# SURVEY OF 1957 CASES IN LAND REGISTRATION

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## I. REGISTRATION UNDER THE TORRENS SYSTEM.

### A. Nature Of Proceedings.

#### 1. *Applicability of the Rules of Court.*

The term "action" found and as used in section 5, Rule 35 of the Rules of Court applies to civil actions only. Thus, in the case of *Ochotorena,* et al. *v. Director of Lands,* et al.,[1] Ana Zason and her children, all surnamed Ochotorena, applied for the registration of thirteen lots. At the hearing of the case two lots were withdrawn from the application. In due course, the court rendered a decision granting the petition for registration in favor of the heirs of Ana Zason who died in the meantime. The oppositors to the registration, having been denied a new trial, appealed to the Court of Appeals which dismissed the same for failure to file the necessary brief. The decision having been made final, the corresponding decree was entered and an original certificate of title was issued in favor of the applicants. Within a short time thereafter, the heirs of an oppositor filed a petition for review on the ground that said decree was obtained by fraud. The question now to be decided was whether the failure of the appellees, meaning the applicants, to answer the petition for review, by the oppositors-appellants, within fifteen days after service thereof rendered the former in default. The Court held that a land registration case is not an "action" within the purview of the Rules of Court, particularly Rule 2, section 1, and the same, pursuant to Rule 132 thereof, "shall not apply to land registration, cadastral and election cases x x x except by analogy or in a suppletory character and whenever practicable and convenient."

#### 2. *No land registration proceedings in the grant of homestead patent.*

In the case of *Basco v. Tan Chuan Leong,* et al.,[2] plaintiff Basco sought to compel defendant Tan to resell a homestead to him in pursuance of Section 119 of the Public Land Law (C.A. 141). Roman Anday intervened to claim a portion of the homestead grant which has been donated to him by Basco. After the joinder of issues was made, the parties entered into a compromise agreement which contained a stipulation to the effect that Tan Chuan Leong recognized the portion claimed by intervenor Anday. When the decision on the compromise agreement became final, proper reloca-

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* Member, Student Editorial Board, *Philippine Law Journal,* 1957-1958.

[1] G. R. No. L-10795, December 17, 1957.

[2] G. R. No. L-8992, February 28, 1957.

tion and segregation of the portion allotted to Anday was undertaken by a competent surveyor with due notification. A subdivision plan prepared by the surveyor was approved by the Director of Lands. Anday then filed a motion submitting the plan for approval by the court and that the Register of Deeds of Quezon province be ordered to issue the corresponding titles for the lots covered by the plan. Despite objection of the defendants, the subdivision plan was approved and new certificates of title were issued to the intervenor. It was argued by the appellants that approval of the subdivision plan could only be granted by the court when a proper petition is filed in the original registration case under which the land was registered. The Court ruled that the argument overlooked the fact that the original title was issued as a Homestead Patent, which necessitated no land registration proceedings to be instituted. Hence, there was no "original registration (court) case" wherein the approval of the subdivision plan should be granted.

B. Lands Not Subject To Registration.

Properties devoted to public use, such as public streets, alleys and parks are presumed to belong to the State. Municipal corporations may not acquire the same, as patrimonial property, without a grant from the National Government, the title of which may not be divested by prescription.[3] Hence, such corporations may not register a public plaza.[4] A local government may not even lease the same.[5] Obviously, it may not establish title thereto, adverse to the State, by withdrawing the plaza—and, hence, an alley—from public use and declaring the same to be patrimonial property of the municipality or city concerned, without express, or, at least, clear grant of authority therefor by Congress.

Such was the declaration of the Supreme Court in the case of *Unson v. Lacson,* et al.[6] That was an action to annul a municipal ordinance and cancel a contract of lease of part of "Callejon del Carmen" in the City of Manila. Petitioner was the owner of a parcel of land which has been leased to the National Government for several years, and on which several structures were constructed. The Municipal Board of Manila passed Ordinance No. 3470 withdrawing a portion of Callejon del Carmen from public use, declaring it patrimonial property of the City and authorizing its lease to the respondent Genato Commercial Corporation. Upon approval of the City Ordinance by the City Mayor, the lease contract of said land, the Callejon in question, was entered into and respondent corporation constructed a building on a portion of the Callejon. Because of the construction of the building, two exits of the land of the petitioner on its southern boundary had to be closed. Hence, the petitioner brought the present action.

C. Registerability of Land Conveyed to a Corporation Sole Where the Incumbent is an Alien.

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[3] Municipality of Tigbauan v. Director of Lands, 35 Phil. 798 (1916).
[4] Nicolas v. Jose, 6 Phil. 589 (1906).
[5] Municipality of Cavite v. Rojas, 30 Phil. 602 (1915).
[6] G. R. No. L-7909, January 12, 1957.

Has a registered corporation sole the right to possess, acquire and register real estates in its name when the Head, Manager, Administrator or actual incumbent is an alien?

