

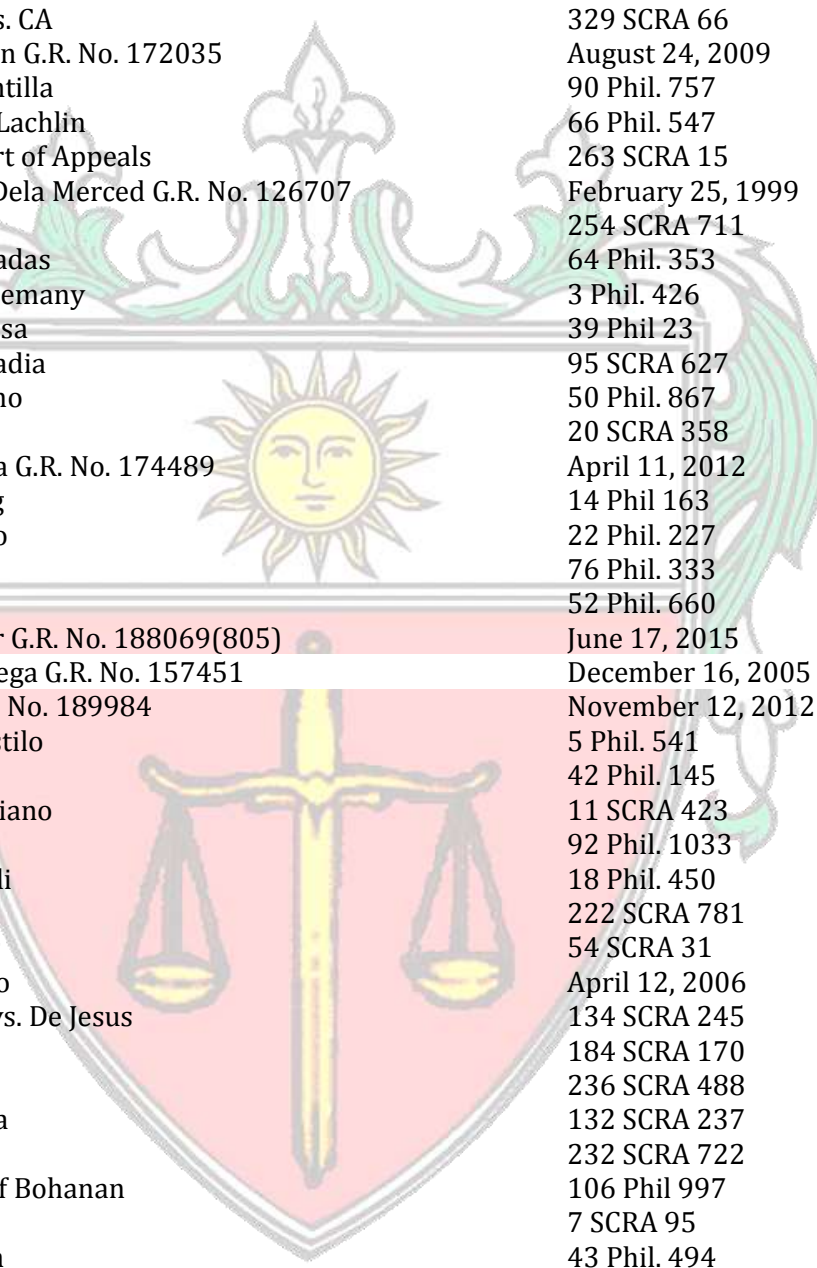
Civil Law – Wills & Succession

Case Digests




**UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW**

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DKC HOLDINGS CORPORATION, PETITIONER, -VERSUS- COURT OF APPEALS, VICTOR U. BARTOLOME AND REGISTER OF DEEDS FOR METRO MANILA, DISTRICT III, RESPONDENTS.
G.R. No. 118248, FIRST DIVISION, April 5, 2000, YNARES-SANTIAGO, J.

