LAND REGISTRATION

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A perusal of the 1960 decisions in Land Registration reveal the same trend which the Supreme Court has adopted in previous cases. Hence the authors have laid down the same basic rules in an outline form. The authors have endeavored to present the facts and rulings of the court as briefly and completely as possible to the end that the readers may have a full understanding of the principles involved.

I. Registration Under The Torrens System

A. Voluntary Registration

1. Nature and Effect of Registration Under Act 496

a) It is a proceeding in rem

Registration of lands under the Torrens system is in the nature of proceedings in rem.[1] This rule has been reiterated in the recent case of *Sabina Santiago, et al v. J. M. Tuason.*[2] Here the plaintiff claims that he and his predecessors in interest were declared by proper Spanish authorities owners of the land in question and that since 1848 they had thereafter been occupying the same publicly and adversely in the concept of an owner. In 1959, the herein defendant brought an action for quieting of title and recovery of possession since he had a Torrens title over the same. The plaintiff contends that in the original registration proceeding, no notice of such proceeding was made and that in any case they acquired the same by prescription. The Court in deciding for the defendant said that the mere fact that the plaintiffs were not personally notified of the registration proceedings that resulted in a decree of registration of title in favor of the former (in 1914) does not in itself constitute fraud that would invalidate the decree. It stressed the fact that the proceedings being *in rem* operate against the whole world and the decree issued therein is a conclusive adjudication of the ownership of the lands registered, not only against the parties who appeared in the said proceedings but also against the parties who were summoned by publication but did not appear.

b) Conclusiveness of title after one year from decree of registration.[3]

Under Sec. 38 of Act 496, upon the expiration of one year from the entry of the decree of registration, every certificate of title issued in accordance with law shall be incontrovertible.[4] This rule was applied in the case of *Vengaso v. Buencamino.*[5] In this case it appears that defendant made claim

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[1] El Hogar Filipino v. S. Olviga, 60 Phil. 17.

[2] G.R. No. L-14223, November 1, 1960.

[3] This period of one year begins from the issuance of the patent in case of a public land grant (Diwalig v. CFI, April 1955). Once a patent is issued the land acquires the character of registered property under sec. 122 of Act 496 and is deemed brought within the operation of the Land Registration Act. (Roco v. Gimeda, Dec. 27, 1958)

[4] Director v. Gutierrez David, 50 Phil. 797.

[5] G.R. No. L-9576, August 31, 1960.

to cadastral lot No. 1547 Lupao Cadastre, while plaintiff filed an opposition asserting ownership and possession of the Northern half of the same lot. Upon petition of the defendant the case was set for hearing of which no notice was served on the plaintiff. After receiving the evidence of defendant the cadastral court entered judgment adjudicating the whole lot to defendant and the corresponding decree was issued on August 15, 1951. Plaintiff knew of the decree only on April 21, 1953 or one year 8 months and 6 days after issuance of decree. So on May 28, 1953, she filed with the CFI the present action praying among other things to declare the decree of the cadastral court null and void because the same was obtained thru fraud, as well as the certificate of title issued in favor of defendant insofar as it includes the northern half portion of lot No. 1547. In dismissing the appeal the Supreme Court held that a cadastral case is governed exactly by the same rule and provision of law as ordinary case for registration of land under the Land Registration Act (Caballes v. Director 41 Phil. 357). It is well settled that upon the expiration of the one year period within which to review the decree of registration said decree as well as the title issued in pursuance thereof becomes incontrovertible and the same may no longer be changed, altered or modified.

The same ruling was applied in the case of *Ingaran v. Ramelo*.[6] In this case it appears that in a decision rendered by the District Land officer at Isabela on October 11, 1947, the homestead application of plaintiff's predecessor in interest Bumanlag for the land in question was rejected and the application of defendant Ramelo for the same land was given due course. The decision was confirmed by the Director of Lands and on appeal, the Secretary of Agriculture and Natural Resources affirmed the decree. Ingaran representing her deceased husband Bumanlag filed a motion for reconsideration but the same was denied. So she brought the present action for cancellation of defendant's title and the restoration of land to her plus damages. The Supreme Court held that inasmuch as the homestead patent was issued to the defendant as far back as October 18, 1949 on the strength of which an original certificate of title was thereafter issued in his name, the certificate of title partakes of the nature of a certificate issued in a judicial proceedings and became indefeasible and incontrovertible upon the expiration of one year from the date of the issuance thereof. The present action having been filed more than 3 years after the issuance of the homestead patent the lower court no longer had jurisdiction to entertain it.

To the same effect was the ruling of the Supreme Court in the case of *Gana v. C. A.*[7] The court found out that sometime in 1909 a cadastral survey of Butuan, Agusan was made by the Bureau of Lands. In that survey the parcel of land in question was included as part of the lot belonging to respondent's predecessors-in-interest for which original certificate of title No. Ro-72 (138) was issued on February 12, 1923. Petitioner on the other hand claim that the lands in Butuan were subsequently resurveyed showed that the land in question is part of the land belonging to their predecessor-in-interest. It is not disputed however that the land in question is part of the lot covered by the Torrens Title issued in 1923 in the name of respondent's predecessor. Said title has not been contested up to the present. So therefore the court held that it has become incontrovertible and indefeasible after the lapse of the period within which it may be impugned.

[6] G.R. No. L-10471, March 30, 1960.
[7] G.R. No. L-12486, August 31, 1960.

In *Aventura v. Pelayo* [8] the decree of registration in favor of Aventura was entered on April 17, 1953 and on May 19, 1953 the original certificate of title was issued in his name. On June 22, 1953 Aventura filed a motion for a writ of possession. Adelante opposed the motion and after hearing the court denied Adelante's petition for review and ocular inspection. Adelante filed a motion for reconsideration and petition for review which was later amended on January 8, 1954. On January 19, 1954 the court denied the amended motion for reconsideration for lack of merit. On February 5, 1954 Adelante filed a motion to lift the writ of possession and to give due course to the amended petition for review of judgment. Aventura opposed the motion but was again denied for lack of merit on February 16, 1954. It appears though that before the court issued the last order Adelante, on February 11, 1954 filed another motion to put up bond and to lift order of the writ of possession, claiming that the court had not yet passed upon the additional grounds for review on January 8, 1954. This last motion was set for hearing. Aventura sought to reconsider the order of hearing but he failed. Three years after, Aventura filed in the case of petition to terminate proceedings, raising questions of lack of jurisdiction. Judge Pelayo ordered said petition be stricken off the record so Aventura moved to set aside the previous order and to issue order for the enforcement of writ of possession. Judge Pelayo denied this motion and ordered the case set for hearing. Hence this petition. *Issue:* Whether Judge Pelayo's order in setting the motion for hearing was valid since more than 5 years have elapse from the entry of the decree of registration in favor of Aventura. *Held:* The denial of the motion to give due course to the amended petition for review also implied that there has been no amended petition for review validly filed in the case. Not having been admitted by the court, the amended petition for review did not interrupt the running of the one-year period for the review of the decree in favor of petitioners entered on April 17, 1953. When the respondent judge set the motion of February 11, 1954 for hearing, therefore the period of one year within which the decree of registration may be attacked, had long elapsed. Therefore the decree in favor of petitioners had already become final and indefeasible, (Sec. 38 Act 496) and may no longer be modified or set aside. (Cabaños v. Register 40 Phil. 620).

But the theory that a decree of registration can no longer be impugned on the ground of fraud one year after the issuance and entry of the decree does not apply where the property involved is private in nature and has ceased to be part of the public domain. (*Mesina v. Pineda* May 25, 1960, *infra.*)

c) When failure to send notice of Hearing to Director of Forestry not a Violation of Sec. 32 Act 496

In the case of *Adorable v. Director,*[9] Adorable here presented a claim over lot No. 3249. After hearing, judgment was rendered awarding said lot to him. Before the finality of decision, the Director of Forestry filed a motion for reconsideration and new trial, claiming that he was not notified of the hearing, that his office had a claim over a portion of the lot in question for river bank protection or as permanent timberland. *Held:* The claim of the appellant that he is entitled to a personal notice of the hearing is based on Sec. 32, Act 496, that if the land borders on a river, navigable stream, sea or lake, notice shall be given to the Solicitor General, the Director of Public Works, the Director of Lands and the Director of Forestry. Since the description of

[8] G.R. No. L-13852, March 30, 1960.
[9] G.R. No. L-13663, March 25, 1960.

the land in question does not show that it borders on a river, stream; sea or lake, and considering the fact that an employee of the Bureau of Forestry was present at the hearing but did not make any claim in behalf of said Bureau, the omission to send personal notice of the hearing to appellant can not be considered a violation of Sec. 32 of Act 496.

2. Authority of Court Sitting as Land Registration Court

a) To authorize amendments and alterations under Sec. 112 Act 496

It is a settled rule that the relief afforded by Sec. 112 may only be allowed if there is a unanimity among the parties or there is not an 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.[10] This was the holding of the Court in *RFC v. Alto Surety*.[11] In this case it appears that Palma, registered owner of a parcel of land executed a first mortgage in favor of the RFC and subsequently a second mortgage in favor of the Alto Surety. Both mortgages were registered. Upon failure of mortgagor to settle the obligation the RFC foreclosed the mortgage and the property was sold in public auction in favor of RFC. Six months later, Palma transferred all his rights in the mortgaged property to Trinidad. Within the period of redemption the RFC and Trinidad executed a deed of resale whereby the property was resold in favor of Trinidad under a deed of redemption on installment plan. When the Alto Surety inquired on the status of the land the RFC advised the former that the property had already been sold to Trinidad. This notwithstanding, the RFC after executing an affidavit consolidating ownership on the purchase property was able to secure the cancellation of the title of the owner-mortgagor Palma and the issuance of a new title in its name. The second mortgage in favor of Alto Surety was however carried and annotated on the new title. It is this annotation that the RFC sought to have cancelled alleging that with the consolidation and transfer to it as the first mortgagee of the mortgagor's right on the property, the junior encumbrancer's lien on the same property had ceased. Alto Surety opposed, contending that with the execution of the deed of resale between RFC and Trinidad the property had been completely released from the first mortgage and the second mortgage had been automatically transformed into a first lien on the property. *Held:* Sec. 112 authorizes only alterations which do not impair rights recorded in the decree, or alterations which if they do prejudice such rights, are consented to by all parties concerned and alterations to correct obvious mistakes. The Supreme Court further stated that the proceedings provided in Land Registration Act being summary in nature they are inadequate for the litigation of issues property pertaining to ordinary civil actions, thus questions involving ownership of or title to real property or relating to the validity or cancellation or discharge of a mortgage should be ventilated in an ordinary proceeding.

