

Progress in the Homesteading of Public Land

Validity of Patents: Question Before Supreme Court

Homesteading of the United States public domain in the various provinces of the Philippines goes on at a pace little realized. Rapid Settlement in Manila unless the records are checked up. Mindoro, with more than 10,000 applicants, has become a mecca for homesteaders from Batangas and the Ilocos provinces. The public lands of northern Mindanao, particularly of Misamis, are being occupied by Visayan immigrant families who plant coconuts and abaca. The movement has broadened since last year. In August this year the number of homestead applications received by the bureau of lands was 1755, and last year during the same month only 316, an increase of nearly 500 per cent for the month, and the areas claimed are 28,375.77 and 5057.20 hectares respectively, again an increase of more than 500 per cent.

In the same month 245 applications for free patents were received, and in August last year only 120. About these free patents there will be more to say hereafter. The outstanding impulse to acquire public land is visible in the record of applications of all classes, 2307 in August this year as compared with 499 in August last year, a proportion of nearly six to one. This high figure doesn't hold true for the period from January 1 to August 31 inclusive. Nevertheless, an increase is noted; for this year during the first eight months the applications of all classes for public domain were 9469 covering 204,453 hectares, and last year during the same period they numbered 8384 covering 107,210 hectares. In actual land entailed the increase was approximately double.

A forthcoming article in the *Journal* on customary laws of the Ilocanos will possibly throw considerable light on that people's participation in this homesteading movement. The change in the homestead law permitting the taking up of many different parcels by a single applicant may be a stimulus to legitimate homesteading, but may be something else besides—

The Dotted Swiss Homestead something to season a large potential plantation area by peppering it with petty homestead claims, and thus cook the proverbial goose of some companies organized for plantation enterprises.

No Federal officer looks after the United States public domain in the Philippines: administration is wholly left to the devices of the local government, which may not be entirely wise, but certainly is most generous confidence for Washington to repose in a distant and wayward territory. The net increase in applications for public land during the first eight months of this year compared to the same period of last year was 1085, as 2286 applications seem for one reason or another to have been rejected or cancelled. These rejected and cancelled applications covered 4872 hectares, leaving 97,242 as the net increase in hectareage covered by applications accepted.

A table courteously furnished by the bureau of lands enables a check to be made upon the partial and complete alienation of public domain in the Philippines from the date of organization of the bureau, July 26, 1904, to August 31 this year. During this period, applications of all classes numbered 178,387 and covered 2,984,247.5 hectares. But no less than 40,427 applications, covering 1,076,225 hectares were rejected, and 7265 covering 109,808

hectares were cancelled. The norm seems to be rejection or cancellation of one application in five. There are 77,446 applications pending action.

These 77,446 applications, of which 49,463 are homestead applications, and 19,901 are applications for free patents, cover an area of 1,282,802 hectares; and 100,000 **Anxiety of Homesteaders** hectares, it may be presumed, remain in anxiety about their claims, leases and purchases. During the 23 years the bureau has functioned, it has approved 32,165 applications for parcels of the public domain covering 474,565 hectares, about one hectare in six of the area actually applied for. Among rejected and cancelled applications were 33,928 for homesteads and 7618 for free patents upon homesteads proved up—for which, under ordinary circumstances of security, patents should have automatically issued from the government, which is seen to be frequently unable to keep faith with the pioneers.

The bureau and its pioneer patrons constantly deplore the use of the uncompleted cadastral survey. The borders are so turbulent with disputes over possession or ownership of lands; the only wonder is that they are not more turbulent and the quarrels more sanguinary.

Reverting to the question of free patents, a case now pending in the supreme court is up from Nueva Ecija and involves three lots in Cadastral record No. 270, Case No. 10. The land involved was adjudged to be public land. In 1916 patents were issued to three settlers; their interests have now passed to a third party; their patents, issued in 1916, presumably ripened into the equivalent of a Torrens title a year later, or in 1917, during which they appear to have remained in possession of the land, where they planted and harvested crops and made sundry improvements, without anyone's contesting their possession or the patents granted by the government. But last year a neighbor did file contest, on the ground that she had an old Spanish possessory title. This was ten years after the patents had been issued and nine years after they had been accepted as unassailable. The contestant won, too; the court of first instance in its decision in Nueva Ecija pronounced the patents void, so

Patents Annulled the case reaches the supreme court upon appeal.

The director of lands, requesting the attorney general to appear in the case as *amicus curiae*, thinks this:

"If within the period of one year after the patent is registered in the office of the register of deeds the adverse claimant does not seek to contest on the ground of fraud the right of the patentee, then he is forever barred from questioning the rights of the said patentee, as the title issued by virtue of the patent duly registered shall then have acquired all the characteristics that determine the finality and indefeasibility of a Torrens title."