This query was answered in the affirmative in the case of *The Roman Catholic Apostolic Administrator of Davao, Inc. v. The Land Registration Commission,* et al.[7] In that case, M. L. Rodis, a Filipino citizen and resident of the City of Davao, sold in favor of the Roman Catholic Administrator of Davao, Inc., a corporation sole organized and existing in accordance with Philippine laws, with Msgr. Clovis Thibault, a Canadian citizen, as actual administrator or incumbent, a parcel of land situated in the same city and covered by a transfer certificate of title. When the deed of sale was presented to the Register of Deeds of Davao for registration, the latter required said corporation sole to submit an affidavit declaring that 60% of the members thereof were Filipino citizens. Upon failure to do so, and because the Register of Deeds entertained some doubts as to the registerability of the document, the matter was referred to the Land Registration Commissioner *en consulta* for resolution. A resolution was rendered holding that in view of the provisions of Sections 1 and 5 of Article XIII of the Philippine Constitution, the vendor was not qualified to acquire private lands in the Philippines in the absence of proof that at least 60% of the capital of the plaintiff corporation sole was actually owned or controlled by Filipino citizens, there being no question that the present incumbent of the corporation sole was a Canadian citizen. As a result of this ruling, the present action for mandamus was instituted for the reversal of the same.

*Held:* The corporation sole is only the administrator and not the owner of the temporalities located in the territory comprised by said corporation sole, and such temporalities are administered for and on behalf of the faithful residing in the diocese or territory of the corporation sole. In other words, such temporalities or estates and properties not used exclusively for religious worship are only held *in trust* by such corporation sole for the benefit of the faithful who, in this case, compose an overwhelming majority of Filipinos.

However, Justice J. B. L. Reyes, in his dissenting opinion, said: "x x x The decision of the Supreme Court in this case will be of far reaching results, for once the capacity of corporations sole to acquire public and private agricultural lands is admitted, there will be no limit to the areas they may hold until the Legislature implements Sec. 3 of Article XIII of the Constitution, empowering it to set a limit to the size of private agricultural land that may be held; and even then it can only be done without prejudice to rights acquired prior to the enactment of such law. In other words, even if a limitative law is adopted, it will not affect the landholdings acquired before the law become(s) effective, no matter how vast the estate should be."

D. Boundaries.

1. *Policy of the law.*

[7] G. R. No. L-8451, December 20, 1957.

The Land Registration Law, like any other law governing relations of private individuals, aims at the attainment of equity and justice.

In the case of *Narag v. Court of Appeals and Del Rosario*,[8] Narag and del Rosario were adjacent owners of real estate. Their common boundary on the West which is the Cagayan River receded westward by the work of nature. The bone of contention is the procedure to be followed in extending the boundary line between the parties' lands westward to cover the accretion. Plaintiff claims all of the accretion to the lands including that which would pertain to defendant del Rosario. The Court negated this claim saying that in no case should the dividing line be extended in such a way that the other adjacent owner be prejudiced; that line should be extended in its natural course, that is, in a straight line from the original point. To do otherwise would work injustice to the other adjacent owner and such was never envisioned by the legislator, and certainly the ends of justice could not be served in that way. The Court declared that the dividing line between the properties of Narag and del Rosario should be extended in a straight line from the old point on the East towards the West, thereby leaving the soil incorporated by way of accretion to the original land of del Rosario.

2. *Effect of decree of registration upon boundaries.*

The cases of *Nable Jose*, et al. *v. Baltazar*, et al.[9] and *Lichauco*, et al. *v. Baltazar*, et al.[10] reiterate the ruling found in the case of *Manlapaz & Tolentino v. Llorente*[10a] which holds that after the issuance of the decree of registration of a land upon which a judgment has become final, no error can be corrected any longer regarding the area of the land.

In those two recent cases which were decided jointly, the question refers only to the problem of proper relocation. This problem arose on the representation of the Director of Lands to the Court of Land Registration that the properties covered by the title issued to the co-owners-petitioners were impossible to properly locate so that new tie line surveys and boundary surveys should be made. Thus, such relocation surveys were made by different surveyors which were rejected by the court because of the inclusion of properties of persons other than the petitioners, the reason for such rejection being that the policy of relocation should be to base the same on the original plan in order not to alter the boundaries of the original decree as covered by the original certificate of title. The Court stated that the petitioners correctly contended that the original decree ordered the registration of the land and not of the plan; yet, the Court continued, the land thus decreed is that delimited by the basic survey and technical description. Whether that survey erred in defining the true boundaries of petitioners' property is a matter no longer open for consideration or revision for the original decree has long ago become final and unalterable.

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[8] G. R. No. L-8065, February 25, 1957.
[9] G. R. No. L-9543, April 11, 1957.
[10] G. R. No. L-9703, April 11, 1957.
[10a] 48 Phil. 298 (1925).

The Court also had the occasion to rule on this matter in the case of *Caoibes*, et al. *v. Sison de Martinez*, et al.[11] It held that upon the original decree of registration, as far as the land is concerned, everything declared thereon—boundaries, size and nature of the property—is already a closed matter.