The Petitioner entered into a Contract of Lease with Option to Buy with the mother of the Respondent. When the mother of the Respondent died, the latter refused to honor the said contract and alleged that said obligation was extinguished by the death of his mother and was not transmitted to his as the heir. In the case at bar, there is no personal act required from the late Encarnacion Bartolome. Rather, the obligation of Encarnacion in the contract to deliver possession of the subject property to petitioner upon the exercise by the latter of its option to lease the same may very well be performed by her heir Victor. It is futile for Victor to insist that he is not a party to the contract because of the clear provision of Article 1311 of the Civil Code. Indeed, being an heir of Encarnacion, there is privity of interest between him and his deceased mother. He only succeeds to what rights his mother had and what is valid and binding against her is also valid and binding as against him.

FACTS:

The subject of the controversy is a parcel of land located in Malinta, Valenzuela, Metro Manila which was originally owned by private respondent Victor U. Bartolome's deceased mother, Encarnacion Bartolome. This lot was in front of one of the textile plants of petitioner and, as such, was seen by the latter as a potential warehouse site.

Petitioner entered into a Contract of Lease with Option to Buy with Encarnacion Bartolome, whereby petitioner was given the option to lease or lease with purchase the subject land, which option must be exercised within a period of two years counted from the signing of the Contract. In turn, petitioner undertook to pay P3, 000.00 a month as consideration for the reservation of its option. Within the two-year period, petitioner shall serve formal written notice upon the lessor Encarnacion Bartolome of its desire to exercise its option. Petitioner regularly paid the monthly P3, 000.00 provided for by the Contract to Encarnacion until her death. Thereafter, petitioner coursed its payment to private respondent Victor Bartolome, being the sole heir of Encarnacion. Victor, however, refused to accept these payments.

Meanwhile, Victor executed an Affidavit of Self-Adjudication over all the properties of Encarnacion, including the subject lot. Accordingly, respondent Register of Deeds issued a Transfer Certificate in the name of Victor Bartolome.

Petitioner served upon Victor a notice that it was exercising its option to lease the property, tendering the amount of P15, 000.00 as rent for the month of March. Again, Victor refused to accept the tendered rental fee and to surrender possession of the property to petitioner.

Petitioner thus opened a Savings Account with the China Banking Corporation, Cubao Branch, in the name of Victor Bartolome and deposited therein the P15, 000.00 rental fee for March as well as P6, 000.00 reservation fees for the months of February and March.

Petitioner also tried to register and annotate the Contract on the title of Victor to the property but the Register of Deeds refused to register or annotate the same or even enter it in the day book or primary register.

Thus, on April 23, 1990, petitioner filed a complaint for specific performance and damages against Victor and the Register of Deeds. Petitioner prayed for the surrender and delivery of possession of the subject land in accordance with the Contract terms; the surrender of title for registration and annotation thereon of the Contract; and the payment of damages.

After trial on the merits, the trial court rendered its Decision, dismissing the Complaint and ordering petitioner to pay Victor P30, 000.00 as attorney's fees. On appeal to the CA, the Decision was affirmed *in toto*.

Hence, this Petition.

ISSUE:

Whether or not the Contract of Lease with Option to Buy entered into by the late Encarnacion Bartolome with petitioner was terminated upon her death or whether it binds her sole heir, Victor, even after her demise?

RULING:

The general rule is that heirs are bound by contracts entered into by their predecessors-in-interest except when the rights and obligations arising therefrom are not transmissible by (1) their nature, (2) stipulation or (3) provision of law.

In the case at bar, there is neither contractual stipulation nor legal provision making the rights and obligations under the contract intransmissible. More importantly, the nature of the rights and obligations therein are, by their nature, transmissible.

The nature of intransmissible rights as explained by Arturo Tolentino, an eminent civilist, is as follows:

Among contracts which are intransmissible are those which are purely personal, either by provision of law, such as in cases of partnerships and agency, or by the very nature of the obligations arising therefrom, such as those requiring special personal qualifications of the obligor. It may also be stated that contracts for the payment of money debts are not transmitted to the heirs of a party, but constitute a charge against his estate. Thus, where the client in a contract for professional services of a lawyer died, leaving minor heirs, and the lawyer, instead of presenting his claim for professional services under the contract to the probate court, substituted the minors as parties for his client, it was held that the contract could not be enforced against the minors; the lawyer was limited to a recovery on the basis of *quantum meruit*."