He subscribes to a decision of the high court (De los Reyes vs. Razon, 59 Phil. Rep. 480) "that if the land to which the patent relates was not in fact public, but was the property of a third person, the rights of that person have not been divested or affected by the issuance of the title... provided that the one year period... has not yet elapsed," but he dissents "if the said period has already expired," and he thinks this rule applies even if the declaration of the land to be public land has been

by administrative decision of the executive branch of the government—upon which point he reasons thus:

"It is granted that no government official, no matter how high his political position may be, has the authority to divest valid outstanding private title by holding in an administrative decision that the land embraced within the homestead application is public, but once title is issued after due consideration of the rights involved in the case, even if administrative, the title shall be incontestable if the aggrieved party by her own laches allows to elapse the period of one year fixed in the statute without asserting his rights in the proper courts of justice. This must be so, otherwise the primordial purpose of the Torrens system, namely to quiet title to land forever, would be set at naught and merely illusory."

The director believes reasonable vigilance required from holders of private titles to land. This and the question as a whole are before the high court for decision. It is evident that

The Title Assurance Fund case is most important may the court be, in construing the homestead and registration acts, without gravely infringing upon the rights of private property? The lamentable situation due to incompleteness of the cadastral survey of the archipelago is at once apparent when one confronts this question. May the court sustain the director's opinion, and leave the holder of private title (if it can be established beyond doubt) the right to indemnity from the assurance fund in the insular treasury?

The balance in this assurance fund August 31 was P237,721.99, and in all the history of the operation of the Land Registration Act, only one claim had been allowed by the court and paid by the treasurer. However, another claim has now been allowed by the court, in a decision written by Associate Justice James A. Ostrand and not yet published in the *Official Gazette*.

Ostrand quotes Section 101 of the Land Registration Act in full, from which the following is taken:

"Any person who is wrongfully deprived of any land or of an interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as the owner of such land, who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein or claim upon the same, may bring in any court of competent jurisdiction an action against the Treasurer of the Philippine Archipelago for the recovery of damages to be paid out of the assurance fund."

The assurance fund is created by Section 99 of the Land Registration Act: "one tenth of one per centum of the assessed value of the real estate on the basis of the last assessment for municipal taxation" payable at the time of registration of the land. In the case just decided by the high court, application had been made to have private land registered in the name of a woman and her minor daughter, and the certificate of title was erroneously issued in the name of the woman alone, who afterward alienated the land through mortgage to a man. After coming of age the girl sued the various parties liable, including the insular treasurer. The lower court absolved the treasurer (and another party) from the complaint and allowed judgment against the mother and the girl's stepfather. The high court reversed this decision in so far as it absolved the treasurer: whatever the amount of the damages, P25,000 (Continued on page 11)

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with interest, cannot be collected from the stepfather and the mother's estate, must, upon determination of this fact to the satisfaction of the court of first instance of the province, be paid by the treasurer from the assurance fund upon the court's order.

The point may not have direct bearing upon the Nueva Ecija case, and yet it may; for, the high court tampers in no way with the certificate of title issued, which, if the year of grace has elapsed, is the point the Director of Lands fixes in respect to title by homestead patent. The case is R. G. No. 24597. The court sat in banc.

ged, alert, ambitious patriotic, obstinate, parochial, who always goes down with his colours nailed to the mast, but who always goes down.

"He may have in him the raw stuff of greatness. His compatriots are sympathetically expectant, if not excessively optimistic. Borah is a considerable figure, but scarcely United States, and I should venture to counsel Britons and other distant observers not to magnify him, even when he knows just what he is driving at, as he does not seem to have known in his recent initiative relative to certain supposed claims of America against Britain arising out of the war.

"From old British friends I have had many letters revealing painful emotions due to Borah. These letters are not surprising, but really nothing has happened to show that Borah is unfriendly to Britain, and if he were he would have small promise of getting far with his animosity."

"He is Chairman of the Foreign Relations Committee of the Senate?"

"Yes, by seniority."

"He is much in the news."

"Decidedly. But neither power nor wisdom is invariably conspicuous in the news."

"He is out for the Presidency?"

"I believe so. Most Americans are. But Borah as President, to entertain a more or less remote possibility, doubtless would be a very different man from Borah as vote-hunting politician."

"In one of my recent letters from England occurs this question: 'What is wrong with England from the American point of view to-day?' I would reply, having regard to the sense of the writer, 'Nothing'."

"England perishes over the length and breadth of the land and off the platform convinces me that the American people never before admired and loved England as they admire and love her to-day. To speak on any representative American platform since the General Strike of that magnificent fight that magnificent people for sanity in Government has been to bring the audience cheering to its feet."

"Some of us have grown grey fighting for British-American solidarity—and we have not fought in vain. Great Britain has her enemies in the United States, and she doubtless long will have them, for nationalistic resentments die hard, but the great body of American citizens is for the British peoples and their institutions up to the hilt. We want British-American solidarity in the Atlantic and in the Pacific and we want this solidarity to mean friendship and a square deal to every other people."

"There is one thing in the world greater than British-American solidarity, and just one, what the late Viscount Kato, of Japan, described in a talk with myself as a single human solidarity. We want no so-called Nordic bloc nor a Latin bloc, nor opposing and potentially warlike blocs of colour. We want justice for all humanity, and the settled peace which can come only through such justice."

