

TRUST TERRITORY OF THE PACIFIC ISLANDS
SAIPAN COURT OF APPEALS

SAIPAN DISTRICT

CIVIL ACTION NO. 2

Cabrera
Plaintiff

against

THE TRUST TERRITORY
OF THE PACIFIC ISLANDS
Defendant

FINDINGS OF FACT

1. That Antonio G. Cabrera filed a possessory title information in the offices of the Spanish Government at Agana, Guam, in 1897.

2. That the description of land in the possessory title information was that of a small portion of land, to wit: Sabanan Papago. However, the possessory title information went on to recite a certain area contained in the land covered by the possessory title information, that being described as 1590 hectare, 90 area, 90 centares. The character of title conveyed or vested by the possessory information is in question in this case, but the materiality of the question has been reduced to a nullity by the other fact situation.

3. That Antonio Cabrera is now dead.

4. That his heirs are the persons listed in the pretrial order of 14 February 1952 as amended by amending order of 17 November 1952.

5. That the Cabrera family continued to use and occupy the land in question throughout the remainder of the Spanish regime and into the German regime.

6. That the German Government through the local governor, Governor Fritz, in the exercise of its normal and authorized police power, issued orders that persons running cattle on the island would fence their pasture land thus contain their cattle.

7. That upon refusal of the persons running cattle on these large pasture lands to comply with this order, the cattle were gathered in a community round-up and confiscated in the name of the German Government

8. That subsequent to this time, and in pursuance to the same policy, the German Government again through Governor Fritz required that the holders of the large pasture lands clear their land and plant them in coconuts and/or fruits and vegetables.

9. That upon the refusal of the parties concerned to comply with this order, their lands were confiscated and that smaller portions of land were then granted to the holders of the possessory titles thus divested of their property.

10. That proper publication was given to these orders both through a meeting with all of the persons concerned and the crying-out of the information in the towns and villages of the island.

11. That the Cabrera family did not contest the decision of the German Government during the remainder of the German regime, but rather waited until the advent of the Japanese Government, under the League of Nations Mandate, before raising their claim to the land described in the possessory information.

12. That the Japanese Government honored the action of the German Government and refused to honor the claim of the Cabrera family, holding that the action of the German Government in confiscating the contested land was a normal and unassailable exercise of the governmental powers.

13. That, further two of the eldest of the members of the Cabrera family being those normally charged with the exercising of control of the family land by Chamorran custom, had renounced their claims to land in Sabanan Papago and had accepted land at Chalan Piao in exchange.

CONCLUSIONS OF LAW

1. The authorities on a case such as this are relatively limited. The basic principles of the law are few but they are well established. The succeeding sovereign, except in a case of conquest, is charged with recognizing any vested property rights that existed under the former sovereign. He may, however, require that such vested property rights be authenticated, and if, when required to present his title for authentication, any party should refuse to submit his claim for authentication the sovereign may declare the land abandoned and confiscate it. It is also true and well settled that the succeeding sovereign is not bound in any way by the policies or actions of the previous sovereign.

At any time after assuming sovereignty of the territory, the new sovereign may declare any policy that he sees fit to be the law of the land. For example, if it were not the policy of the Spanish Government to confiscate land for non-payment of the taxes and it was the policy of the German Government to confiscate lands for non-payment of taxes, no one could argue that because one held a Spanish title in land now ruled by Germans that the law of the Spanish continued in effect and the laws of the German Parliament or Reich were denied effect. The succeeding sovereign may well honor every aspect of the laws of the previous sovereign as regards land rights. In the present case, under Spanish law it took 20 years, as a rule, to perfect a possessory information to a point where one could request a crown grant. Germany could have recognized such a law and required that the holder of a possessory information on Saipan continue in occupancy for 20 years before they could ask that a grant being given them. Likewise, if it were the policy of the German Government to maintain the majority of land in government control, they could nullify the possessory information by a stroke of the pen denying them any further effect. It has been shown in this case that the Germans did honor the Spanish documents, that the holders of the possessory title were continued in occupancy until such time as they disobeyed a law of the German Empire. At that time, and only after their disobedience, were their lands taken from them and other lands were substituted. The law is well stated in the conclusions of law in the case of WASISANG versus the TRUST TERRITORY OF THE PACIFIC ISLANDS, Palau District Civil Action No. 2: "So far as property rights are concerned the present government of the Trust Territory of the Pacific Islands is in a position like that of a succeeding sovereign taking over the government of land conquered by it or ceded to it by another nation. The rights and obligations of such a succeeding sovereign are explained in general terms in Volume 30 of American Jurisprudence, pages 202 to 207, in paragraphs 44 to 47 of the article on "International Law". In accordance with the general principles there explained, the present administration is entitled to rely upon and respect the official acts