In American jurisprudence, "(W)here acts stipulated in a contract require the exercise of special knowledge, genius, skill, taste, ability, experience, judgment, discretion, integrity, or other personal qualification of one or both parties, the agreement is of a personal nature, and terminates on the death of the party who is required to render such service."

It has also been held that a good measure for determining whether a contract terminates upon the death of one of the parties is whether it is of such a character that it may be performed by the promissor's personal representative. Contracts to perform personal acts which cannot be as well performed by others are discharged by the death of the promissor. Conversely, where the service or

act is of such a character that it may as well be performed by another, or where the contract, by its terms, shows that performance by others was contemplated, death does not terminate the contract or excuse nonperformance.

In the case at bar, there is no personal act required from the late Encarnacion Bartolome. Rather, the obligation of Encarnacion in the contract to deliver possession of the subject property to petitioner upon the exercise by the latter of its option to lease the same may very well be performed by her heir Victor.

It is futile for Victor to insist that he is not a party to the contract because of the clear provision of Article 1311 of the Civil Code. Indeed, being an heir of Encarnacion, there is privity of interest between him and his deceased mother. He only succeeds to what rights his mother had and what is valid and binding against her is also valid and binding as against him.

In the case at bar, the subject matter of the contract is likewise a lease, which is a property right. The death of a party does not excuse nonperformance of a contract which involves a property right and the rights and obligations thereunder pass to the personal representatives of the deceased. Similarly, nonperformance is not excused by the death of the party when the other party has a property interest in the subject matter of the contract.

Under both Article 1311 of the Civil Code and jurisprudence, therefore, Victor is bound by the subject Contract of Lease with Option to Buy.

WILLIAM ONG GENATO, Petitioner, -versus- BENJAMIN BAYHON, MELANIE BAYHON, BENJAMIN BAYHON, JR., BRENDA BAYHON, ALINA BAYHON-CAMPOS, IRENE BAYHON-TOLOSA, and the minor GINO BAYHON, as represented herein by his natural mother as guardian-ad-litem, JESUSITA M. BAYHON, Respondents.

G.R. No. 171035, FIRST DIVISION, August 24, 2009, PUNO, CJ.

The loan in this case was contracted by respondent. He died while the case was pending before the Court of Appeals. While he may no longer be compelled to pay the loan, the debt subsists against his estate. No property or portion of the inheritance may be transmitted to his heirs unless the debt has first been satisfied. Notably, throughout the appellate stage of this case, the estate has been amply represented by the heirs of the deceased, who are also his co-parties in the Civil Case.

FACTS:

On October 18, 1990, respondents Benjamin M. Bayhon, Melanie Bayhon, Benjamin Bayhon Jr., Brenda Bayhon, Alina Bayhon-Campos, Irene Bayhon-Tolosa and the minor Gino Bayhon, as represented by his mother Jesusita M. Bayhon, filed an action before the RTC. In their Complaint, respondents sought the declaration of nullity of a dacion en pago allegedly executed by respondent Benjamin Bayhon in favor of petitioner William Ong Genato.

Respondent Benjamin Bayhon alleged that he obtained from the petitioner a loan amounting and that to cover the loan, he executed a Deed of Real Estate Mortgage over the property. However, the execution of the Deed of Real Estate Mortgage was conditioned upon the personal assurance of the petitioner that the said instrument is only a private memorandum of indebtedness and that it would neither be notarized nor enforced according to its tenor.

Respondent further alleged that he filed a separate proceeding for the reconstitution of the TCT of the property before the RTC. Petitioner William Ong Genato filed an Answer in Intervention in the said proceeding and attached a copy of an alleged dacion en pago covering said lot. Respondent assailed the dacion en pago as a forgery alleging that neither he nor his wife, who had died 3 years earlier, had executed it.

In his Answer, petitioner Genato denied the claim of the respondent regarding the death of the latter's wife. He alleged that on the date that the real estate mortgage was to be signed, respondent introduced to him a woman as his wife. He alleged that the respondent signed the dacion en pago and that the execution of the instrument was above-board.