The same ruling was applied in the case of *Aglipay v. de los Reyes*.[12] In this case the petitioners claim that they are the heirs of the late Monsignor G. Aglipay and that the deceased left nine parcels of land covered by Transfer Certificate of Title and that the oppositor as incumbent Obispo Maximo of the Philippine Independent Church, is in possession of said certificate but that notwithstanding repeated demands, he refused to and still refuses to surrender the same, to the petitioners. Monsignor Reyes on the other hand alleged that the real properties in question are owned by the Iglesia Filipina Independiente

[10] Tangaman v. Republic, Dec. 29, 1953; Angeles v. Razon, Oct. 26, 1959.
[11] G.R. No. L-14303, March 24, 1960.
[12] G.R. No. L-12776, March 23, 1960.

and registered in the name of Aglipay only in his capacity as the Supreme Bishop of the Church. The Supreme Court in dismissing the petition said that while in some instances the Court has deviated from the otherwise rigid rule that the jurisdiction of a Land Registration Court, being special and limited in character and proceedings thereon summary in nature, does not extend to cases involving issues properly litigable in other independent suit however, the exception is based not alone in the fact that Land Registration Courts are likewise the same Courts of First Instance, but also on the following premises: (1) mutual consent of the parties or their acquiescence in submitting aforesaid issues for determination by the court in the registration proceedings; (2) full opportunity given to the parties in the presentation of their respective sides of the issues; and (3) consideration by the court that the evidence already of record is sufficient and adequate for rendering a decision upon those issues. The latter condition is a matter that largely lies within the sound discretion of the trial judge.

In the case of *Magdalena Estate Inc. v. Yuchengco*[13] the court said: The law (Sec. 112 Act 496) relied on by appellee cannot be applied because it cannot be doubted that when the mortgagee China Insurance & Surety Co. signed jointly and severally the promissory note with Hemady in favor of the Oriental Investment Corporation, it did so only on condition that the Magdalena Estate should mortgage the property in question in its favor to secure its undertaking. And in order to make it effective, this mortgage was registered and annotated on the back of the certificate of title. To order the substitution of the mortgage for a surety bond would in effect novate the contract entered into between the parties which cannot be done without their consent. Here the consent is lacking. If this cannot be done by a court of general jurisdiction, much less can it be done by a Court of limited jurisdiction under Sec. 112 of Act 496.

In *Director of Lands v. Abrera*,[14] the CFI of Negros on August 20, 1941 rendered a decision adjudicating lot No. 3725 to Pilar Merecido, who died intestate, single and without issue on December 11, 1942. On July 24, 1954 or eleven years after, that is after judgment became final but no decree of registration had yet been issued, Francisco Merecido, a brother, and in representation of Julian, Fidel and Gerardo and other heirs, filed a motion for amendment of the decision of 1941 in their favor as heirs of Pilar. This was opposed by Fidel and the heirs their contention being that Fidel became the sole owner thereof by virtue of a deed of sale executed by Pilar in his favor. Fidel thus filed a separate petition to have the decision annulled making him the sole adjudicatee of the property. Francisco opposed alleging that Pilar never sold the property in question. The question raised was whether the trial court had jurisdiction over the issue of the alleged contract of sale.

Under Sec. 29 Act 496, the land subject of the cadastral proceeding may prior to the issuance of the decree of title be dealt with and the court may order the land registered subject to the encumbrances created by the instrument relating thereto or order the decree of registration issued in the name of the buyer.[15] However, the cadastral court may only order such decree of registration where there is no serious controversy between the parties as to the validity of the instrument affecting the land, because in the exercise of its jurisdiction over the cadastral case, the CFI acting as cadastral court or as court of land registration has limited authority. It has no authority to adjudicate issues

[13] G.R. No. L-12963, May 30, 1960.
[14] G.R. No. L-11834, July 26, 1960.
[15] Government of the Phil. v. Abad and Molina, May 23, 1958.

that should be ventilated in an ordinary civil action such as the question of whether the contract of sale was really entered into.

b) Writ of Possession

(1) Against whom may it be issued

A writ of possession may be used not only against the person who has been defeated in the registration case but also against any one occupying the land or portion thereof during the registration proceeding.[16] The writ however may not be issued against the winner's own administrator or agent. This was the holding in the case of *Bishop Legaspi v. Calicja.*[17] It appears in this case that in 1947 Rev. Fr. Alcazar now deceased, applied for the registration of several parcels of land. The decree and certificate of title was subsequently issued in his name. Petitioner filed with the Register of Deeds a deed of sale executed by Father Alcazar in favor of Msgr. Santos, Bishop of Nueva Caceres. Transfer certificate of Title was then issued in the name of the Bishop of Nueva Caceres. On April 20, 1954 respondent Luna filed a special civil action against Msgr. Santos claiming that they are the heirs of the deceased Father Alcazar who died intestate. Petition was then filed in the corresponding land Registration case a motion for the issuance of a writ of possession against Luna. *Held:* As assignee of the rights of the Archbishop of Nueva Caceres, who had merely the rights conveyed to him by Father Alcazar the Bishop of Legaspi has no more right over the property than those which Father Alcazar had as original owner thereof. It should be noted that Mr. Luna held said property as administrator thereof; appointed by no other than Father Alcazar and hence, in his name and behalf. Mr. Luna's possession was, in contemplation of law, a possession by Father Alcazar. As a consequence the latter could not not availed himself of a writ of possession against Mr. Luna for the former would be using the writ against his alter ego, and hence against himself. The court however suggested that the remedy of the petitioner would be to sue for specific performance or bring an action for ejectment.

(2) Power to issue writ of demolition

In *Rafael Marcelo v. Mencias and Clemente Pagsisihan,*[18] the petitioner Marcelo applied for the registration of three parcels of land. Leoncio Pagsisihan father of the respondent Clemente opposed. Subsequently, however, the petitioner was adjudged owner of said lands. An order for the issuance of a decree in his favor was made. Since Clemente Pagsisihan who occupied said lands refused to deliver possession thereof, the petitioner filed a petition for writ of possession which was granted. In spite of such writ however, Clemente refused to surrender said lots hence petitioner filed a petition for a writ of demolition, which was denied. The Supreme Court in reversing the holding of the trial court said that Sec. 13 of Rule 39 [19] applies also to land registration cases for the reason that under Rule 132 [20] the Rules of Court

[16] Manlapat v. Llorente, 48 Phil. 298; Pasay Estate Co. v. Del Rosario, 11 Phil. 391.
[17] G.R. No. L-14134, May 25, 1960.
[18] G.R. No. L-15609, April 29, 1960.
[19] Sec. 13 of Rule 39. How execution for the delivery or restitution of property enforced.—The officer must enforce an execution for the delivery or restitution of property by placing the plaintiff in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the costs, damages, rents, and profits included in the execution. However, the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by special order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court.
[20] Rule 132.—These rules shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

are applicable to land registration cases in a suppletory character. Hence, the writ of possession issued in a land registration proceedings implies the delivery of possession of the land to the successful litigant therein,[21] a writ of demolition must likewise issue especially considering that the latter writ is but a complement of the former which without the said writ of demolition would be ineffective. Hence, the petitioner does not have to resort to ordinary civil action in the regular courts to enforce his rights. This would only make for unnecessary and expensive litigation and result in multiplicy of suits. Furthermore under Sec. 6 of Rule 12t[22] the land registration court has the power to issue all auxiliary writs, (including the writ of demolition sought by the petitioner) processes, and other means necessary to carry into effect the jurisdiction conferred upon it by law in land registration cases.

3. Non-Prescriptibility of Title

Sec. 46 of Act 496 provides that no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. This was applied in the case of *Alfonso v. Pasay City*.[23] Plaintiff Alfonso here is the registered owner of lot No. 4368 in Pasay City. In 1925 the City took it for road purposes. No expropriation proceedings was instituted by the Municipality and neither was the plaintiff paid any compensation for the lot. Because the municipality failed to pay for the rental or value of said lot or to return the same when demanded, plaintiff filed the present action to recover either the possession of the lot or its value. *Issue:* Whether the City could acquire the lot through prescription. *Held:* Registered lands are not subject to prescription. Alfonso as registered owner could bring an action to recover possession, however said restoration of possession by the City is neither convenient nor feasible because it is now and has been used for road purposes. So the only relief available is for the City to make due compensation.

The same ruling was reiterated in the case of *Revilla v. Galindez*.[24] It appears in this case that Alipio Casmena was formerly the registered owner of lot No. 659. On May 21, 1935 he mortgaged the lot to defendant Galindez and on October 5, 1938 sold it outright to the defendant. The mortgage was registered but the subsequent sale was never registered. From the date of the mortgage, defendant had been in possssion of the property. On September 20, 1950 the heirs of Casmena sold the land to the plaintiff who before they purchased the land examined the title and found no encumbrance noted therein. When plaintiff attempted to take possession of the land the defendant refused to relinquish his possession. In finding for the plaintiff the Supreme Court said that the sale in favor of defendant was never registered and although the defendant had been in uninterrupted possession of the land he cannot have any better right because the land in question is registered and therefore title thereto is imprescriptible. Hence defendant cannot claim title by acquisitive prescription.

