

finds ample proper evidence therein to support the judgment of the District Court. As a matter of review therefore the judgment of the District Court entered September 2, 1960, is affirmed this 26th day of October, 1961.

RDIALUL TORUAL, Plaintiff

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, its
ALIEN PROPERTY CUSTODIAN, and CHARLES B. HUGHES,
District Land Title Officer, Defendants**

Civil Action No. 152

Trial Division of the High Court

Palau District

November 24, 1961

On writ of certiorari from determination of ownership and release by District Land Title Officer. Title Officer made determination regarding land in question which was favorable to plaintiff, caused it to be delivered, and three days later recalled determination and proceeded, without notice to plaintiff, to hear further evidence and make new determination of ownership in favor of defendant. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Title Officer's attempts to recall determination in favor of plaintiff and to make new determination were void and in excess of his jurisdiction.

1. Appeal and Error—Jurisdictional Error

Excesses of jurisdiction from which relief may be obtained in certiorari are not restricted to jurisdiction in limited sense of jurisdiction over parties and subject matter.

2. Appeal and Error—Jurisdictional Error

Excesses of jurisdiction from which relief may be obtained in certiorari include cases where administrative officer has not proceeded according to essential requirements of law, so that his acts must be considered void.

3. Evidence—Generally

Where evidence is taken in certiorari proceeding in order to avoid delay of amended return, and defendants' counsel in open court expressly waives objection to taking of evidence, defendants cannot later properly object to consideration of evidence so taken.

- 4. Administrative Law—Land Title Determination—Evidence**
Official who exercises quasi-judicial functions cannot, by merely dropping essential document from his record, defeat rights of party.
- 5. Appeal and Error—Certiorari**
In certiorari proceedings, court will consider record in proceedings as well as that certified in return to writ.
- 6. Appeal and Error—Certiorari**
In certiorari proceedings, agreed statement of facts in record setting forth charges will be considered as fully as if facts stated therein had been set out in detail in application for writ.
- 7. Appeal and Error—Certiorari**
Matters stated in return to writ of certiorari which are responsive to writ are deemed to be truthfully stated.
- 8. Appeal and Error—Certiorari**
Charges not responded to in return to writ of certiorari are taken as true.
- 9. Administrative Law—Land Title Determination—Appeal**
Unless and until decision of District Land Title Officer is revised or modified by High Court, legal interests of person designated as owner are those shown on determination of ownership, except that no person can convey better title than he had at time of conveyance. (Office of Land Management Regulation No. 1)
- 10. Administrative Law—Land Title Determination—Publication**
In making determination of ownership, District Land Title Officer exhausts his authority to determine matter in question when he has signed determination and published it by delivery to person determined to be owner, or to his representative. (Office of Land Management Regulation No. 1)
- 11. Administrative Law—Land Title Determination—Publication**
District Land Title Officer has implied authority to correct clerical errors after he has published determination of ownership.
- 12. Administrative Law—Land Title Determination—Publication**
In making determination of ownership, District Land Title Officer cannot hold owner's rights subject to his control merely by failing to complete publication.
- 13. Administrative Law—Land Title Determination—Publication**
District Land Title Officer's delay in completing publication of determination of ownership postpones time for appeal until he is compelled in appropriate proceeding to file required copy of his determination with Clerk of Courts or does so voluntarily.
- 14. Administrative Law—Land Title Determination—Publication**
District Land Title Officer has no authority to recall determination in favor of claimant, and then without notice to claimant and opportunity to be heard, take new evidence and make new determination adverse to claimant. (Office of Land Management Regulation No. 1)

TORUAL v. TRUST TERRITORY

15. Equity—Laches

Essential element of defense of laches is showing of injury or prejudice by delay in question.

16. Administrative Law—Land Title Determination—Release

Where party gives release in connection with determination of ownership and release of land to him, and District Land Title Officer thereafter makes second determination adverse to party, release is no bar to relief sought in certiorari proceedings to have second determination set aside.