Meanwhile, petitioner William Ong Genato filed a separate Civil Case for specific performance, before the RTC. In his Complaint, petitioner alleged that respondent obtained a loan from him and that respondent failed to pay the loan and executed a dacion en pago in favor of the petitioner. The dacion en pago was inscribed and recorded with the Registry of Deeds of Quezon City.

The two cases were consolidated. RTC found that respondent obtained a loan in the amount of PhP 1,000,000.00 from the petitioner. The trial court likewise found that at the time of the execution of the real estate mortgage, the wife of respondent, Amparo Mercado, was already dead. It held that the property covered by TCT No. 38052 was owned in common by the respondents and not by respondent Benjamin Bayhon alone. It concluded that the said lot could not have been validly mortgaged by the respondent alone; the deed of mortgage was not enforceable and only served as evidence of the obligation of the respondent.

The Court of Appeals rendered a decision reversing the trial court. The Court of Appeals held that the real estate mortgage and the dacion en pago were both void. The appellate court ruled that at the time the real estate mortgage and the dacion en pago were executed, the wife of respondent Benjamin Bayhon was already dead. Thus, she could not have participated in the execution of the two documents. The Court of Appeals held further that while the principal obligation is valid, the death of respondent Benjamin Bayhon extinguished it. The heirs could not be ordered to pay the debts left by the deceased.

Petitioner now comes before this Court assailing the decision of the Court of Appeals.

ISSUE:

Whether or not the obligation was transmissible to the heirs of the deceased and the CA erred in ruling that the liability of the respondents were extinguished by the death of Benjamin Bayhon? (YES)

RULING:

As a general rule, obligations derived from a contract are transmissible. In *Estate of Hemady v. Luzon Surety Co., Inc.*, the Court, through Justice JBL Reyes, held:

While in our successional system the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, the principle remains intact that these heirs succeed not only to the rights of the deceased but also to his obligations. Articles 774 and 776 of the New Civil Code (and Articles 659 and 661 of the preceding one) expressly so provide, thereby confirming Article 1311 already quoted.

The Court proceeded further to state the general rule:

Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors. The rule is a consequence of the progressive "depersonalization" of patrimonial rights and duties that, as observed by Victorio Polacco, has characterized the history of these institutions. From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony to patrimony, with the persons occupying only a representative position, barring those rare cases where the obligation is strictly personal, i.e., is contracted intuitu personae, in consideration of its performance by a specific person and by no other. The transition is marked by the disappearance of the imprisonment for debt.

The loan in this case was contracted by respondent. He died while the case was pending before the Court of Appeals. While he may no longer be compelled to pay the loan, the debt subsists against his estate. No property or portion of the inheritance may be transmitted to his heirs unless the debt has first been satisfied. Notably, throughout the appellate stage of this case, the estate has been amply represented by the heirs of the deceased, who are also his co-parties in the Civil Case.

INTESTATE ESTATE OF THE LATE AGUSTIN MONTILLA, SR.; PEDRO L. LITONJUA, MOVANT AND APPELLANT, VS. AGUSTIN B. MONTILLA, JR., ADMINISTRATOR AND APPELLEE; CLAUDIO MONTILLA, OPPOSITOR AND APPELLEE.

G.R. No. L-4170, FIRST DIVISION, January 31, 1952, PARAS, C.J.

Litonjua obtained a monetary judgment against Montilla; however, the latter has no property to satisfy the same. Pedro L. Litonjua filed in Special Proceeding No. 532 of the Court of First Instance of Negros Occidental, Intestate Estate of Agustin Montilla, Sr., deceased, a motion praying that the interest, property and participation of Claudio Montilla, one of the heirs of Agustin Montilla, Sr., in the latter's intestate estate be sold and out of the proceeds the judgment debt of Claudio Montilla in favor of Pedro L. Litonjua be paid.

The Supreme Court held that the creditor of the heirs of a deceased person is entitled to collect his claim out of the property which pertains by inheritance to said heirs, only after all the debts of the testate or intestate succession have been paid and when the net assets that are divisible among the heirs are known, because the debts of the deceased must first be paid before his heirs can inherit. It was therein also held that a person who is not a creditor of a deceased, testate or intestate, has no right to intervene either in the proceedings brought in connection with the estate or in the settlement of the succession. In the case at bar, because the appellant is not a creditor of the deceased Agustin Montilla, Sr. and he cannot collect his claim out of the inheritance of Claudio Montilla, an heir, before the net assets of the intestate estate have been determined.