"That the Americans are against entanglements which entangle, there is no shadow of doubt. They are against any form of super-State. They are against all but inevitable encroachment upon the rights of the American States by their own Federal Government. What does this mean? It means that the American people intend to preserve their Home Rule, to preserve it not only against international centralisation, but just as far as practicable against domestic centralisation."

"International co-operation, so far as America is to have a part in it, must hold

Edward Price Bell Unbosoms To England

Dean of London Correspondents Talks of Pacific Problems

Editor's Note.—Ordinarily, as all readers have observed, the Journal publishes nothing but original matter; and when it digresses from this rule there is a paramount reason, for its chief object is to print informatively and intelligently respecting the Philippines. In this instance, the reprinting from the London Observer of that paper's interview with Mr. Edward Price Bell, London man for more than twenty years of the Chicago Daily News, the paramount reason is obvious in the text: Mr. Bell has returned to London after his trip to Manila and other points in the Far East with ideas upon oriental and world problems bound to have the utmost weight when he expresses them, as he does fearlessly and frequently. His oriental trip was in behalf of world peace; and in Manila his interviews were with Wood, Quezon and Osmeña, in Japan with Kato, Shidehara and Baneroff. The same problem still engrosses his attention. He writes "I'm enroute to France, Italy, Switzerland, Germany... world economies". Through his pen and his public speaking, Mr. Bell is a national and international power whose leadership guides many editors, and widely influences American opinion.

"I am very fond of the Japanese, and have every confidence that politically, socially, economically, and ethically they are moving in the right direction. I cannot escape the conclusion that if the Occident loses the friendship of those volcanically cradled islanders it will be the Occident's fault. China, to my mind, is the most moving and appealing potentiality on this earth—a great country and a great people staggering towards the path of a great destiny. There, too, the Occident can build friendship or enmity as it likes.

"The paramount interests of the Filipinos, as well as those of the Americans—those of the Orientals as well as those of the Occidentals—seem to me to require that the Stars and Stripes shall fly in the Philippines for a long time yet—how long, only the evolution of history can determine. The greatest work in the Pacific—indeed, in civilization—is the word equilibrium. In any form of listing there is danger. There is safety only in equilibrium; and America in the Philippines is a force for the equilibrium of the Pacific and of the world."

Mr. Bell then went on to discuss domestic concerns. He said:—

"To say the least of prohibition, its success is unproven. Our 'Drys' and 'Wets' are continually at And Drys each other, and their 'statisties' are fearful and wonderful. When they come together with their alleged facts and figures, one is reminded of two heavy freight trains meeting head-on at top speed. There is debris all over the adjacent countryside. My opinion is that prohibition, if not eternally repugnant to normal, self-reliant, freedom-loving humanity, is hopelessly premature.

"That some of the effects of alcohol are hideous no one will deny. But in America to-day it is not a question of alcohol or no alcohol; it is a question of abortive prohibition or temperance. Although prohibition doubtless has done great good in some ways, it also has worked disastrously in the spheres of morals, health and politics.

"As to war-debts, as I never have been able to believe that inter-allied war debts should be paid, so I never have been able to believe they could be paid. They strike me as a deplorable if not dangerous world nuisance. I think they could be wiped out with nothing but contempt to all concerned, and it is an abiding faith with me that advanced economic intelligence finally will liquidate them. Who can imagine that in perhaps five or ten years from now anyone in a position of authority still will be so much in the dark as not to see that profitable international markets are to be preferred to the continuous passing of heavy credits across frontiers?"

"As to Europe's cry of Shylock at America, I think it were better hushed."

"It has been said we got rich out of the Great War. We did not. Like most other countries, we had the wild night of inflation—despite the rigorous taxation policy of our Treasury—and the bad morning of deflation. Our entire national machinery of production was thrown out of gear, and our industries passed through difficulties unprecedented in their history. Our farmers—60 per cent. of our people—are shaken to this day.

"Referring to American prosperity, it is true, if we except the agriculturists whose condition is only beginning to respond to the industrial boom, America is at the moment extraordinarily prosperous. But this is not war prosperity. It is not history-born. It is science-born. It is prosperity achieved by energy and intellect, advantaged by readily accessible raw materials and a wide, protected, high-consumption home market."

"Up-to-date American business directors will not look at the idea of low wages, for low wages spell business decline and threaten social instability. Capitalism in America is justifying itself by the only way possible—by universalising itself. Socialism fails. Why? Because it will not produce wealth. Of what avail is it to preach wealth diffusion while producing no wealth to diffuse?"

Discussing Senator Borah and British opinion, Mr. Bell said: "This favorite son of Idaho, a north-western State with a population about one-seventh that of the city of Chicago, appears to get more for his money when he steps on a foreign weighing machine than when he steps on one at home. Whatever his merits in American politics—and he is supposed to have some—Senator Borah is not addicted to felicitous international manners. If I might do so, with full respect, I should call him a rug-