E. Certificate of Title.

1. *Correction or Amendment.*

Section 112 of Act No. 496 allows any registered owner or other person in interest to file a petition in the court asking that the certificate of title or the memorandum thereon be corrected, modified or amended on the ground that an error or omission was made therein, or that a registered interest has terminated, or that new rights have arisen which do not appear on the certificate, or that the name or status of a person mentioned in the certificate has been changed. The court after notice to all parties in interest may grant or deny the relief prayed for. But the court does not have the authority to reopen the original decree of registration, or to issue an order which may impair the title or other interest of an innocent purchaser for value, or his heirs, or assigns, without his written consent.

The phrase "without his (or their) written consent" is otherwise known as the phrase "unanimity among the parties." In the case of *Enriquez*, et al. *v. Atienza*, et al.,[12] respondent Atienza filed a motion in original Cadastral Case No. 7880 of the court of first instance of Zamboanga praying for the confirmation of her right of ownership over the greater portion of a registered parcel of land and for the consequential cancellation of its title and the issuance of another in her favor under Section 112 of Act No. 496. Petitioners opposed, claiming title to one-half of the land. Judgment was rendered in favor of respondent Atienza. The decision of the case centers on the meaning of the phrase "unanimity among the parties." It is argued by the petitioners that it means the non-existence of a controversial issue among the parties; the absence of any adverse claim or serious objection on the part of any party in interest to the title of ownership of the movant. Thus, it is contended that the court acquires jurisdiction only where none of the parties concerned has adverse claims. On the other hand, the responent argues that lack of unanimity consists in the presence of serious objection by interested parties to the relief sought, coupled with the indispensable requisite of absence of conformity of all the parties to submit the matter involved to the court acting in the land registration case.

*Held:* A review of all the decisions dealing with the application of Section 112 reveal that by "unanimity among the parties" is meant the absence of serious controversy between the parties in interest as to the title of the party seeking relief under said section. In the case of *Casilan v. Espartero*,[13] it was held that Section 112

[11] G. R. No. L-8672, September 27, 1957.
[12] G. R. No. L-9986, March 29, 1957.
[13] G. R. No. L-6902, September 16, 1957.

authorizes only alteration which do not impair rights recorded in the decree or which, if they do prejudice such rights, are consented to by all the parties concerned, or alterations to correct obvious mistakes. The same effect was arrived at in the case of *Lagula,* et al. *v. Casimiro,* et al.,[14] holding that relief under Section 112 can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident belongs. The latter holding is reproduced from the case of *Tanguna,* et al. *v. Republic.*[15]

2. *Notice required in the correction of error.*

Under Section 112 of Act No. 496, notice to all parties in interest is jurisdictional. It was thus held in the case of *Patingo v. Pelayo,* et al.[16] In that case, in the issuance of a transfer certificate of title covering a parcel of land belonging to Santiaga Labrador and Bernabe Patingo in equal shares, the heirs of the latter, now deceased, were omitted in said title. Hence, they filed an action for partition in an attempt to regain their interest in said parcel of land. The court dismissed the case on the ground that it involved a mistake committed by the Register of Deeds, and therefore, the same cannot be resolved in an ordinary action. For this reason, plaintiffs, heirs of Bernabe Patingo, filed a petition in Cadastral Case No. 21 praying that the mistake adverted to be corrected pursuant to Section 112 of Act No. 496. Petition was granted, and a new certificate of title was issued in accordance with the order. Upon being informed from private sources of such order, petitioner in the present case filed a motion for reconsideration alleging that she was never notified of the petition filed by the heirs of Bernabe Patingo.

The Supreme Court held that while under Section 112 any registered owner or person in interest may apply by petition to the court upon the ground that "an error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate", however, the court can only act thereon, after notice to all parties in interest, which may be served either by the petitioner or by order of the court. Such notice is necessary in order to give jurisdiction to the court over the petition. This is clearly inferred from the provisions of the law which says that "the court shall have jurisdiction to hear and determine the petition *after notice to all parties in interest.*

3. *Cancellation of attachment lien must be instituted in the original registration case.*

Where a mortgage is registered prior to an attachment lien, the latter is subordinate to the former. And after the foreclosure and sale of the mortgaged property, there being no redemption ex-

[14] G. R. No. L-7852, December 17, 1957.
[15] G. R. No. L-5545, December 29, 1957.
[16] G. R. No. L-10288, April 15, 1957.

ercised by the mortgagor nor by the attaching creditor within the reglamentary period, the right to consolidate attaches. Where such consolidation has been made, then the right to cancel the attachment lien will lie. For, as held in the case of *Metropolitan Insurance Co. v. Pigtain and Pigtain,*[17] to maintain an attachment lien which has lost its legal value and its annotation at the back of the certificate of title will work to the prejudice of the true owner of the property covered by said title which was the subject of consolidation, and who had acquired such property for value and in good faith at a legally conducted public auction sale. The cancellation of the attachment lien should properly be brought in the original registration case under the provisions of Section 112 of Act No. 496 as was done in the present case.