FACTS:

In Civil Case No. 868 of the Court of First Instance of Negros Occidental, Pedro L. Litonjua obtained a judgment against Claudio Montilla for the payment of the sum of P4, 000. In due time, a writ of execution was issued, but no property of Claudio Montilla was found which could be levied upon. Pedro L. Litonjua filed in Special Proceeding No. 532 of the Court of First Instance of Negros Occidental, Intestate Estate of Agustin Montilla, Sr., deceased, a motion praying that the interest, property and participation of Claudio Montilla, one of the heirs of Agustin Montilla, Sr., in the latter's intestate estate be sold and out of the proceeds the judgment debt of Claudio Montilla in favor of

Pedro L. Litonjua be paid. This motion was opposed by Claudio Montilla and by Agustin Montilla, Jr., administrator of the intestate estate.

The Court of First Instance of Negros Occidental issued an order denying the motion. From this order Pedro L. Litonjua appealed.

ISSUE:

Whether or not the creditor of the heirs of a deceased person can collect his claim out of the property which pertains to the inheritance of the said heir? (Partly Yes)

Ruling:

In the case of *Ortiga Brothers & Co. vs. Enage and Yap Tico*, it was held that the creditor of the heirs of a deceased person is entitled to collect his claim out of the property which pertains by inheritance to said heirs, only after all the debts of the testate or intestate succession have been paid and when the net assets that are divisible among the heirs are known, because the debts of the deceased must first be paid before his heirs can inherit. It was therein also held that a person who is not a creditor of a deceased, testate or intestate, has no right to intervene either in the proceedings brought in connection with the estate or in the settlement of the succession.

The foregoing pronouncements are perfectly applicable to the case at bar, because the appellant is not a creditor of the deceased Agustin Montilla, Sr. and he seeks to collect his claim out of the inheritance of Claudio Montilla, an heir, before the net assets of the intestate estate have been determined.

**SOCCORO LEDESMA AND ANA QUITCO LEDESMA, PLAINTIFFS-APPELLEES, -VERSUS-
CONCHITA MCLACHLIN, ET. AL, DEFENDANTS-APPELLANTS.
G.R. NO. L-44837, EN BANC, November 23, 1938, Villa-Real J.**

Quitco executed a promissory note in favor of Ledesma. Later, Quitco died leaving no properties for his heirs. Subsequently, Quitco's father died and an intestate proceeding was instituted wherein the children of Quitco represented their father. Ledesma also filed her claim based on the promissory note in the said Intestate Proceeding.

The Supreme Court explained that while it is true that under the provisions of articles 924 to 927 of the Civil Code, a child represents his father or mother who died before him in the properties of his grandfather or grandmother, this right of representation does not make the said child answerable for the obligations contracted by his deceased father or mother, because, as may be seen from the provisions of the Code of Civil Procedure referring to partition of inheritances, the inheritance is received with the benefit of inventory, that is to say, the heirs only answer with the properties received from their predecessor. The herein defendants, as heirs of Eusebio Quitco, in representation of their father Lorenzo M. Quitco, are not bound to pay the indebtedness of their said father from whom they did not inherit anything.

FACTS:

In the year 1916, the plaintiff Socorro Ledesma lived maritally with Lorenzo M. Quitco, while the latter was still single, of which relation, lasting until the year 1921, was born a daughter who is the other plaintiff Ana Quitco Ledesma. In 1921, it seems that the relation between Socorro Ledesma and Lorenzo M. Quitco came to an end, but the latter executed a deed acknowledging the plaintiff Ana Quitco Ledesma as his natural daughter, and on January 21, 1922, he issued in favor of the plaintiff Socorro Ledesma a promissory note, of the following tenor:

" P2,000. For value received I promise to pay Miss Socorro Ledesma the sum of two thousand pesos (P2,000) Philippine currency under the following terms: Two hundred and fifty pesos (P250) to be paid on the first day of March, 1922; another two hundred and fifty pesos (P250) to be paid on the first day of November, 1922; the remaining one thousand and five hundred (P1,500) to be paid two years from the date of the execution of this note. San Enrique, Occ. Negros, P. I., Jan. 21, 1922."