The same rule was followed in the case of *Manila Electric Co. v. Juan Enriquez*.[25] Here, it was shown that after the CFI of Quezon City rendered

[21] Demorar v. Ibañez, 5106-2872.

[22] Rule 124, sec. 6– Means to carry jurisdiction into effect.—When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by these rules, any suitable process or mode of proceeding may be adopted which appears most conformable to the spirit of said rules

[23] G.R. No. L-12754, January 30, 1960.

[24] G.R. No. L-9940, March 30, 1960

[25] G.R. No. L-15193, December 29, 1960.

judgment ordering Custodio and Marquez to vacate the petitioner's property, the herein respondent, Espinosa acquired by purchase from said defendant the lot and house in question. The issue raised by the respondent was whether or not they were bound by the judgment against Custodio and Marquez. The court found that the petitioner's claim to the land was evidenced by a transfer certificate of title hence it concluded that the defendant could not therefore acquire title thereto by prescription or adverse possession in derogation to that of the registered owner and Espinosa could not acquire a title better than her transferors.[26] Furthermore, since she was privy to the defendants, she was bound by the judgment rendered against them.

The action to recover land registered under the Torrens system on the ground of imprescriptibility of the title under Sec. 46 of Act 496 is however subject to a condition. This was observed in the case of *Bernardino Jocson v. Manuel Silos*.[27] The plaintiffs are children of Agueda Torres and Agustin Jocson. The spouses owned a parcel of lot covered by a Transfer Certificate of Title. In 1935 their mother died and in the same year their father sold the lot to the defendants. This action was then brought to annul the sale as to one-half of the land corresponding to their undivided share as heirs of Agueda Torres. The plaintiffs-appellants contend that the title to lands brought under the operation of the Torrens system is not subject to prescription. The court said that this contention would be correct if the title to the registered land in question were in the name of the spouses Agustin Jocson and Agueda Torres. In this case the title was in the name Agustin Jocson which title was cancelled and in lieu thereof a new one issued to the defendants.

4. No Prescription against the Government

It is well settled rule that title of the Government to alienable public lands in the Philippines could not be diverted by adverse possession alone no matter how long it might have extended.[28] In the case of *Estrella v. Register of Deeds of Rizal*,[29] one Pedro Moraga filed in the office of the Register of Deeds of Rizal an affidavit of adverse claim, claiming ownership of lot No. 14 issued in the name of John Yu, on the ground that in 1945 the Philippine Realty Corporation sold said land to a Chinese citizen disqualified to acquire public agricultural land or to hold lands of public domain in the Philippines; that the sale was void and neither the vendor nor the vendee retained or acquired ownership thereof, that they had been in actual, continuous, public, exclusive, uninterrupted possession of the land for more than 10 years. Appellant further claims that as neither the vendor or the vendee could claim ownership of it, it reverted to the State as patrimonial property which they may acquire by prescription. *Held:* Even if their claim of reversion to the State be sustained, still their adverse claim cannot be registered. Prescription does not run against the State. Moreover the court said, the parcel of land having been registered under Act 496 no title in derogation to that of the registered owner may be acquired by prescription or adverse possession.

In the case of *Ignacio v. Director of Lands* [30] it was held that land formed by accretion and alluvial deposits caused by the action of the Manila Bay which borders it is public land and hence could not be subject to acquisitive prescription.

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[26] Sec. 46, Act 496.
[27] G.R. No. L-12998, July 25, 1960.
[28] Valenton v. Murciano, 3 Phil. 538.
[29] G.R. No. L-12614, January 29, 1960.
[30] G.R. No. L-12958, May 30, 1960.

Same ruling was adjudged in the case of *Adorable v. Director*.[31] Appellant based his motion on the claim that a portion of the land in question either is needed for river bank protection or forms part of permanent timberland. If this claim be true, said the court, then possession thereof however long cannot convert it into private property.

5. Fraud in the Registration

a) Fraud in Sec. 38 Act 496 means actual fraud

This was the ruling in the case of *Aventura v. Pelayo*.[32] The court said that the only ground upon which a petition for review may be filed under Sec. 38 is actual fraud.

An example of an actual fraud is concealment from the plaintiff of the proceedings leading to the issuance to defendant of a questioned free patent notwithstanding the defendant's knowledge that the land covered under defendant's application was being possessed by the plaintiff as the owners thereof. This was the holding in the case of *Nelayon v. Nelayon*.[33]

b) Prescription in case of fraud

In this case of *Mariano Sison v. Feliciano Maza*,[34] the defendant Maza in causing a survey of a lot erroneously included two hectares belonging to the plaintiff. On December 20, 1937 the plaintiff and defendant executed a document whereby the latter acknowledged that the said two hectares were erroneously included in the survey and recognized the former's right and ownership thereto. In 1958 the plaintiff discovered that through fraud and misrepresentation the defendant Maza had secured a free patent title on the lot. He brought this action on May 21, 1958 to recover the same. The issue raised was whether or not the plaintiffs' action is barred by the statute of limitations. The court held that under Section 40 of Act 190[35] an action for recovery of title to or possession of real property or interest therein can only be brought in ten years after the cause of action occurs. From December 20, 1937, almost twenty years have passed before he brought this action, hence it is barred by the statute of limitations.

c) Remedies of aggrieved party

(1) Petition for review within one year from entry of decree under Sec. 38

In the case of *Nelayan v. Nelayan*[36] it appears that on December 15, 1952 plaintiff filed against the defendant a complaint for cancellation of Title and Reconveyance alleging that plaintiffs have been, since time immemorial in actual possession as owners of the land in question, but that through actual fraud defendant succeeded in securing for herself a certificate of title over said land. The issue in the case was whether the court had jurisdiction over the case. The Supreme Court held that as the patent was issued only on October 9, 1952 while the complaint was filed on December 15, 1952 after a period of only two months, the court had jurisdiction over the case.

The rule was reiterated in the case of *Magdalena Vda. de Cuayong v. Cristeta Vda. de Sengbenco*.[37] In September 1935 the CFI of Negros Occidental

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[31] *Supra*.
[32] *Supra*.
[33] G.R. No. L-14518, August 29, 1960.
[34] G.R. No. L-14219, Dec. 29, 1960.
[35] Sec. 40, Act 190—An action for recovery of title to or possession of real property or any interest therein can only be brought within 10 years after the cause of action accrues.
[36] *Supra*
[37] G.R. No. L-11837, Nov. 29, 1960.

ordered the registration of the land in question in the name of Sengbengco and the heirs of J. Nichols. The corresponding decree of registration and certificate of title were issued but in less than a year later the heirs of Rafael Balile moved for a reconsideration. It was shown that Sengbengco and M. Nichols in their application submitted that they were the only claimants to the same. It was proved a fact however that the Balile had been in adverse possession thereof, actually and continuously for forty years prior to September so that it was not possible that the appellees were not aware of such fact. Furthermore they never attempted to take possession of the land since 1935. The court thus concluded that there was fraud sufficient to justify the order granting a motion for new trial. A decree of registration secured thru fraud is valid although annullable upon petition filed within one year after entry of the decree in the absence of an innocent purchaser for value.

(2) Relief under Rule 38, Rules of Court

Inasmuch as Sections 113 and 513 of the Code of Civil Procedure have been declared by the Supreme Court applicable in land registration cases, it stands to reason that Rule 38 Sec. 3 of the Rules of Court which embodies practically the same provision is likewise applicable in registration cases and maybe invoked by the party seeking relief from a judgment or order of the court on any of the grounds stated therein provided that the decree of registration has not as yet been issued (*Elviña v. Filamor, 26 Phil. 305; Tañedo v. Judge 44, Phil. 179*).[38]

(3) Reconveyance

In the case of *Vengaso v. Buencamino*,[39] the Supreme Court said that the sole remedy of a land owner whose property has been wrongfully or erroneously registered in another's name is after one year from the date of the decree, not to set aside the decree, but respecting it as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance.

(4) Damages

In the same case of *Vengaso v. Buencamino* [40] the court held that an ordinary action for reconveyance of the property is not available as when the property has passed into the hands of an innocent purchase for value, the remedy is to sue for damages against the parties to such fraud.

(5) Assurance Fund

In the case of *Santiago Blanco v. Fructuosa Esquerido and Development Bank of the Philippines* [41] the land in question was originally registered in the name of the "Heirs of Maximo Blanco." In 1950 Fructuosa Esquerido, wife of the deceased made an extrajudicial adjudication in her favor of the entire land claiming in her affidavit that she was Maximo Blanco's widow and only heir. She was given a new title in her name. Subsequently she mortgaged the land to the Development Bank of the Philippines. Upon learning of the transfer of certificate of title, the plaintiffs who are brothers and sisters of the deceased, brought this action to have the title cancelled. It was not shown that the mortgagee was party to the fraudulent transfer of the land to Esquerido. The mortgagee had therefore the right to rely on what appeared

[38] VENTURA, LAND TITLES AND DEEDS, p. 150 (4th edition, 1955).
[39] *Supra.*
[40] *Ibid.*
[41] G.R. No. L-15182, Dec. 29, 1960.

on the certificate and in the absence of anything to generate suspicion or indicate fraud, or any other cause as to put one upon inquiry as to the rights being conveyed, was under no obligation to look beyond the certificate to investigate the title of the mortgagor appearing on the face of the said certificate.[42] Thus being an innocent mortgagee for value its right or lien on the land mortgaged must be protected. The remedy of the persons prejudiced is to bring an action against those causing the fraud and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for the recovery of damages against the Assurance Fund.[43]

6. Action for Reivindication

In the case of *De la Cruz v. Quevado*,[44] one Teodora de la Cruz in 1932 filed an application for registration of a parcel of land. Quevado opposed. Cruz won in the CFI. Upon review, the Court of Appeals approved the registration but modified it by sustaining the opposition and adjudicating to the oppositors the portions claimed by them. Upon the return of the expediente the lower court required Cruz to submit an amended plan of the real property by excluding the portions adjudicated to the oppositors. Unwilling to submit to such amended plan, Cruz filed a petition for certiorari. On January 1940 this court dismissed petition holding that the lower court not only acted within its jurisdiction but acted precisely in compliance with the decree of the Court of Appeals. This Court's decree however in quoting the dispositive part of the C.A. decree omitted thru clerical error that portion adjudicating to the oppositors the portion claimed by them. Thereafter Quevado took steps to carry out the C.A. decree but Cruz continued to refuse to submit an amended plan. So Quevado obtained a court decree putting Quevado in possession of the land. Four years later the heirs of Cruz initiated the present suit for reivindication alleging that they had been illegally deprived of the land given to the Quevados. Can the heirs maintain the suit of reivindication? No, the cases cited by appellant holding that one who lost in a registration case may thereafter relitigate and sue the oppositors in a "reivindication" were cases wherein the land was not adjudged in favor of the latter in the registration proceedings.