4. *Validity of instrument may be resolved by a court acting as a Land Registration Court.*

In the case of *Luna,* et al. *v. Santos and Arriola,*[28] a petition designated as a *special action* was filed for the cancellation of certain certificates of title on the ground of nullity of the deeds of sale. Said petition was filed pursuant to Section 112 of the Land Registration Law and with the court of first instance in its capacity as a Land Registration Court. The deeds of sale were declared valid and, hence, the certificates of title. Petitioners argue that the court, being one of limited jurisdiction, could not take cognizance of the question of the validity or invalidity of a document for it has to be resolved by a court of general jurisdiction. The Court, disregarding the argument advanced, said:

> **"We find no reason to declare that the Land Registration Courts, that are at the same time Courts of First Instance and of general jurisdiction could not have, at least for the sake of expediency, entertained and disposed of the question of the validity or invalidity of the instrument...."**

It was further noted by the Court that the petition was filed or docketed as a *special action* which thus takes the petition out of the scope of the last paragraph of Section 112 of the Land Registration Law.

In the case of *Caoibes,* et al. *v. Sison de Martinez,* et al.[19] which was also a petition for cancellation of a certificate of title and which involves a similar issue recalls the reason why the remedy granted under Section 112 of the Land Registration Law be availed of in the original case in which the decree of registration was entered. The Court said, citing the case of *Cavan v. Wislizenus.*[19a]

> **"This procedure was adopted with an intelligent view: to allow such petitions and motions to be filed and disposed of elsewhere would eventually lead to confusion and render it difficult to trace the origin of the entries in the registry."**

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[17] G. R. No. L-9336, August 30, 1957.
[18] G. R. No. L-9914, December 19, 1957.
[19] G. R. No. L-8672, September 27, 1957.
[19a] 48 Phil. 632 (1926).

F. The Right To Question Certificate Of Title Issued.

In the case of *Abrasia v. Carian*,[20] the petitioning register of deeds issued to the oppositor a certificate of title covering a parcel of land which was acquired by the latter by descent as determined in a judgment pursuant to a compromise agreement. After sometime, the register of deeds filed in the cadastral case covering said parcel of land a petition stating that the decision pursuant to the compromise agreement was not confirmed by the cadastral court nor was there ever a motion filed in a cadastral court for the purpose of having said decision confirmed by the cadastral court; that through this oversight and mistake of law, the office of said register of deeds had erroneously cancelled the original certificate of title covering the land in question and issued in lieu thereof the present certificate of title and that the mistake thus committed was jurisdictional. The petition was granted by the lower court. It must be noted that the petition was based on two grounds as found by the Supreme Court, viz., that the predecessors-in-interest of the oppositor had left unpaid debts; and, failure of confirmation by the cadastral court of the judgment pursuant to the compromise.

*Held*: In the absence of proof to the contrary and there is none to this effect, it must be presumed that the cause of action of the creditors of the oppositor's predecessors-in-interest had prescribed long ago, that is, the judgment pursuant to the compromise had been promulgated 17 years before. So that in all probabilities, there is reason to believe that their respective claims must have been fully settled. Furthermore, it "shall be presumed that the decedent left no debts if no creditor filed a petition for letters of administration within 2 years after the death of the decedent", and no such petition has ever been filed. In any event, said creditors, if any, are the only parties who could possibly seek relief against the issuance thereof. The register of deeds had no cause of action.

And as regards the second ground of the petition, no legal provision or authority can be found which justifies the cancellation of the certificate of title because the judgment pursuant to the compromise had not been confirmed by the cadastral court.

G. Fraud In The Registration.

1. *Fraud committed upon the Government.*

Where the Government has never contended the commission of fraud in the registration of land, and where the former had been represented by counsel, the decree of registration must be deemed as definitely settled.[21] Private parties to the registration can not rely on fraud committed upon the Government which has the sole power to question the same.

2. *Extent of the effect of fraud.*

The setting aside of the original decree of registration is op-

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[20] G. R. No. L-9510, October 31, 1957.

[21] Ochotorena, *et al.* v. Director of Lands, *et al.*, G. R. No. L-10795, December 17, 1957.

erative only between the parties to the fraud and the parties defrauded or their privies; but not against acquirers in good faith. Because, as held in the case of *Domingo,* et al. *v. Mayor Realty Corporation,* et al.,[22] to maintain otherwise would violate the basic principle of the Land Registration Law that if there is any innocent purchaser for value (which term includes an innocent mortgagee), the decree shall remain in full force and effect forever (Sec. 38, Act No. 496).

H. Reconveyance.

1. *Party seeking relief must show absolute ownership.*

In the case of *Lucas v. Duriant,* et al.[23] the plaintiff was one of three applicants for a homestead patent over the same parcel of land. It appears that in at least two of such applications, the Director of Lands ordered the issuance of the corresponding patents upon favorable recommendation of the property by the Public Land Inspector. The records, however, fail to prove that a patent was actually issued in favor of the plaintiff. Ultimately, the homestead patent was granted to defendant Durian. Plaintiff in this action prays for the reconveyance of the homestead.

*Held:* The plaintiff is not entitled to this relief. He never claimed the property to be his. In fact he even admitted that his application was cancelled for violations of the provisions of the Public Land Law. It is thus imperative in an action for reconveyance that the party seeking this relief must prove that he is the owner of the property registered in the name of another through fraud.