17. Evidence—Documents—Lost or Destroyed

Loss or destruction of document does not of itself ordinarily affect rights evidenced by document.

18. Evidence—Documents—Lost or Destroyed

Courts having equity jurisdiction may compel re-execution of lost or destroyed document or otherwise establish such document.

Assessor:
Interpreter:
Reporter:
Counsel for the Plaintiff:

JUDGE PABLO RINGANG
SYLVESTER F. ALONZ
FLORENCE H. SHOOK
JOHN E. HOSMER, ESQ.,
Public Defender,
and WILLIAM O. WALLY
ALFRED J. GERGELY, ESQ.,
District Attorney,
and CHARLES B. HUGHES, ESQ.

Counsel for the Defendants:

FURBER, *Chief Justice*

OPINION

This is a proceeding in which the plaintiff seeks to have set aside a determination of ownership and release by the District Land Title Officer for the Palau District purportedly made under Office of Land Management Regulation No. 1. The application for Writ of Certiorari was submitted upon an agreed statement of facts, which clearly showed that the Title Officer had made one determination of ownership and release in favor of the plaintiff and caused it to be delivered and had then within three days thereafter purported to recall the determination and proceeded, with-

out notice to the plaintiff, to hear further evidence, and on the basis of such new evidence make the determination of ownership and release now in question, in favor of the Alien Property Custodian of the Trust Territory of the Pacific Islands.

[1, 2] The defendants argue that the Title Officer had jurisdiction of the parties and the subject matter, and that, therefore, any irregularity in his proceedings was a matter for correction only by appeal, time for which had expired when these proceedings were started. The court considers it clear, however, that the excesses of jurisdiction from which relief may be obtained in certiorari are not restricted to jurisdiction in the limited sense of jurisdiction over the parties and subject matter, but clearly include cases where an administrative officer has not proceeded according to the essential requirements of the law so that his acts must be considered as void. 10 Am. Jur., Certiorari, §§ 3, 5, and 13.

[3] The defendants claim that the court is restricted in these proceedings to a consideration solely of the matters shown in the Title Officer's file, and it is clear that the file, as certified, does not contain any copy of the determination of ownership and release in favor of the plaintiff. It does, however, contain the Title Officer's findings of fact, conclusions, and recommendations on which this was based. From the agreed statement of facts and from the evidence presented without objection, it clearly appears, however, that such a determination was in fact made, delivered to the plaintiff or his representative, and sent to the municipal office for posting. The court recognizes that the taking of evidence in such a situation was unusual. This course, however, was requested by the plaintiff's counsel and, after express statement by counsel for the defendants in open court that he had no objection, was adopted by the

court in the interest of justice and avoiding the delay likely to be involved in seeking to cover the same matter by an amended return. It is considered therefore that the defendants cannot now properly object to consideration of the evidence so taken.

[4-8] The court further believes that an official exercising quasi-judicial functions cannot, by merely dropping from his record an essential document, defeat the rights of a party, and that in certiorari proceedings the court should consider the record in the certiorari proceedings as well as that certified in the return to the writ. Under the circumstances of this case, it is considered that the agreed statement of facts in the record in the present case, setting forth the charges, should be considered as fully as if the facts stated therein had been set out in detail in the application for the writ. As stated in American Jurisprudence concerning the effect of the return to a writ of certiorari, "The matters stated therein, which are responsive to the writ, are deemed to be truthfully stated, and *the charges not responded to are taken as true.*" (Emphasis added.) 10 Am. Jur., Certiorari, § 18 (following note 13).