B. Subsequent Registration

1. Who are innocent purchasers for value

Sec. 55 of Act 496 provides that any subsequent registration procured by the presentation of a forged deed shall be null and void and that the owner of the land may pursue all his legal and equitable remedies against the parties to the fraud, without prejudice however to the rights of any innocent holder for value of a certificate of title. Innocent purchaser for value includes innocent lessee, mortgagee or other encumbrancers for value.[45] In order therefore that the holder of a certificate for value issued by virtue of the registration of a voluntary instrument may be considered a holder in good faith for value, the instrument registered should not be forged. This was in effect the ruling in the case of *Joaquin v. Madrid*.[46] In this case the spouses Madrid are registered owners of a lot in Rizal. As they were planning to build a house on the lot, one Carmencita de Jesus, godmother of one of the spouses offered to help them borrow money from the RFC. The spouses then delivered to de Jesus on January 1954 the certificate of title to be surrendered to the RFC.

[42] De Loa v. Ayroso, 50 O.G. 4838. Joaquin v. Madrid, Jan. 30, 1960.
[43] Avecillo v. Yatco, 54 O.G. 6415
[44] G.R. No. L-14430, March 29, 1960.
[45] Sec. 38, Act 496.
[46] G.R. No. L-13551, Jan. 30, 1960.

But later, the spouses were able to secure a loan from their parents so they decided to withdraw the application for loan in the RFC. De Jesus however told the spouses that the certificate of title could not be had because the RFC employee in charge of the keeping thereof is on leave. In May, 1954 one Calayag showed up before the spouses and told the latter that the mortgage constituted on their lot had already expired. It appears that de Jesus asked Calayag to find a money lender who would grant loan on the security of the real property. Calayag approached Joaquin for the purpose. The next day Calayag presented two persons posing as the spouses Madrid who signed the deed of mortgage. Joaquin cannot be an innocent holder in good faith for value within the meaning of Sec. 55 Act 496. When the instrument presented is forged, even if accompanied by the owners duplicate certificate of the title, the registered owner does not thereby lose his title, and neither the assignee in a forged deed acquire any right or title to the property. The innocent purchaser for value protected by law is one who purchases a titled land by virtue of a deed executed by the registered owner himself; not by forged deed as the law expressly states.

In the case of *Rivera v. Tirona*[47] it appears that Diego Rivera was the registered owner of a real property in Pasay City. On December 8, 1944 he sold said property to Tirona with a right to repurchase the same within 6 months. Rivera continued to be in possession of the property within the period agreed upon, Rivera offered to repurchase the property but Tirona refused. Rivera then filed a complaint with the CFI of Manila consigning with said court the repurchase money. Tirona was served with a copy of the complaint and on the same day a notice of *lis pendens* was filed with the office of the Register of Deeds which was entered in the Day Book. Notwithstanding these proceedings, Tirona sold the property to Jose Lapuz who bought it on the strength of the deed of sale executed by Diego in favor of Tirona and upon seeing that the Torrens Title of Rivera was clean and free. Lapuz subsequently sold the same land to his mother Concepcion Kerr in whose name the transfer certificate of title now appears. Whether or not Lapuz and Kerr were purchasers in good faith. They are not since one who buys land from a person who is not the registered owner is not considered a "subsequent purchaser of registered land who takes the certificate of title for value and in good faith and who is protected against any encumbrance except those noted on said certificate." (*Revilla v. Galindez, supra*). In the instant case, Lapuz relied merely on the deed of sale executed by Rivera in favor of defendant Tirona which was not annotated on the Title. These circumstances, not to mention the fact that Rivera was in possession of the land in controversy, should have put Lapuz upon inquiry as to the right of the transferor sell the property. This he did not do. Instead he had Rivera's title cancelled and on the strength of his sworn statement to the effect that his purchase of the property would not in anyway prejudice the rights of third parties, he was able to secure title in his name. These circumstance tend to show that he was not a purchaser in good faith. The same thing may be said of defendant Kerr.

Carlos Inquimboy v. Maria Concepcion Paez.[48] Inquimboy sold a parcel of land for P4,000.00 to Cenon Albea who promised to pay the balance of the purchase price. Albea thereafter sold this disputed land with two other parcels to Pedro Cruz but this deed of sale was refused registration because the land was still in Inquimboy's name. Subsequently however the sale to Albea was

[47] G.R. No. L-12328, Sept. 30, 1960.
[48] G.R. No. L-13953, July 26, 1960.

registered and Inquimboy's title cancelled. On February 23, 1944 Inquimboy filed an action against Albea for the recovery of the land because he failed to pay the balance of the price. Albea was ordered to deliver the land unless he would pay the purchase price. Inquimboy then instituted this action to annul the transfer certificate of title in Pedro Cruz's name on the ground that Cruz was not a purchaser in good faith.

Pedro Cruz was a purchaser in good faith. It is true that one who buys from a person not a registered owner is not a purchaser in good faith, but the circumstances of each case must be considered. The court said that it is usual in these cases that the buyer never dealt with the registered owner directly yet the certificate of title was transfered from the registered owner directly to the buyer, a fact which should have made the buyer investigate the right of the transferor to sell the property. In each case the transferor never became the registered owner of the litigated land. This case is different, for while Albea may not have been the registered owner at the time he executed the deed of sale in favor of Cruz, he nevertheless subsequently acquired valid title in his own name which title was later transferred to Cruz.[49]

a) Duty of an innocent purchaser for value

Manila Surety and Fidelity Co. v. Jose Luna[50] Jose Luna was the registered owner of a parcel of land. He entrusted the title to one Jose Calderon in 1946 in order that he may contact someone who would be willing to extend a loan on the guaranty of the property. The title came into the hands of a person who went to the Surety and Fidelity Co. and representing himself as Jose Luna solicited for a credit accomodating ₱5,000.00 The plaintiff Manila Surety accordingly signed a promissory note as a co-maker in favor of the Philippine National Bank for ₱3,500. As security in favor of the Surety Co., this person executed an indemnity agreement in its favor and delivered the title of the property under a deed of mortgage. This action was brought by Manila Surety to recover the ₱3,500 from Luna. This issue raised was whether Luna was liable under the ruling *Blondeau v. Nano* that as between two innocent persons one of which must suffer the consequence of the breach of trust, the one who make it possible by his act of confidence must suffer the loss. Luna in this case was not held liable. The court distinguished this case from the Blondeau case. It held "the rule in the Blondeau case would not apply here. The facts obtaining in both cases are different. While it is true that Luna entrusted to Calderon his owner's duplicate of title and the latter availing himself of said documents approached the plaintiff company and represented himself to be the person named in the document, the company however limited itself to agreeing to act as a co-signer of a promissory note to the PNB and as a security therefor it merely made the impostor (Calderon) execute an indemnity agreement in its favor. In other words the company did not obtain in its favor a mortgage on the land belonging to Luna (as in the Blondeau case) but contented itself with obtaining merely his personal guarantee. Such being the case the company cannot now shield itself behind the protection of Act 496.

The court in the case of *Revilla v. Galindez*[51] where the sale of the land was not registered held that one of the main features of the Torrens System of registration is that all encumbrances on the land shall be shown, or at least

[49] Art. 1434 N.C.C.: Where a person who is not the owner of a thing allienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

[50] G.R. No. L-14226, Feb. 29, 1960.

[51] *Supra*.

intimated upon the certificate of title and a person dealing with the owner of the registered land is not bound to go behind the certificate and inquire into transactions, the existence of which is not there intimated; but he is only charged with notice of the burdens on the property which are noted on the face of the register or on the certificate of title.

But, while one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land.[52]

C. Involuntary Dealings with Land

1. Sec. 51 Act 496 applies only to registered land

In *Castillo v. Samonte*[53] one Meneses was owner of an unregistered land in Bulacan. Upon her demise she left as compulsory heirs the plaintiff and his brothers and a sister, Gregorio, Amando, Jose and Melencia. On July 13, 1953 Gregorio without giving any notice in writing tc his co-heirs sold for ₱1,000 his undivided interest in the property to defendant who on July 16, 1953 succeeded in registering the deed of sale with the Register of Deeds of Bulacan. In September 1956 plaintiff learned of the sale and offered to redeem the property from defendant but the latter refused. Defendant claims that under Article 1088 of the New Civil Code which provides "should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided he do so within the period of one month from the time they were notified in writing of the sale by the vendor" so that their right to redeem has already prescribed. The defendant admits that the plaintiff has never been notified *in writing* of the sale under Sec. 51 Act 496, which provides "Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting *registered land* which would under existing laws if recorded, filed and entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time such registering, filing or entering." The one-month period has not began to run. The law requires notice by the vendor in writing. Sec. 51 of Act 496 cited by the defendant applies only to registered land, and has no application whatsoever to the instant case, for the reason that the property herein involved is admittedly, unregistered land.