2. *Relief is available only where the land has not passed into the hands of a bona fide purchaser.*

The action for reconveyance is an equitable remedy available only when the parcel of land wrongly registered under the Torrens system in the name of one who is not the owner has not passed into the hands of an innocent purchaser for value. This was held in the case of *Rosario,* et al. *v. Rosario,* et al.[24] In that case the deceased father of the plaintiffs was the owner of a parcel of land during his lifetime. He appointed the deceased father of the defendants as trustee and *encargado* of said land but said trustee registered the same land in his own name without the knowledge and consent of his principal. The records show that between 1915, when the land was entrusted into the hands of defendants' father, and 1949, when the land was acquired by the defendants, the land had changed ownership for several times. The Court held that the fact that the appellees are the children of the alleged trustee, who, after several conveyances of the parcel of land to other parties, became the owners of or acquired the parcel of land, does not render them liable for the acts of their father nor did they assume upon

[22] G. R. No. L-2710, September 30, 1957.
[23] G. R. No. L-7886, September 23, 1957.
[24] G. R. No. L-9701, July 31, 1957.

acquiring the parcel of land the alleged obligation of their father as trustee.

## II. VOLUNTARY DEALING WITH LAND.

Section 50 of the Land Registration Law expressly provides that the act of registration shall be the operative act to convey and affect the land. Section 55 of the same law requires the presentation of the owner's duplicate certificate of title for the registration of any deed or voluntary instrument, the reason for the law being that as a voluntary instrument is a willful act of the registered owner of the land to be effected by the registration, it is to be presumed that he is interested in registering the instrument, and would willingly surrender, present or produce his duplicate certificate of title to the register of deeds in order to accomplish such registration. So the Court reiterated in the case of *Ramirez v. Causin*, et al.[25] The plaintiff in that case became the purchaser of a parcel of land with the obligation to assume a first mortgage executed in favor of the Philippine National Bank. The deed of sale was entered in the day book of the register of deeds on May 10, 1951. Meanwhile, an attachment was secured by defendant Causin over the property sold to the plaintiff in a case between Causin and the vendor. The attachment was transcribed on the back of the certificate of title covering the parcel of land in litigation. When the plaintiff was able to secure a transfer certificate of title, the attachment lien was carried forward. The question to be decided is whether the registration of a deed of sale without the accompanying duplicate certificate of title constitute a full registration.

*Held*: As the deed of sale in favor of the plaintiff on May 10, 1951, was not accompanied upon presentation by the duplicate certificate of title covering the land, the registration of the aforementioned deed of sale cannot be considered as having been in effect on said date. Consequently, when on August 4, 1951, the attachment lien in favor of defendant Causin was presented which was immediately transcribed, said attachment was not affected by the entry of the sale on May 10, 1951, as the sale was not yet registerd, and the levy of attachment became full, complete and binding on all the parties in interest as well as on all third persons. Hence, the attachment lien can not be cancelled.

## III. INVOLUNTARY DEALING WITH LAND.

### A. Annotation Of Right Of Way.

In the case of *Araneta v. Hashim*,[26] the petitioner purchased from the testate estate of Hashim several lots with the approval of the probate court. In the deed of sale, the vendor warranted that a strip of land has been segregated to serve as a right of way. On the same day that the sale was concluded between the parties, a

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[25] G. R. No. L-10794, July 31, 1957.
[26] G. R. No. L-10082, November 19, 1957.

memorandum agreement embodied in a private document was executed specifying the lots which had been segregated to serve as the right of way for the benefit of the purchaser. The petitioner then sold some of the lots he purchased to the Isabela Agricultural Corporation and to the Colegio de San Jose. It seems that after such sale to the latter by the petitioner, the oppositor refused to comply with the agreement concerning the right of way. Hence, Araneta filed a petition praying that the Register of Deeds be directed to annotate the right of way constituted in favor of the lots he purchased from said testate estate. Petition was granted. It is now argued by the oppositor that the deed embodying the agreement concerning the right of way should have been presented to and filed with the register of deeds in the manner provided for by Section 52 of the Land Registration Law.

The Court held that Section 52 requires the presentation to the register of deeds of the instrument creating or transferring the right sought to be annotated. The instrument mentioned in said provision refers to a registerable document while the memorandum agreement in the instant case is only a private one, and hence, the vendee must have understood the futility of filing said memorandum agreement with the register of deeds. Moreover, the petition filed with the lower court revealed that the petitioner sought the annotation of the right of way pursuant to the warranty contained in the deed of sale as supplemented by the memorandum agreement.

B. Cancellation Of *Lis Pendens.*

1. *Lis pendens cannot be cancelled pending litigation.*

In the case of *Rehabilitation Finance Corporation v. Morales,*[27] one Agoncillo bought a parcel of land from the Gregorio Araneta, Inc. on the installment plan. Before complying with it fully, Agoncillo sold the property to the defendant with the agreement that the account would continue to be carried out in the former's name until fully paid. The agreement was not made of record in the office of the realtor. Without the knowledge of the defendant, Agoncillo mortgaged the property with the plaintiff which guaranteed the payment of the balance to the realtor company. A certificate of title was thus issued on the back of which was annotated the mortgage. Upon becoming aware of these transactions, the defendant filed a case for estafa against Agoncillo and filed a civil case for the recovery of the property. The defendant caused a notice of *lis pendens* to be annotated on the back of the title which was in the name of Agoncillo. In the meantime, the mortgage matured, and for failure of the mortgagor Agoncillo to satisfy the obligation, the same was foreclosed and sold at public auction. Plaintiff became the highest bidder. The notice of *lis pendens* was carried forward in the new title secured by the plaintiff. Action was therefore brought to cancel the notice of *lis pendens.*

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[27] G. R. No. L-10064, April 23, 1957.