Subsequently, Lorenzo M. Quitco married the defendant Conchita McLachlin, with whom he had four children, who are the other defendants. Lorenzo M. Quitco died and, still later, his father Eusebio Quitco also died, and as the latter left real and personal properties upon his death, administration proceedings of said properties were instituted in this court, the said case being known as the 'Intestate of the deceased Eusebio Quitco,' civil case No. 6153 of this court.

Upon the institution of the intestate of the deceased Eusebio Quitco and the appointment of the committee on claims and appraisal, the plaintiff Socorro Ledesma, on August 26, 1935, filed before said committee the aforementioned promissory note for payment, and the commissioners, upon receipt of said promissory note, instead of passing upon it, elevated the same to this court *en consulta* and as the Honorable Jose Lopez Vito, presiding over the First Branch, returned said *consulta* and refrained from giving his opinion thereon the aforesaid commissioners on claims and appraisal, alleging lack of jurisdiction to pass upon the claim, denied the same.

The court issued an order of declaration of heirs in the intestate of the deceased Eusebio Quitco, and as Ana Quitco Ledesma was not included among the declared heirs, Socorro Ledesma, as mother of Ana Quitco Ledesma, asked for the reconsideration of said order, a petition which the court denied. From the order denying the said petition no appeal was taken, and in lieu thereof there was filed the complaint which gives rise to this case."

ISSUE:

Whether or not the trial court erred in holding that the properties inherited by the defendants from their deceased grandfather by representation are subject to the payment of debts and obligations of their deceased father, who died without leaving any property? (NO)

RULING:

While it is true that under the provisions of articles 924 to 927 of the Civil Code, a child represents his father or mother who died before him in the properties of his grandfather or grandmother, this right of representation does not make the said child answerable for the obligations contracted by his deceased father or mother, because, as may be seen from the provisions of the Code of Civil Procedure referring to partition of inheritances, the inheritance is received with the benefit of inventory, that is

to say, the heirs only answer with the properties received from their predecessor. The herein defendants, as heirs of Eusebio Quitco, in representation of their father Lorenzo M. Quitco, are not bound to pay the indebtedness of their said father from whom they did not inherit anything.

For the foregoing considerations, we are of the opinion and so hold that the claim for the payment of an indebtedness contracted by a deceased person cannot be filed for its collection before the committee on claims and appraisal, appointed in the intestate of his father, and the properties inherited from the latter by the children of said deceased do not answer for the payment of the indebtedness contracted during the lifetime of said person.

ROMULO A. CORONEL, ALARICO A. CORONEL, ANNETTE A. CORONEL, ANNABELLE C. GONZALES (FOR HERSELF AND ON BEHALF OF FLORIDA C. TUPPER, AS ATTORNEY-IN-FACT), CIELITO A. CORONEL, FLORAIDA A. ALMONTE, AND CATALINA BALAIS MABANAG, PETITIONERS, -VERSUS- THE COURT OF APPEALS, CONCEPCION D. ALCARAZ, AND RAMONA PATRICIA ALCARAZ, ASSISTED BY GLORIA F. NOEL AS ATTORNEY-IN-FACT, RESPONDENTS.

G.R. No. 103577, THIRD DIVISION, October 7, 1996, MELO, J.

The Coronels entered into a contract of Sale with the Alcaraz on January 19, 1985. During the said date, the property was still under the name of the Petitioners' father. Later on, the Petitioners decided to sell the property to another person. The Respondent filed a case for specific performance. The Petitioners alleged that the contract was not perfect because by then, the property was still under the name of their deceased father.

The Supreme Court held that Petitioners-sellers in the case at bar being the sons and daughters of the decedent Constancio P. Coronel are compulsory heirs who were called to succession by operation of law. Thus, at the point their father drew his last breath; petitioners stepped into his shoes insofar as the subject property is concerned, such that any rights or obligations pertaining thereto became binding and enforceable upon them. It is expressly provided that rights to the succession are transmitted from the moment of death of the decedent (Article 777, Civil Code; Cuison vs. Villanueva, 90 Phil. 850 [1952]).