2. Notice of Lis Pendens

The proviso of Sec. 79 Act 496 provides that in case notice of the pendency of the action has been duly registered it shall be sufficient to register the judgment or decree in such action within sixty days after the rendition. In construing this provision the court in the case of *Self v. de Aguilar*[54] held that this section does not say that if judgment is not registered within sixty days, the notice will not be binding. In this case Luis Capule after 1917 acquired a ten-hectare land in Quezon, covered by a transfer certificate of title. On October 21, 1930, Valentin Devilles obtained judgment against Capule, and the latter's right and interest to the property were levied upon which culminated in the sale to Devilles of the land at public auction. Subsequently, Capule presented a case against Devilles (Civil case No. 2614). Capule won

[52] *Ibid.*, Joaquin v. Madrid, *supra*.
[53] G.R. No. L-13146, Jan. 30, 1960.
[54] G.R. No. L-13465, March 29, 1960.

and reacquired the land also on execution sale. Consequently, a new title was issued to Capule, who mortgaged the property to the Manila Trading. A month later, Devilles filed a complaint (Civil case No. 3145) against Capule to annul the sale of the land to the Capules. At the same time Devilles caused a notice of lis pendens to be inscribed in Capule's title. Capule having failed to pay their obligation to the Manila Trading and judgment having been rendered in the latter's favor the property was sold at foreclosure sale to the Company. Capule's title was consequently cancelled and a new one issued to the Company. The notice of lis pendens was annotated in this new title. On April 14, 1934 Devilles won by civil case 3145, the Supreme Court voiding the sale of the property to the Capules and ordering a new title issued in his favor. On July 8, 1936 Devilles sold the property to spouses Aguilar, herein appellees. Thereafter the Quezon Register of Deeds required the Manila Trading to surrender its title for cancellation in accordance with the Supreme Court's decision. On Sept. 15, 1952, Manila Trading sold the property subject to the lis pendens to Julius Reese, and a new title was issued in the latter's name with annotation of the lis pendens. On Dec. 21, 1956, the administrator of the estate of Reese (who had died) presented a petition under Sec. 112 Act 496 for cancellation of the annotation of lis pendens. Defendant Aguilar set up the ownership of Devilles. In dismissing the complaint and the petition to cancel the lis pendens, the Court *Held:* Appellant, as administrator of the Estate of the late Reese, claims that the lis pendens may not adversely affect him because the Supreme Court decision of 1934 was not registered within 60 days after its rendition pursuant to Sec. 79 Act 496. However, this section does not say that if the judgment is not registered within 60 days, the notice will not be binding. Even if it said so, the judgment will not be binding only as against persons other than the parties to the suit. It is still binding on the parties (Capule) and the successors of such party (like Manila Trading and Reese) particularly because the titles of these successors bear the annotation relating to the lis pendens. Even admitting that the annotation in the Register's office concerning the lis pendens had become ineffective by reason of non-presentation to the Register of this court's decision in 1934 there is ample ground to hold that as Reese purchased the property with actual notice of the controversy over the title thereto, he was particularly subject to its outcome.

In the case of Capitol Subdivision v. Montelibano [55] an action was brought against Montelibano and notice of lis pendens was annotated in the titles to all the realties of said defendants including lots 21 and 23 which had previously been sold to Lacson and Lalantakan respectively. Movants Capitol Subdivision seeks to cancel the notice of lis pendens in so far as lots 21 and 28 are concerned. It appears however that the said sales were not recorded. The Supreme Court held that the notice of lis pendens cannot be cancelled. An unrecorded sale of a parcel of registered land is binding upon the parties and their privies but not as to third parties. The lots in controversy remain or continue to be the property of the registered owners.

In the case of *Rivera v. Tirona* [56] the court in touching on the question of lis pendens held that in involuntary registration such as an attachment, levy on execution, *lis pendens* and the like, entry thereof in the Day Book is a sufficient notice to all persons of such adverse claim. It is not necessary that the notice be annotated at the back of the owner's certificate of title.

[55] G.R. Nos. L-13389 & L-13390, Sept. 30, 1960.
[56] *Supra.*

Such annotation is only necessary in voluntary transactions. The notice of course should be annotated on the back of the corresponding original certificate of title but this is an official duty of the register of deeds which may be presumed to have been regularly performed.

3. Registration is a mere ministerial act and its purpose is to give notice to all persons

Jose Seton v. Hon. Jose Rodriguez.[57] It appears here that the original certificate of title which is in the possession of the petitioners was issued in the names of their parents who died intestate leaving as heirs said petitioners Andres and Jacinto Seton. In 1951, Jacinto's son herein respondent Ignacio Seton, filed a complaint for partition of the real estate left by the deceased spouses alleging that he acquired all the rights and interests of his father thereon. He also filed a motion in the original land registration proceedings praying that the petitioners be ordered to deliver the original certificate of title so that the deed of sale executed in his favor by his father, may be annotated thereon. This motion was granted so the petitioners appealed from that motion. The court in resolving the issue held that registration is a mere ministerial act by which a deed, contract, or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the Certificate of title covering the land subject of the deed, contract or instrument. Its purpose is to give notice thereof to all persons[58] and does not declare that the recorded instrument is valid and subsisting interest in the land. This is so because the effect or validity of the instrument can only be determined by an ordinary case before the courts, not before a court acting merely as a registration court which has no jurisdiction over the same.[59] If the purpose of registration is merely to give notice, then questions regarding the effect or invalidity of instruments are expected to be decided after and not before registration. It must follow as a necessary consequence that registration must first be allowed and validity or effect litigated afterwards.[60] In the present case however, all that the respondents demand is the surrender of the title so that the sale in his favor may be annotated thereon. The pendency of the partition proceedings, wherein the validity of the sale is in issue, does not prevent the respondent from requesting that the said sale be registered at the back of the title. Both cases may proceed independently of each other.[61]

The same rule was reiterated in *Agricultural Credit Cooperative Association of Hinigaran v. Estanislao Yusal.*[62] It appears that on July 20, 1952, Rafaela Yulo executed a mortgage in favor of the Agricultural Credit. The mortgagee filed a motion demanding the surrender of the owner's duplicate certificate of title that he may annotate said mortgage at the back of the certificate. Yusal a part owner of the lot opposed the petition on the ground that the granting of the motion would operate to his prejudice as he has not participated in the mortgage cited in the motion. The court decided for the mortgagee holding that the registration of a lease or mortgage or the entry of a memorial of a lease or mortgage on the register is not a declaration by the state that such an instrument is a valid and subsisting interest in the land; it is merely a declaration that the record of the title appears to be bur-

[57] G.R. No. L-14789, Dec. 29, 1960.
[58] Sec. 51, Act 496.
[59] G.R. No. L-13313; Agricultural Credit Coop. v. Yusal, April 28, 1960.
[60] Guibox Seng Pablo v. Reyes et al., 48 O.G. 4365; Register of Deeds of Manila v. Tinoco Vda. de Crul, 53 O.G. 2804.
[61] *Supra.*
[62] G.R. No. L-13313, April 28, 1960.

dened with the lease on mortgage described according to the priority set forth in the certificate. And the mere fact that a lease or mortgage was registered does not stop any party to it from setting up that it now has no force or effect.[63]

The court below in ordering the registration and annotation of the mortgage did not pass on the validity or effect for this can only be determined in an ordinary case before the court which a court acting merely as a registration court did not have the jurisdiction to pass upon the alleged effect or invalidity. The registration is a mere ministerial act by which a deed, contract or instrument is sought to be inscribed in the records of the Register of Deeds and annotated at the back of the certificate of the land subject of the deed, contract or instrument.

4. Adverse Claim

Sec. 110, Act 496 provides that whoever claims any right or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may if no other provision is made in this act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. In the case of *Estrella v. Register of Deeds of Rizal*[64] Morga filed in the office of the Register of Deeds an affidavit of adverse claim claiming ownership of a parcel of land on the ground that the Philippine Realty Corporation sold to a Chinese citizen disqualified to acquire public agricultural land, and that they had been in actual, continuous, public, exclusive, uninterrupted possession of the land for more than 10 years. The court held that the land having been registered under Act 496, no title in derogation to that of the registered owner may be acquired by prescription, and the registration of their adverse claim would serve no useful purpose because it could not validly and legally affect the parcel of land in question.

II. Registration Under Administrative Proceedings

A. Public Agricultural Land

1. Purpose of public sale

Socorro K. Ladrera v. Secretary of Agriculture and Natural Resources and M. Aportadera.[65] A land ten hectares in area was the subject of sales application of Ladrera. At the ensuing public sale Ladrera offered to pay ₱50.00 per hectare whereas Aportadera bid for ₱980.00 per hectare. Ladrera equalled Aportadera's bid under protest. He thereafter addressed to the Director of Lands a petition for the reduction of the price of his original bid. The Director rejected the latter's bid. On appeal the Secretary of Agriculture and Natural Resources ruled that Aportadera's bid being the highest should be accepted and that Ladera may get the land if she equalled Aportadera's bid. The Secretary of Agriculture found that considering the condition of the land, the price offered by Aportadera was not excessive. According to the Court the Secretary was only complying with the purpose of the public bidding and the laws directing sale to the highest bidder; as to the contention that the Public Land Law did not intend to dispose of

[63] Niolack, pp. 134 & 135, quoted in Francisco on Land Registration Act 1950 ed., p. 318.
[64] *Supra.*
[65] G.R. No. L-13385, April 28, 1960.

lands for profit but rather to implement the policy of "land for the landless" the court observed "Land for the underprivileged is provided by the Public Land Law in its title on Homesteads. The poor may thereunder apply for twenty-four hectares gratis. However on the subject of sale, the law has decreed that public land shall be sold to the highest bidder.[66] The Government is not thereby engaged in profit-making, it is merely getting money in exchange for its property which money would be used for the benefit of the people.