The Supreme Court noted that said notice was caused to be annotated as an incident of the action taken by the oppositor against both Agoncillo and the plaintiff to recover the ownership of the property affected by the mortgage, and said action, when the petition for cancellation was filed, was still pending and undisposed of. In that case, not only the propriety of the mortgage was involved, but also the very title acquired by petitioner when it subsequently bought the property as the highest bidder, and in said litigation plaintiff was a party defendant. It can therefore be said that plaintiff not only has a constructive knowledge of said litigation but is a party to the case. The notice therefore intended to be a warning to the whole world that one who buys the property does so at his own risk. This is necessary in order to save innocent third persons from any involvement in any future litigation concerning the property. The Court further stated:

> "It is true that as a matter of general principle the notice of *lis pendens* cannot affect the right of petitioner as a mortgagee because the mortgage was annotated prior to the annotation of said notice and to that extent its right is protected by law as against subsequent encumbrancers, but such cannot preclude the continuance of the notice of *lis pendens* for the simple reason that the property is actually in litigation. This is more so when the validity of the mortgage is involved. Until the civil case is finally terminated, it would not be right nor proper to cancel the notice of *lis pendens*.

2. *Notice of lis pendes is proper in actions affecting title and possession of real estate.*

The case of *Garchitorena,* et al. *v. Register of Deeds,* et al.[28] is to be distinguished from the case of *Somes v. Government.*[28a] In the instant case, respondent Asuan sought to compel the petitioners to convey to him a portion of a parcel of land. The action therefore is one affecting title and possession of such real estate, and the annotation of *lis pendens* notice is proper under Section 79 of Act No. 496 as well as under Section 24 of Rule 7 of the Rules of Court. The action is directly addressed to obtaining conveyance of, and title to, a specific real property. And the claim should be protected against fraudulent conveyances by the appropriate *lis pendens* annotation. Hence, the notice of *lis pendens* should not be cancelled.

On the other hand, in the case of *Somes v. Government,* the right sought to be protected was a mere judgment for a sum of money that did not concern any particular realty. Hence, the notice of *lis pendens* was improperly entered.

C. Sale of Realty for Tax Delinquency.

1. *Sheriff's certificate of sale must be registered.*

In the case of *Metropolitan Water District v. Aurelio Reyes,*[28b]

[28] G. R. No. L-9731, May 11, 1957.
[28a] 62 Phil. 432 (1935).
[28b] 74 Phil. 142 (1943).

it was held that it is not necessary to register a tax lien because it is automatically registered once the tax accrues, by virtue of Section 39 of Act No. 496. But there is no provision of law to the effect that the sale of registered land to foreclose a tax lien need not be registered. On the contrary, Section 77 of said Act specially provides that whenever registered land is sold for taxes or for any assessment, any officer's return, or any deed, demand, certificate, or affidavit or any other instrument made in the course of proceedings to enforce such liens shall be filed with the register of deeds for the province where the land lies and registered in the registration book, and a memorandum made upon the proper certificate, in each case, as an adverse claim or encumbrance.

The case of *Santos v. Rehabilitation Finance Corporation,* et al.[29] reiterates the ruling of the above case. In this case, the petitioner acquired at a sale at public auction for tax delinquency of a parcel of land. The certificate of sale executed by the sheriff was never presented for registration. The deed of sale executed and issued by the City Treasurer on the same property was registered only after a tender of payment of the taxes due was made by the oppositors in the office of the City Treasurer. The Court held that the running of the period of one year for redemption had started only after the registration or annotation of the deed of sale in the back of the certificate of title.

2. *Nature of tax delinquency proceedings.*

The problem posed in the case of *Pantaleon,* et al. *v. Santos,* et al.[30] is whether the rights of a registered but undeclared (in the tax declaration) owner of one-half of a parcel of land affected by the administrative or tax delinquency proceedings against the registered owner of the other half of the property, who is the declared owner of the whole, or not? It was held in this case that the provisions of the law for the sale of land for non-payment of taxes establish a proceeding *in personam* as the tax is not a charge on the land alone, and only the particular interest of the person assessed is sold. It must be noted that this finding refers only to the Provincial Assessment Law which is now found in Sections 28 to 41 of Commonwealth Act 470 (June 16, 1939). With respect to the City of Manila, the proceeding is *in rem,* under Rep. Act No. 409, otherwise known as the Revised City Charter of Manila.

In the present case, since the proceedings are not *in rem,* for the land is situated in Rizal province, but merely *in personam,* it follows as a necessary consequence that the rights of the registered but undeclared owners were not affected by the proceedings in the sale for delinquency.