[9-13] Counsel for the defendants also called attention to the fact that there is no evidence that the Title Officer's determination in favor of the plaintiff was ever filed with the Clerk of Courts, as required by Section 10 of the Office of Land Management Regulation No. 1. He seemed to imply that, until this copy was filed with the Clerk of Courts, the determination remained within the control of the Title Officer. Section 13 of the same Regulation, however, provides as follows:—

"*Sec. 13. Determination of ownership, effect.* Unless and until the decision of the District Land Title Officer is reversed or modified by the High Court, the legal interests of persons designated as

owners shall be as shown on the determination of ownership, except that no person can convey better title than he has at the time of the conveyance.”

In view of the provisions of that section, the court believes that a Title Officer, in making a determination of ownership exhausts his authority to determine the matter in question when he has signed a determination and published it by delivery to the person determined to be the owner or his representative—with the possible exception of an implied authority to correct clerical errors, which is not material here—and that he cannot hold the owner's rights subject to the Title Officer's control, merely by failing to complete the publication, although it would appear that such delay would postpone the time for appeal until the Title Officer was compelled in an appropriate proceeding to file the required copy of his determination with the Clerk of Courts or did so voluntarily. 42 Am. Jur., Public Administrative Law, § 174.

[14] The court recognizes, as indicated in the section of American Jurisprudence just cited, that in a number of instances administrative officers or bodies have been held to have an implied authority to reconsider or modify determinations made by them. Even assuming, however, that a Title Officer had such a power under Office of Land Management Regulation No. 1, it appears to the court clear and beyond question that he has no authority to recall a determination in favor of the claimant, and then without notice to the claimant and an opportunity to be heard, take new evidence, and make a new determination adverse to the claimant. The Regulation here in question expressly provided in Section 6, “Both public and private notice shall be given of all hearings”. 42 Am. Jur., Public Administrative Law, § 178.

[15] Counsel for the defendants also has claimed that relief should be denied the plaintiff because of his alleged

laches in failing to bring this action until approximately a year after he admits he had notice of the second determination. Counsel has, however, failed to indicate whereby the defendants have been injured or prejudiced by the delay in question, which is an essential element of the defense of laches. 19 Am. Jur., Equity, §§ 498, 508, and 509.

[16] Present counsel for the plaintiff has surprisingly argued strongly that the general release by the plaintiff to the Trust Territory Government, its agents, officers, and administrators, dated January 17, 1955, in the Title Officer's file, has barred the plaintiff from the relief sought in this action by his former counsel. The date of that release is the same as that of the hearing recited in the Title Officer's file as a result of which he recommended release of the land to the claimant. Counsel for the defendants at first stated in open court that the defendants would not rely upon this release unless counsel for the plaintiff pressed them to. Counsel for the plaintiff did press the point however, and counsel for the defendants then stated that they did rely upon the release. From the information before the court, however, the court considers that the only reasonable inference is that this release was given in connection with the determination of ownership and release of the land in question to the plaintiff, and that, therefore, in view of the later action of the Title Officer, this release is no bar to the relief sought in this action.

[17, 18] For the guidance of the parties in any further proceedings involving the land in question, attention is respectfully called to the fact that loss or destruction of a document does not of itself ordinarily affect the rights evidenced by the document and that, on proper application, courts having equity jurisdiction may compel the re-

execution of the document or otherwise establish the same. 34 Am. Jur., Lost Papers and Records, §§ 4 and 14.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

a. The proceedings taken by the then District Land Title Officer for the Palau District whereby he attempted to recall his determination in favor of the plaintiff Rdialul Torual on Claim No. 52 in the files of said Title Officer, and, without notice to the plaintiff, to re-open the hearing thereon, take further evidence, and make a new determination adverse to the plaintiff, were void and of no force or effect, and were without and in excess of the jurisdiction of said Title Officer.

b. The Land Title Officer for the Palau District's Determination of Ownership and Release No. 52, dated February 6, 1957, filed with the Clerk of Courts for the Palau District on that date in Volume T-1, Page 88, was made illegally, without authority and without and in excess of the jurisdiction of said Title Officer, and is therefore void and of no force or effect, and is hereby annulled and set aside.

c. No costs are assessed against any party.