2. Authority of the Director of Lands

a) Decision final and conclusive when approved by the Secretary of Agriculture and Natural Resources

In the case of *Ingaran v. Ramelo*,[67] plaintiffs seek a judicial review of the administrative decision above mentioned. Obviously, plaintiff's action must fail. It is well settled that the decision rendered by the Director of Lands when approved by the Secretary of Agriculture and Natural Resources is final and conclusive upon all questions of fact concerning homesteads which fall within his scope and authority, in the absence of a showing that such decision was rendered in consequence of a fraud, imposition or mistake other than error of judgment in estimating the value or effect of evidence.

b) The Director is empowered to cancel application

The director of Lands is empowered by law to cancel an application and a homestead entry, or may refuse the issuance of a patent if, after due hearing, he finds that the applicant has not complied with or has violated the mandatory provisions of the law. This was the ruling laid down by the court in the case of *Guiting v. Director*.[68] It appears that in October, 1934 the Director of Lands approved Guiting's application for a homestead of 24 hectares. In 1948 Guiting submitted final proof and upon investigation it was found that he complied with all the requisites preparatory to the issuance of the patent, so the Bureau of Lands in 1950 issued an order for the issuance of a patent to him. Meanwhile on 1944, Guiting sold 9 hectares to Arevado without the previous approval of the Director of Lands. Arevado occupied and cultivated the land until 1953 when she sold the same to Alfon. Upon the basis of these facts, after investigation, the Director of Lands ordered the applicant Guiting to exclude from his application the 9 hectares which he sold. This order was affirmed by the Secretary of Agriculture and Natural Resources. *Issue:* Did the Director of Lands commit any grave abuse of discretion? *Held:* No; under Sections 14, 16, 20 and 102 of C.A. 141 (Public Land Law) the Director of Lands is empowered to cancel an application and a homestead entry, or refuse the issuance of patent if, after due hearing he finds that the applicant has not complied with the requirements and provisions of the law, or has violated any mandatory provision of the law. In the present case, it appears that contrary to applicant's previous assertion that he has not encumbered or alienated any part of his homestead land, he had sold 9 hectares of his homestead without the Director of Lands' previous approval and that since 1944 he had ceased to be in possession of said 9 hectares.

In the case of *Gamao v. Colamba*,[69] the plaintiffs here alleged that their father at the time of his death, was the owner, possessor and occupant of lots Nos. 1685 and 1690 which were then covered by a free patent application

[66] Sec. 24 and 26, Public Land Act.
[67] *Supra.*
[68] G.R. No. L-12906, Sept. 29, 1960.
[69] G.R. No. L-13348, Sept. 30, 1960.

with the Bureau of Lands, which is still subsisting, that in 1938, defendant Bualan was allowed by their stepmother to build her house on lot 1960; that without their knowledge and consent, Bualan fraudulently filed an application for free patent over the lot; that Bualan sold to Columba said lot 1960; that by virtue of said sale, Columba obtained a free patent over the lot. The court *Held:* that the plaintiffs have as yet acquired no title to the lot in question to entitle them to sue in their own right. They are mere applicants thereto, their application being still pending approval by the Director of Lands. The land titled in the name of Columba is still public land and therefore, subject to the exclusive and executive control and supervision of the Director of Lands. The mere fact that the title had already been issued to defendant Columba does not preclude administrative investigations by the Director who if he finds fraud in obtaining the same may himself or in representation of the government file an appropriate action for cancellation of the patent and title as for reversion of the lands to the public domain, as the case maybe.

In the case of *Rellin v. Cabigas* [70] it appears that plaintiffs are the equitable possessors and owners of a 4-hectare portion of lot No. 188 at Lanao. Said portion was acquired by plaintiff through purchase from the spouses Tayong, who had filed a homestead application over said portion. Plaintiff Bernabe Rellin re-applied for it himself as a homestead without obtaining up to the nresept a patent. Having learned that defendant had filed an application in the Bureau of Lands over the whole lot No. 188 plaintiffs immediately filed formal protest against said applicants with the Director of Lands and with the President without waiting for the result of their protest, plaintiff filed the present complaint against the defendant and Director of Lands praying that the title issued to defendant be cancelled; that the 4-hectare portion be declared public land; and that the defendant be ordered to pay them moral damages and attorney's fees. The Supreme Court quoted the decision of *Gamao v. Columba, supra.*

3. Vested Right; when acquired

An applicant may be said to have acquired a vested right over the homestead only when his application has been perfected by the presentation of the final proof and its approval by the Director of Lands. When a homesteader has compiled with all the terms and conditions which entitles him to a patent for a particular tract of public land, he acquires vested interest therein, and is to be regarded as the equitable owner thereof. The execution and delivery of the patent after the right to a particular parcel of land has become complete, are the mere ministerial acts of the officer charged with that duty. Even without a patent, a perfected homestead application is a property right in the full sense, unaffected by the fact that the paramount title to the land is still in the government. Such land maybe conveyed or inherited. No subsequent law can deprive him of that vested right.[71] This was the ruling followed in this case of *Ingaran v. Ramelo.*[72] The plaintiff in this case could not be said to have acquired a vested right over the land in question because they merely alleged in their complaint then an "intention to make final proof was submitted to the proper authorities." No such final proof appears to have actually been presented.

Ombe (Bagobo) v. Vicente Diga.[73] In this case Ombe, a member of the Bagobo tribe since 1928 had occupied and cultivated and claimed the parcels

[70] G.R. No. L-15926, Oct. 3, 1960 .
[71] Balboa v. Sarrales, 51 Phil. 498; Republic v. Diamond, Oct. 31, 1955.
[72] *Supra.*
[73] G.R. No. L-15743, July 26, 1960.

of land in question, openly, publicly and continuously. She filed even before 1941 a free patent application, the records of which had been lost during the war but which she renewed after the war, the same being given due course.

In 1947, defendant Diga married plaintiff in accordance with Bagobo rites. The free patent over the land in question was issued to Ombe on August 2, 1951 and the certificate of title on October 1, 1951 which read that Ombe was "married to Vicente Diga". Ombe subsequently filed a petition for cancellation of the words "married to V. Diga" but the lower court held that they were married and therefore co-owners of the land applying articles 144 and 485 of the new civil code.

On appeal the Supreme Court in overruling the lower court's decision held that Ombe acquired a perfect or complete title to the lands when she complied with all the conditions and prerequisites to obtaining a free patent title, namely her occupation, possession and cultivation under claim of ownership, publicly, openly and continuously since 1928 and lastly by filing an application for a free patent title to the land prior to 1941. All these conditions she had complied with long before her marriage to the defendant on September 27, 1947 which according to the court was null and void because the parties did not comply with the Marriage Law. The issuance to her of a free patent and of the certificate of title served merely as a confirmation of her ownership of the land.

4. Five-year prohibitory period

As to holders of homesteads and Free patents: Except in favor of the Government or any of its branches, units, or institutions, lands acquired under homestead or free patent provision of the Public Land Law are not subject to alienation or encumbrance from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor are they liable to the satisfaction of any debt contracted prior to the expiration of said period but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporation. The said five years should be counted from the date of the patent and not from that of the certificate of title.[74] This rule was applied in the case of *Campanero v. Coloma*.[75] Filomeno Campanero here was a registered owner of a parcel of land as shown by Free Patent No. 10746 issued on Sept. 2, 1925, and registered in the Office of the Register of Deeds of Nueva Vizcaya on Jan. 26, 1926. On Aug. 12, 1927 (one year, 11 months, 10 days) Campanero conveyed in a definite sale to Ismael Asuncion the said lands and the latter caused the cancellation of the original title. On March 4, 1932 Asuncion sold to defendants said land by virtue of which another transfer certificate of tite was issued in defendants' favor. The Supreme Court held the sale to be invalid. Said the Supreme Court: "The rule that the purchaser of a parcel of land registered under Act 496 need not make inquiries as to the legitimacy and legality of the title of the registered owner but may rely on the title of such owner as it appears in the certificate of title, though sound, cannot defeat the express policy of the state in prohibiting the alienation or encumbrance of lands of the public domain required under the provisions of the Public Land Act within 5 years from and after the date of the issuance of the patent. The lofty aim, purpose and wisdom of the prohibition cannot be gainsaid. Landless citizens acquiring land of the public domain would soon

[74] Ventura Land Titles and Deeds, p. 252 (1955 ed.) citing Sabas v. Gama, 66 Phil. 471; Register v. Director of Lands, 72 Phil. 313; Villanueva v. Paras, 69 Phil. 384.
[75] G.R. No. L-12761. Jan. 30, 1960.

revert to their former condition if not for the prohibition." The defendants and their predecessors in interest cannot be deemed to be innocent purchasers of the land because in the original certificate of title issued by the Register of Deeds to Campanero the following appears "Surveyed under autho. of Sec. 41 to 43 Act 2874" and "subject to the prop. of Sec. 116, 119, 120 and 122 of Act 2874 of the Philippine Legislature which provide that the land thereby acquired shall be inalienable and shall not be subject to encumbrance for a period of 5 years from date of their patent," and in the transfer certificate issued to Coloma and Asuncion the same thing appears.

5. Acquisition under 48-B CA 141

Republic Act No. 1942 which took effect on June 22, 1957 (amending sec. 48-B CA 141) provides that "Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership for at least 30 years immediately preceding the filing of the application for confirmation of title . . . shall be conclusively presumed to have performed all the conditions inherent to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

In the case of *Susi v. Razon et al., 48 Phil. 424*, it was observed that where all the necessary requirements for a grant by the government are complied with thru actual physical possession, openly, continuously and publicly with a right to a certificate of title to said land under the provisions of chapter VIII of Act 2874, amended Act 926 (carried over on chapter VIII of CA 141) the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the government, for it is not necessary that a certificate of title be issued in order that the said grant may be sanctioned by the courts—an application therefore being sufficient under the provisions of sec. 47 of act 2874 (reproduced as sec. 50 C.A. 141).