## IV. REGISTRATION UNDER ADMINISTRATIVE PROCEEDINGS.

### A. A Perfected Homestead is a Property Right.

[29] G. R. No. L-9796, July 31, 1957.
[30] G. R. No. L-10289, July 31, 1957.

Thus, it was held in the case of *Lucas v. Durian,* et al.[31] that after an applicant has filed his final proof and that the Director of lands had even ordered the issuance of a patent in favor of such applicant, this gives rise to the presumption that all the requirements of the law have been complied with and such applicant becomes the equitable owner of said homestead. This case cites with approval the ruling of *Balboa v. Farrales*[31a] in which it was stated that:

> "A perfected homestead, under the law, is property in the highest sense, which may be sold or conveyed and will pass by descent. A valid and subsisting perfected homestead, made and kept up in accordance with the provisions of the statute, has the effect of a grant of the present and exclusive possession of the land. Even without a patent, a perfected homestead is property right in the fullest sense, unaffected by the fact that paramount title to the land is in the Government. Such land may be conveyed or inherited."

B. Nature of a Certificate of Title Issued Pursuant to a Homestead Patent.

In the same case of *Lucas v. Durian,* et al.,[32] the Court had the occasion to rule that a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate of title issued in a judicial proceeding as long as the land so disposed of is really part of the disposable land of the public domain, and becomes indefeasible and incontrovertible upon the expiration of one year from the date of the issuance thereof.

C. Exhaustion of Administrative Remedies.

1. *Decisions of the Director of Lands are subject to appeal to the Department Secretary.*

Still in the case of *Lucas v. Durian,* et al.,[33] it was held that the Director of Lands has the power to determine the qualifications of applicants, whether they have complied with the conditions required by law, who among several applicants is entitled to the grant, or to settle conflicts between applicants. Protests against applications should be lodged before the Director of Lands to whom the administration and distribution of public lands are vested by law, subject to the immediate control of the Secretary of the Department. And it appearing that plaintiff failed to bring to the attention of the proper officials the existence of his claim by means of protest, he cannot now seek relief in the courts of justice for he should have first exhausted all the administrative reliefs then available to him.

2. *Scope of administrative appeal.*

The case of *Lubugan,* et al. *v. Castrillo and Malinay*[34] defines

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[31] G. R. No. L-7886, September 23, 1957.
[31a] 51 Phil. 498 (1928).
[31a] 51 Phil. 498 (1928).
[32] *Id.*
[33] *Id.*
[34] G. R. No. L-10521, May 29, 1957.

the scope of administrative appeal. In that case, the defendant Malinay applied to purchase a parcel of land from an estate acquired by the Government for the purpose of subdividing it into small lots and reselling them to qualified purchasers. Plaintiffs opposed the application on the ground that the same parcel of land had long been occupied by their deceased father so that their claim may be said to be preferred. The Director of Lands, after the necessary investigation, dismissed the claim of the plaintiffs and ordered them to vacate the premises. No appeal was taken to the Secretary of Agriculture and Natural Resources from the order of the Director of Lands. When the latter officer issued an order of execution requiring the plaintiffs to vacate the property, plaintiffs brought the present action. It is contended by them that the filing of an appeal with the Secretary of Agriculture and Natural Resources is not a condition precedent for the filing of the case before the courts.

The Court, in dismissing this contention, held that while ordinarily a question of jurisdiction is for the courts to determine, this rule may be modified by statutory provision. Thus, where, as in this case, it is required that the decisions of the Director of Lands in the exercise of his prerogatives be appealed to the Secretary of Agriculture and Natural Resources within 60 days in order that they may not become final and executory, these provisions should be complied with before resort to the courts may be had. The law does not state that an appeal to the said official shall be taken only to correct an alleged error of judgment and not of jurisdiction. Appeal may cover all questions of law and fact for its purpose is to give a chance to the chief executive official to correct whatever error may have been committed by his subordinates and thus avoid a court action. For failure to avail themselves of this administrative remedy, their action failed in the courts.

3. *Administrative appeal—a condition precedent to court action.*

A party seeking a review of the decision of the Director of Lands must prove in court that he has exhausted the administrative remedies available to him. Thus, he must show that he had asked the Director of Lands to reconsider his decision, or to have appealed therefrom to the Secretary of Agriculture and Natural Resources who controls said official. Such things must be shown especially in disputes concerning public lands where the findings of said administrative bodies as to questions of fact are declared by statute to be conclusive, as provided by Section 4 of C.A. 141. Such was the ruling of the Supreme Court in the case of *Cortez v. Avila.*[35]

The same ruling was handed down in the case of *Heirs of Gregorio Lachica,* et al. *v. Ducusin,* et al.[36] where the plaintiffs, claiming fraud on the part of the defendants in securing a patent over a disposable public land, failed to appeal to the Secretary of Agriculture and Natural Resources from the decision of the Director of Lands. And for such omission they were barred to seek relief before the courts.

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[35] G. R. No. L-9782, April 26, 1957.
[36] G. R. No. L-11373, November 29, 1957.