of the Japanese administration of these islands and is not required as a matter of right to correct wrongs which the former administration may have done, except in those cases where the wrong occurred so near the time of the change of the administration that there was no opportunity for it to be corrected through the courts or other agencies of the former administration. The present administration may be willing in some cases to grant relief from hardships imposed by the law in force under the former administration where the present administration is under no obligation to do so as a matter of right. The granting of such relief, however, is a matter of policy to be decided by the law-making authorities and not by the courts. The general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have for many years before been persisted in by the former administration."

I think that the Chief Justice in that case might have gone further to say that a court would take action where there was such a manifest injustice done that it was incumbent upon the court to relieve the hardship of the people concerned. I can see no hardship in the present case. True, the Cabrera family did hold, according to their claim, a large area of land in the East District but they were making little or not use of it. The testimony we had in this case was that, at the most, perhaps 10 hectares out of 25, the Juan Gumataotao land, was all that was ever cultivated or used to a great extent. The rest of the land lay fallow or went for pasture land for which there was no cattle. The Cabrerias in exchange for that area of land were given approximately 30 hectare of land in Chalan Piao. If they could not make use of 25 hectare in Sabanan Papago then surely 30 hectare in Chalan Piao would have taken care of all their needs. Had the Cabrera family in the days of Governor Fritz been large perhaps he would have seen fit to provided more amply for the Cabrera family. However, at the time there was not such a large number of Cabrerias and Governor Fritz thought 30 hectare was sufficient for the family. The prolificness of the Cabrera family cannot establish a legal right and now be affirmed before a court to grant relief from present hardship, if there be any.

herein, is "Whether any act was legally wrong should be decided according to the law as it was at the time the act was done. This is the rule, except when it is changed by some express provision in the law." The Cabrerias have not shown that the action of Governor Fritz was taken to their ignorance, or the confiscation was an abuse of the normal police powers vested in a sovereign. In fact one of the plaintiff's witnesses testified that although there was the order to fence they did not fence.

3. The court takes judicial notice that by a Vesting Order issued on September 27, 1951 under Interim Regulation No. 4-48 as amended by Interim Regulation Nos. 6-48 and 3-50 any interest previously owned or held by the Japanese Government in any land or other property in the Trust Territory was vested in the Area Property Custodian. Inasmuch as the defendants have not asked for any determination for rights as between themselves, such a question is not before the court here.

JUDGEMENT

It is ordered, adjudged, and decreed as follows:

1. As between parties plaintiff and defendant in this case, that the action of the German Government and the Japanese Government, and the action of members of plaintiff's own family in agreeing to and in the act of confiscation of the land known as Sabanan Papago, is binding upon plaintiffs and that plaintiffs have no more rights of ownership or possession in the lands in contest.

2. Title to the lands in contest in this case are hereby vested in the Area Property Custodian, Trust Territory of the Pacific Islands.

3. The plaintiffs are notified that they have 30 days in which to appeal this case to the Appellate Division of the Saipan Court of Appeals. The 30 day period shall not commence to run until they have been served with a copy of the written judgment in this case.

Entered: 12 January 1954

W. J. McAVOY
Judge
Saipan Court
of Appeals