In the case of *Mesina v. Pineda*,[76] the plaintiff claims that he is the owner in fee simple of a lot with the improvements thereon, situatel in Nueva Ecija, and that he has been in actual possession thereof since 1914 publicly, openly, peacefully, and up to the present time he is the only one who benefits from the produce thereof. He further claims that said lot is at present the subject of a registration proceeding, that sometime in 1953, the Director of Lands issued a homestead patent in favor of defendant as a consequence of which a certificate of title was issued in their names, and that since said title was procured thru fraud, deception and misrepresentation, plaintiff prays that said title be cancelled. *Issue:* Whether or not the lot in question is the private property of the plaintiff. The court held that the lot is the private property of the plaintiff because of sec. 48-B C.A. 141. The situation of the plaintiff here is the same as the plaintiff in the *Susi* case. If by legal fiction as stated in the *Susi* case, plaintiff is deemed to have acquired the lot by a grant of the state, it follows that the same had ceased to be part of the public domain and had become private property and therefore is beyond the control of the Director of Lands. Consequently, the homestead patent and the original certificate of title covering said lot issued by the Director of Lands in favor of defendants can be said to be null and void for having been issued thru fraud, deceit and misrepresentation. The theory that a decree of registration can no longer be impugned on the ground of fraud one year after the issuance and entry of

[76] G.R. No. L-14722, May 25, 1960

the decree does not apply here because the property involved is allegedly private in nature and has ceased to be part of the public domain.

6. Right of repurchase under sec. 119 C.A. 141.

Sec. 119 of the Public Land Act provides that the right to repurchase shall be exercised "within a period of 5 years from the date of the conveyance." In the case of *Motor v. Soler* [77] the court held that the period must be counted from the date when Soler filed a motion for the issuance of, or when the court issued the writ of execution ordering Motor to execute the required deed of sale. It appears in this case that on October 5, 1943, appellant Motor executed a written promise to sell to appellee Soler 2 parcels of land in Camarines Sur, receiving a partial payment of ₱300.00. In spite of the fact that Soler was willing to pay the balance due, appellant kept on putting off the execution of the deed of sale until finally, he offered to return the partial payment and notified Soler that he was not selling the land any more. As a result on April 19, 1944, Soler commenced civil case No. 225 for specific performance consigning the balance of the purchase price in court. On Sept. 4, 1944, judgment was rendered declaring the promise to sell inoperative as to one of the two parcels of land, but as the other, Motor was ordered to execute a deed of absolute sale in favor of Soler. On April 14, 1955 Motor executed the deed of sale, with a provision to the effect that the land may be repurchased by the vendor within 5 years from the execution of the sale. The sale was disapproved by the Court and Motor was required once more to execute a deed of absolute sale within 10 days from notice. The latter then filed a petition for certiorari with the Court of Appeals but the same was dismissed upon the ground that appeal and not certiorari was the proper emedy. Because Motor refused to execute the deed of sale, the provincial sheriff, upon authority of the court, executed the same on August 11, 1955. Subsequently Soler sold the property to his son Jaime Soler. Before the lapse of 5 years from the issuance of the writ of execution but scarcely 2 months after the execution of the deed of sale by the sheriff Motor commence the present action to compel Soler and his son to allow him to repurchase the land pursuant to sec. 119 of the Public Land Act. *Issue:* Whether the right of Motor to repurchase the property had been barred by the decision in civil case 225. *Held:* Not yet; The lower court held that the period must be counted from the date when Soler filed a motion for the issuance of or when the court issued the writ of execution ordering Motor to execute the required deed of sale. It is not disputed that the writ was issued on Dec. 20, 1950. While a strict construction of the aforesaid provision leads to the conclusion that the period of 5 years therein provided started only upon the execution of the deed of conveyance by the provincial sheriff on Aug. 11, 1955, rather than on the date when the writ of execution referred to was issued, it is manifest that in either case the present action commenced on Oct. 13, 1955 was filed within the 5-year period.

7. Sec. 90 C.A. 141 applied only to lands of public domain.

Sec. 1 of R.A. No. 1273 amending Sec. 90 C.A. 141 provides that "application under the provisions of this act shall set forth that the applicant shall agree to reserve 40 meters wide starting from the bank on each side of any river or stream that may be found on the land applied for, for the protection of the banks, or as a permanent timberland, as a condition to the granting of his application; and that the condition is enforceable even after the patent (sale, homestead and free) shall have been issued to him or a contract of

[77] G.R. No. L-11329, Sept. 30, 1960.

lease shall have been executed in his favor." All these conditions can refer only to applicants for a portion of a public domain as held in the case of *Heirs of Justo Malfore v. Director of Forestry.*[78]

It appears in this case that in Cadastral Case No. 86, the Director of Forestry filed a motion to reserve a strip of land in lot No. 51316 claimed by appellees, as a permanent timberland pursuant to sec. 90 of C.A. 141 as amended by R.A. 1273. Appellees filed an opposition to the said motion claiming that the land in question is not public land but the private property of the claimants. *Issue:* Whether sec. 90 of C.A. 141 as amended is applicable only to lands of public domain. *Held:* All the conditions referred to in the section can refer only to applicants for a portion of a public domain. Whatever rights or title the applicant acquires, he obtains it from the government which is entitled to impose any condition. In this case at bar there is no application under the Public Land Law, but a claim of private ownership under the Cadastral Act. The court merely confirms appellees' title to the land as against the whole world including the government. In support of his argument that the provision above cited is applicable to private lands, appellant cited sec. 39 of the Land Registration Act as imposing a similar incumbrance on lands of private ownership registered under the Torrens System. In dismissing this contention the court said that it is to be observed that the only servitude which a private property owner is required to recognize in favor of the Government under said sec. 39 is the easement of a "public highway, way, private way established by law, or in any government canal or lateral thereof," where the certificate of title does not state that the boundaries thereof have been determined. But even in these cases it is necessary that the easement should have been previously "established by law," which implies that the same should have been pre-existing at the time of the registration of the land in order that the registered owner may be compelled to respect it. Where the easement is not pre-existing and is sought to be imposed after the land has been registered under the Land Registration Act, proper expropriation proceedings should be had.

8. Forfeiture of Improvements under Act 1654

Ham v. Bachrach Motor.[79] On Feb. 26, 1919 a contract of lease was entered into by and between the Government and Helen Caswell leasing to the latter a parcel of public land at Manila Port Area. On May 16, 1935 the defendant Bachrach Motor acquired the rights and interests of said Helen Caswell over the lease. On Feb. 4, 1946, the defendant company entered into a contract of lease with the plaintiff over a portion of the land at the stipulated rental of ₱500 a month for the period from Feb. 1946 to Oct. 1949. Plaintiff had paid the rental up to Oct. 1949. On Sept. 15, 1947, the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources issued an order cancelling the lease contract and forfeiting the improvement of the defendant thereon in favor of the Government, a copy of which order was received by the defendant on March 16, 1948. Defendant's petition for reconsideration and reinvestigation of the case having been denied it appealed to the President. Plaintiff in his complaint seeks to recover the rents he had paid to the defendant from April 1948 to Oct. 1949, allegedly not due because of the cancellation and forfeiture of the lease and the improvement by the Director of Lands. Trial court held that since the decision of the Director cancelling the lease had been appealed to the President and the latter has not

[78] G.R. No. L-13636, Sept. 30, 1960.
[79] G.R. No. L-13677, Oct. 31, 1960.

yet acted on the matter, the present action was premature and so dismissed the complaint. *Issue:* Whether the trial court erred in dismissing the complaint. *Held:* Parcel of land in question, a reclaimed land, is of public domain. Its lease and incidence arising therefrom are governed by the provision of Act No. 1654 and the Public Land Act. Sec. 2(d) Act 1654 partly provides that in case of failure to comply with any or all of the terms of said lease the same shall be forfeited in favor of the Government provided however that the President may in his discretion waive the forfeiture. It would appear therefore that the forfeiture of the improvements declared by the Director is subject to review by the President. Moreover, by virtue of the President's power of control over all executive departments which means that the power to alter or molify or nullify or set aside what a subordinate had done, the President may reverse, affirm, or modify the decision of the Director.

B. Dispositions Under Other Special Law

1. Preferences under C.A. 539

The order of preference as provided by C.A. 539 is first; to the *bona fide* tenants, second, to the occupants; and third, to private individuals. In construing this provision, the Supreme Court held in the case of *Gutierrez v. Santos* [80] that this order is to be observed only if the parties stand on equal footing or under equal circumstances. The intent of the law in this case was declared paramount. The facts of the case are: Lot in question was part of the Tambobong estate which was bought by the Government for resale pursuant to C.A. 539. Before said sale the leasehold right of the lot was purchased by the plaintiff from its original lessee. Defendants Santos and Lachica subleased from plaintiff portions of the lot and constructed thereon their houses wherein they lived with their family. Sometime in 1952 plaintiff applied with the Director of Lands for the purchase of the lot of which he is the registered lessee which was opposed by Santos and Lachica, who in turn claimed to have priority to buy the portions occupied by them. Deciding the conflict, the Director gave the right of preference to defendants Santos and Lachica. The issue was whether the right to purchase the lot should be awarded to plaintiff lessee. Under the order of preferences above mentioned, the lot should have been awarded to the plaintiff who is the registered lessee. The court in deciding otherwise said: "But the order of preferences should be observed if the parties affected stand on an equal footing or under equal circumstances for only in that way can the provision of the law be implemented with equity, justice and fairness to all and in keeping with the spirit of giving land to the landless so that he may have a land of his own. The order need not be rigidly followed when a party, say a *bona fide* tenant has already in his possession other lots more than what he needs for his family as in the present case for certainly to give him preference would work injustice to the occupants, who had been living on these small lots since 1933."

