without making any pronouncement as to who was entitled to such portion. On appeal by Corro, the decision was affirmed but the case was remanded to the lower court for execution and adjudication as to the excluded portion. A supplemental decision of the lower court adjudicated Lot 48-C to Santiago. Corro appealed on the ground that since Santiago had failed to appeal from the original decision, such became final and executory and could not be modified. The Court, aside from stating that Corro had no right or interest to appeal, held that Santiago's failure to appeal from the original decision did not bar him from pressing his claim with respect to Lot 48-C in the absence of any pronouncement as to who was entitled to said lot.

V. REGISTER OF DEEDS

The functions of the Register of Deeds are generally ministerial; he has no power to pass upon the legality of an order issued by a court of competent jurisdiction.[57] In case the Register of Deeds is in doubt whether he should allow or refuse the registration of a certain document, he can make use of the *consulta* to secure an opinion from the court as shown in the case of *Lizardo v. Herrera*[58] but a consultation of this nature pursuant to Section 200 of the Revised Ad-

[54] Henson v. Director of Lands, 32 O.G. 1808 (1933).
[55] Director of Lands v. Roman Catholic Arch. of Manila, 41 Phil. 120 (1920).
[56] G.R. No. L-8413, Oct. 26, 1956.
[57] Director of Lands v. Heirs of Caiji, G.R. No. L-7261, May 11, 1956.
[58] G.R. No. L-6401, March 14, 1956.

ministrative Code cannot be availed of to invalidate an order of a competent court. The regularity of the proceedings and the validity of the orders of the court are issues which demand the exercise of judicial power in an ordinary action. They are beyond the scope of the court's jurisdiction in dealing with the *consultas* submitted by the Register of Deeds.[59] A court ordering the cancellation of a T.C.T. cannot be questioned by the Register of Deeds through the *consulta*, such being neither an ordinary action or a special proceeding.[60]

ADMINISTRATION AND DISPOSITION OF PUBLIC LANDS

I. THE SCOPE OF AUTHORITY OF THE DIRECTOR OF LANDS IN THE DISPOSITION AND ADMINISTRATION OF PUBLIC LANDS

The Director of Lands has direct executive control of the survey, classification, sale or any other form of concession or disposition and management of lands of the public domain. His decisions as to questions of fact are conclusive when approved by the Secretary of Agriculture and Natural Resources.[61] Even if the decision in a forcible entry and detainer case is final, such decision cannot be executed at least in so far as possession is concerned when a decision of the Director of Lands will be affected by such execution. This doctrine was enunciated in the case of *Hernandez v. Clapis, et al.*[62] where the plaintiff filed an action for forcible entry and detainer in 1947. The decision was in favor of the plaintiff. After judgment had become final, defendants opposed execution on the ground that the sales application of the plaintiff was rejected by the Director as shown in the decision by the Secretary of Agriculture and Natural Resources in 1949. The defendants application were preferred, they being veterans.[63] The decision in the forcible entry and detainer case cannot be executed.

II. SALE OF PUBLIC LANDS BY INSTALLMENT

The Government reserves title to land sold under Act No. 1120 until the full payment of all installments of the purchase price has been paid and any subsequent transfers made by the purchaser who has not paid all installments shall not be valid against the Government.[64] Such rule was followed in the case of *Dones v. Director of Lands, et al.*[65] The facts of the *Dones* case are as follows: The government agreed to sell lot 1899 to Nepomuceno in installments.

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[59] Director of Lands v. Heirs of Caiji, *supra*, note 57.
[60] *Id.*
[61] § 4, Com. Act No. 141.
[62] G.R. No. L-6812, March 25, 1956.
[63] Rep. Act No. 65.
[64] § 15, Act 1120.
[65] G.R. No. L-9302, May 14, 1956.

Nepomuceno borrowed ₱1,000 from Dones and promised to pay the southern half of Lot 1899 in case of their default. For failure to pay remaining installments, the government cancelled the certificate in Nepomuceno's favor but before said land could be disposed of by the government, Nepomuceno applied for reinstatement under section 5 of Executive Order No. 138 as amended by the Philippine Executive Commission,[66] by paying the rest of the purchase price. Subsequently, Dones on his part applied for purchase of the same land which was granted. The Court decided the case in favor of Nepomuceno and as to the claim of preference by Dones by virtue of the indebtedness to him, the agreement was not an automatic cession and assuming it is, still it could not be binding on the government by virtue of section 15 of Act 1120.

III. HOMESTEADS

In a conveyance of a homestead, it is the duty of the vendor, not the vendee, in the absence of stipulation, to secure the approval of the Secretary of Agriculture and Natural Resources.[67] The vendor is supposed to give a clear title to the property he is conveying.

Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be duly repurchased by the applicant, his widow, or legal heirs, within the period of five years from the date of conveyance.[68] There could be no reconveyance after five years from date of conveyance.[69]

In the case of *Barbosa v. Mallari*,[70] the original complaint was for the annulment of sale of homestead on the ground of fraud, deceit and insidious machinations in obtaining consent or failure to pay consideration. The original complaint was amended in 1948 where the right to redeem was alleged. The court held that the action has prescribed since the sale took place in 1937. The original complaint filed in 1941 was not taken into consideration in computing the prescriptive period because the amended complaint introduced a new cause of action.

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[66] "For the purpose hereof...any cancelled sales contract which covers a tract of land that has not yet been disposed of may be reinstated for the purpose of issuing a deed of conveyance therefor after the necessary revaluation has been made and upon payment of the purchase price thereof; *Provided*, that when an expired contract is modified and extended or when a contract that has already been cancelled is reinstated the land to be conveyed shall not exceed ten hectares."

[67] Bacaltos v. Esteban, *et al.*, G.R. No. L-9121, April 11, 1956.

[68] § 119, Act 141.

[69] Bayaua de Visaya v. Suguitan and Blas, G.R. No. L-8352, May 31, 1956; Baradi and Bonita v. Ignacio, G.R. No. L-8324, Jan. 19, 1956.

[70] G.R. No. L-8012, Aug. 30, 1956.

Conveyance as used in Section 119 of Act No. 141 means an act or sale or transfer not registration.[71] The five-year prescriptive period is then to be counted from the date of sale not from the date of registration of such sale. As between the parties, registration is not necessary since actual notice is equivalent to registration. Heirs of the homesteader may not be considered third persons because there is privity of interest between them and their predecessor. They only succeed to whatever rights their predecessor had.[72]

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[71] Galasinao v. Austria, G.R. No. L-7912, May 28, 1956.
[72] Blanco, *et al.* v. Bailon, *et al.*, G.R. No. L-7342, April 28, 1956.