*Prescriptive period of administrative appeal is suspended by court action.*

A novel situation arose in the case of *Geukeko v. Araneta.*[37] In that case the petitioner was the registered lessee of a lot, part of the Tambobong Estate, a portion of which he sub-leased to others. When said Estate was purchased by the Government,, petitioner applied to purchase the lot leased to him. At the same time, the sub-lessees opposed said application and applied to purchase the portion actually occupied by them. The Director of Lands gave due course to the application of the petitioner and dismissed the protests and counter-applications of the sub-lessees. The latter filed a civil case which was dismissed for failure to exhaust administrative remedies. The sub-lessees then brought the matter to the Secretary of Agriculture and Natural Resources who entertained the same despite the protests and objections of the petitioner. Hence, the petitioner filed a petition for mandamus and prohibition to restrain the respondent Secretary from taking cognizance of the appeal made by the sub-lesees on the ground that the filing of the civil case amounted to a waiver of appeal to the Department Secretary. In justifying his taking cognizance of the sub-lessees' appeal, the Secretary refers to his Department's policy of considering the running of the prescriptive period for purposes of appeal from the decisions of the Director of Lands, as suspended by the institution of a civil action.

The Court held that the dismissal of the action in court did not constitute an impediment to the filing of the appeal before the Secretary of Agriculture and Natural Resources. The only requisite in such a case would be that the period within which said remedy may be invoked has not yet prescribed, as it appears in this case. The Court gave weight to the rule-making authority of the Department, especially departmental procedural rules, and the fact that courts must give the greatest weight to the interpretation given to a rule or regulation of administrative origin by those charged with its execution. Thus, the appeal of the sub-lessees still lie.

D. Grantee's Right to Repurcharse Homestead.

1. *Written demand to repurchase.*

Where the heir of a homesteader had demanded, by letter, of the vendees of part of a homestead to repurchase said part sold by his predecessor-in-interest, said written demand preserved his right to repurchase, as held in the case of *Lustado v. Piñol and Glorioso,*[38] following the spirit of the Public Land Act of aiding a homesteader to keep his homestead not only by prohibiting the sale thereof within a certain period from the issuance of the patent, but also allowing him in case of a valid sale to repurchase the same.

2. *Repurchase must be made within five years from the date of the sale.*

The issue that arose in the case of *Monge,* et al. *v. Angeles and Molina*[39] is whether the period of five years which Section 119 of

[37] G. R. No. L-10182, December 24, 1957.
[38] G. R. No. L-10825, September 27, 1957
[39] G. R. No. L-9558, May 24, 1957. This case is a reiteration of the rulings

C.A. 141 allowing a homesteader to repurchase a homestead sold by him should be counted from the date of the sale even if the same is with an option to repurchase or from the date the ownership of the land had become consolidated in favor of the purchaser because of the homesteader's failure to repurchase it. The Court held that the word *conveyance* which is found in Section 119 of C.A. 141 refers to every instrument by which any estate or interest is created, alienated, mortgaged or assigned. Thus, when the law speaks of "date of conveyance", it means "date of sale". The contention made by plaintiffs, therefore, that the five-year period should be counted from the date the ownership of defendants over the land had become consolidated is untenable.

The case of *Manuel v. Philippine National Bank,* et al.[40] repeats the ruling of the preceding case and those cited therein. In this case, the registered owner of a homestead, which was mortgaged with the Philippine National Bank which foreclosed the same, tried to redeem the homestead only after the lapse of nine years from the date the sale at public auction was made. This was brought about by the fact that it was only after the lapse of nine years that a final deed of sale was issued and recorded in the register of deeds in favor of the mortgagee and to which a certificate of title was issued. The homesteader based the five-year period from the date of the issuance of the final deed of sale. The Court stated that the five-year period should be counted from the date of the sale, because the issuance of a final deed of sale becomes a mere formality, and which serves only as an act merely confirmatory of the title that is already in the purchaser and constituting official evidence of that fact.

3. *Recovery for fraud.*

In the case of *Tabuanan v. Marigmen,* et al.,[41] a homestead patent was issued to the spouses Valentin Catalon and Margarita Tabunan, plaintiff in the instant case. Plaintiff and Catalon are living separately and had been so for sometime. In 1948, Catalon sold the homestead to the defendants and a transfer certificate of title issued in the name of the latter. Plaintiff now in this action seeks, among others, to recover her share in the homestead property it being conjugal property. The defense is prescription.

The Court held that under the second paragraph of Art. 1413 of the Spanish Civil Code which provides that when the husband effects the sale of conjugal property in fraud of the wife, the same cannot prejudice her. There is no question that the sale of the homestead property was made in fraud of the wife as demonstrated by the fact that she was not shared with the purchase price therefor, and by the fact that the sale was consummated without her knowledge and consent. The homestead, being conjugal property of the spouses, in which the wife, even if living separately, had a right and interest, the dictates of reason and fairness demanded that the husband advise or inform the wife thereof. Absence of such advice amounted to a fraud on her rights.

found in th cases of Blanco v. Bailon, G. R. No. L-7342, April 28, 1956; Galasinao v. Austria, G. R. No. L-7918, May 25, 1955; and, Galanza v. Nuesa, G. R. No. L-6628, August 31, 1954.

[40] G. R. No. L-9664, July 31, 1957.

[41] G. R. No. L-9727, April 29, 1957.