2. Friar Land Act (Act 1120)

In the case of *Bacalzo v. Pacada* [81] the court held that in the sale of friar lands under Act 1120 the purchaser even before the payment of the full price and before the execution of the final deed of conveyance, is considered by law as the actual owner of the lot purchased under obligation to pay in full the purchase price, the role of the Government being that of a mere lien holder or mortgagee. It appears in this case that on March 9, 1917 Carmiano Bacalzo

[80] G.R. No. L-14432, March 30, 1960.
[81] G.R. No. L-14433, March 30, 1960.

then married to Carmelina Padillo petitioner's mother entered into a contract with the Director of Lands for the purchase of lot No. 1790 originally forming part of the Friar Lands payable in installments. Carmiano died on Nov. 5, 1948. Carmiano made payment during his union with Carmelina and the respondents although the main bulk of such payment was made during his union with the latter. The lot was fully paid for on June 17, 1947 although a payment for shortage of interest was also made on Aug. 12, 1948 by the deceased. On Nov. 11, 1953, Transfer Certificate of Title No. 2898 for lot no. 1790 was issued in the name of "the legal heirs of Carmiano Bacalzo represented by Martina Pacada." On February 24, 1954 petitioner filed in the CFI of Cebu a special action for declaratory relief for a determination of their rights to the lot in question as against Martina Pacada, surviving widow of their deceased father. Treating the case as one for positive relief the trial court, after hearing rendered a decision declaring respondent to be the legal and absolute owner of the lot and ordering the Register of Deeds to cancel the title previously issued and in lieu thereof a new one issued in the name of respondent. The decision was predicated on the theory that the deceased Carmiano Bacalzo prior to and until his death was a mere holder of a certificate which is only an agreement to sell and that the purchase price of the lot was not fully paid until March 4, 1953; when respondent Pacada paid the amount of P.45 for the additional five sq.m. discovered upon resurvey of the lot. According to the court respondent under sec. 16 of the Friar Land Act succeeded in the right of her deceased husband. *Issue:* Whether Bacalzo became the actual owner of the lot in question upon full payment during his lifetime of the purchase price thereof. *Held:* It is not disputed that the original price for the lot was fully paid on June 17, 1947 with a payment of shortage of interest on Aug. 12, 1948 of before the death of Bacalzo. All the requirements of the law have been complied with on Aug. 12, 1948 the government on that date was legally bound to issue to Bacalzo the proper instrument of conveyance. The fact that the government failed to do so cannot preclude the now deceased purchaser from acquiring during his lifetime ownership over the lot. It is not the issuance of the deed of conveyance that vests ownership in the purchaser under the Friar Lands Act.

In the case of *Villoria v. Secretary of Agriculture and Natural Resources* [82] the Supreme Court helr that the Director of Lands has no power to unilaterally cancel the sale certificate or contract for failure to pay subsequent installments. Sec. 17 of Act 1120 (Friar Land Act) merely authorizes said Director of Lands to bring suit to recover the same with interest thereon and also to enforce a lien of the Government against the land by selling the same in the manner provided by Act 190 for the foreclosure by mortgagee.[83]

3. Expropriation of lands under R.A. 1400 (Land Tenure Act)

Hacienda Sapay Palay Tenant's League v. Yatco and Philippine Suburban Development Co.[84] The Philippine Suburban as vendor filed an action to compel the Board of Directors of the People's Homesite and Housing Corporation as vendee to execute the deed of purchase on Hacienda Sapay Palay in accordance with a perfected contract between them. The petitioner tenant's league sought to intervene in the case alleging that it had an interest in ths success of the PHHC officials in resisting the execution of the deed of sale for the reason

[82] G.R. No. L-14611, Nov. 29, 1960.
[83] Director of Lands v. Rizal, Dec. 20, 1960.
[84] G.R. No. L-14651, Feb. 29, 1960.

that the sale would cause the tenants dispossesion of their land holdings and that as they had petitioned the Land Tenure Administration to purchase land for resale to them, they as tenants have acquired a legal right in the property under R.A. 1400. They cite sec. 20 of said law which prohibits the landowner except in pursuance to the provision of Secs. 12 and 16 of the same, from disposing the land. In dismissing the intervenor's motion the court said that the mere filing with the Land Tenure Administration of a petition urging the acquisition of the land is not enough to bind the owner and effect the right of dominion including jus disponendi. It is necessary and essential as provided in Sec. 12 and 16 to take positive steps as specifically directed in said Sections before the superior right of the state to eminent domain may be exercised and become effective in favor of the tenants and against the owner. The only steps complied with by the tenants in this case was the filing of the petiiton with the Land Tenure Administration.

C. Effect of Homestead Patent registered in accordance with sec. 122 Act 496

Samonte v. Descallar.[85] In this case the plaintiff brought an action to recover possession of the three parcels of land in question. The defendants allege that the titles issued to the plaintiff by the Bureau of Lands are null and void because they were obtained by fraud and misrepresentation. It appears, however, that the plaintiff in 1944 applied for a homestead patent and in 1950 the original certificate of title was issued to him. The Court ruled that a homestead patent issued according to the Public Land Act which is registered in accordance with Sec. 112 of the Public Land Act is irrevocable and enjoys the same privilege as a Torrens Title issued under Act 496.[86] This decree could neither be collaterally attacked by any person claiming title or interest in the land prior to the registration proceeding.[87] Furthermore this action is barred for not being brought within one year from the decree of registration.[88]

D. Remedy in case of Public lands acquired by fraud

Director of Lands v. Eustaquio de Luna[89]. Here, E. de Luna filed with the Director of Lands an application for a free patent over a parcel of land. He claimed that he had been in possession and cultivation thereof since 1943. Relying on the respondents allegation's the Director approved the application. The free patent was issued, followed by the certificate of title which was issued in accordance with Sec. 122 of Act 496. Subsequently, however, on the complaint of one Igmedio Gaa, the Director upon investigation found that de Luna had never been in possession of the land but on the contrary it had been in the actual possession and cultivation of Gaa. The Director thereupon filed a petition in court, to have the patent and title issued cancelled. The issue therefore is whether or not the Director of Lands has the authority to file the petition. The Supreme Court in sustaining the dismissal of the petition said that once the patent is registered and the corresponding certificate of title is issued, the land ceases to be part of the public domain and becomes private property over which the Director of Lands has neither control nor jurisdiction.[90] And a

[85] G.R. No. L-12964, Feb. 29, 1960.
[86] El Hogar v. Olviga, *supra*.
[87] Sorsogon v. Macalintal, 45 O.G. 3819.
[88] Sec. 38, Act 496
[89] G.R. No. L-14641, Nov. 23, 1960.
[90] Sumail v. Judge of CFI of Cotabato, April 30, 1955; Republic v. Heirs of Ciriano Conde, July 31, 1959.

public land patent when registered is a veritable Torrens Title.[91] It becomes as indefeasible as a Torrens Title [92] upon the expiration of one year from the date of the issuance thereof.[93] As such it can no longer be cancelled or annulled. The Director in this case brought the petition two years after the issuance of the free patent and more than one year after the expiration of the period provided in Sec. 38 of Act 496.

The Court, however, explained that Sec. 101 of the Public Land Law provides for a remedy whereby lands of the public domain fraudulently awarded to the applicant may be recovered back by its original owner, the Government. That section provides that all actions for the reversion of lands of the public domain shall be instituted by the Solicitor General in the name of the Republic of the Philippines. But Sec. 91 of the same law would be applicable where the patent or title is sought to be cancelled or annulled for having been procured through fraud, prior to the expiration of the one year period provided in Sec. 38 and not where as in the case the said period of one year had already elapsed.

E. Reconstruction of lost or destroyed title under RA 26

Philippine National Bank v. de la Viña.[94] Lots Nos. 3007, 3109, and 3121 of the Cadastral Survey of San Carlos, Negros Occidental, were originally registered in the names of the late Jose dela Viña and his wife Maria Española. It appears that Carlos Esteban, as judicial administrator of the estate of the deceased and as attorney-in-fact of Maria Española was upon proper authority from the court, granted a loan by the petition, giving as security therefor lot 3109 which lien was registered and annotated at the back of the corresponding original certificate of title. Two weeks later, on August 6, 1940 Maria Española and Carlos Esteban jointly executed a real estate mortgage in lots 3107 and 3121 in favor of petitioner which was approved by the probate court registered and annotated at the back of the original certificate. As the original certificate of title covering the aforementioned lots were either lost or destroyed during the war, a petition for reconstitution of said title was filed in court and as a consequence the original certificate of titles were cancelled. The new titles issued did not mention the subsisting mortgage, liens in favor of petitioner. On Aug. 11, 1953 Emeliano de la Viña and Maria Española sold the lots to Juan Uriarte Zamacona. The reconstituted titles were cancelled and new ones issued in the name of the buyer. Claiming that its duplicates of the original title considered lost have been found and relying on Sec. 18 RA 26 petitioner bank now prays that an order be issued directing the Register of Deeds to enter the liens in favor of the bank and to annotate the same on the new transfer certificate of title issuel to Zamacona. Oppositors moved for dismissal. *Issue:* Whether appellants petition for reconstitution was correctly denied. *Held:* The trial court correctly denied the petition. Prior to the institution of these proceedings there had already been a judicial reconstitution of the original certificate of titles upon petition of the registered owner. Unlike in the extra-judicial reconstitution of titles wherein there is the statutory reservation that the new title shall be without prejudice to any party whose rights or interests in the property was duly noted in the original at the time

[91] Dagdag v. Nepomuceno, Feb. 27, 1959.
[92] Ramoso v Obligado, 70 Phil. 86.
[93] Lucas v. Durian, Sept. 23, 1957.
[94] G.R. No. L-14606, Aug. 31, 1960.

it was lost or destroyed (Sec. 7 RA 26), a judicially reconstituted title by express provision of the statute (Sec. 10) shall not be subject to the encumbrance referred to in Sec. 7 of the Act.

On the other hand Sec. 18 of RA 26 which provides that in case a certificate of title considered lost or destroyed be found or recovered, the same shall prevail over the reconstituted certificate of title, does not refer to the mere mortgagee's duplicate certificate of title.[95]

[95] *Sy Juco* v. Philippine National Bank, 47 O.G. Sup. No. 12, p. 1-8.