FACTS:

On January 19, 1985, defendants-appellants Romulo Coronel, et al. (hereinafter referred to as Coronels) executed a document entitled "Receipt of Down Payment" in favor of plaintiff Ramona Patricia Alcaraz (hereinafter referred to as Ramona).

Clearly, the conditions appurtenant to the sale are the following:

- 1. Ramona will make a down payment of Fifty Thousand (P50,000.00) Pesos upon execution of the document aforestated;*
- 2. The Coronels will cause the transfer in their names of the title of the property registered in the name of their deceased father upon receipt of the Fifty Thousand (P50,000.00) Pesos down payment;*
- 3. Upon the transfer in their names of the subject property, the Coronels will execute the deed of absolute sale in favor of Ramona and the latter will pay the former the whole balance of One Million One Hundred Ninety Thousand (P1,190,000.00) Pesos.*

On the same date, plaintiff-appellee Concepcion D. Alcaraz (hereinafter referred to as Concepcion), mother of Ramona, paid the down payment of Fifty Thousand. The property originally registered in the name of the Coronels' father was transferred in their names.

Later, the Coronels sold the same property covered to intervenor-appellant Catalina B. Mabanag (hereinafter referred to as Catalina) for P1, 580,000.00 after the latter has paid P300, 000.00. For this reason, Coronels canceled and rescinded the contract with Ramona by depositing the down payment paid by Concepcion in the bank *in trust for Ramona Patricia Alcaraz*.

Concepcion, et al., filed a complaint for specific performance against the Coronels and caused the annotation of a notice of *lis pendens* at the back of TCT No. 327403.

Meanwhile, Catalina caused the annotation of a notice of adverse claim covering the same property with the Registry of Deeds of Quezon City. The Coronels executed a Deed of Absolute Sale over the subject property in favor of Catalina. A new title over the subject property was issued in the name of Catalina under TCT No. 351582.

The case was submitted for resolution before Judge Reynaldo Roura. A judgment was handed down by Judge Roura granting the complaint for specific performance and ordering defendant to execute in favor of plaintiffs a deed of absolute sale covering that parcel of land embraced in and covered by Transfer Certificate of Title No. 327403 (now TCT No. 331582) of the Registry of Deeds for Quezon City and the plaintiff was ordered to pay defendants the whole balance of the purchase price amounting to P1,190,000.00 in cash. Transfer Certificate of Title No. 331582 of the Registry of Deeds for Quezon City in the name of intervenor is hereby canceled and declared to be without force and effect. Defendants and intervenor and all other persons claiming under them are hereby ordered to vacate the subject property and deliver possession thereof to plaintiffs. Plaintiffs' claim for damages and attorney's fees, as well as the counterclaims of defendants and intervenors are hereby dismissed. A motion for reconsideration was filed by petitioner before the new presiding judge of the Quezon City RTC but the same was denied by Judge Estrella T. Estrada.

Petitioners thereupon interposed an appeal, but on December 16, 1991, the Court of Appeals rendered its decision fully agreeing with the trial court.

Hence, the instant petition.

ISSUE:

Whether or not the Petitioners were correct in arguing that there could be no perfected contract between them and the Alcaraz because they were then not yet the absolute owners of the inherited property? (NO)

RULING:

Article 774 of the Civil Code defines Succession as a mode of transferring ownership as follows:

Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to be extent and value of the inheritance of a person are transmitted through his death to another or others by his will or by operation of law.

Petitioners-sellers in the case at bar being the sons and daughters of the decedent Constancio P. Coronel are compulsory heirs who were called to succession by operation of law. Thus, at the point their father drew his last breath; petitioners stepped into his shoes insofar as the subject property is concerned, such that any rights or obligations pertaining thereto became binding and enforceable upon them. It is expressly provided that rights to the succession are transmitted from the moment of death of the decedent (Article 777, Civil Code; *Cuison vs. Villanueva*, 90 Phil. 850 [1952]).

Be it also noted that petitioners' claim that succession may not be declared unless the creditors have been paid is rendered moot by the fact that they were able to affect the transfer of the title to the property from the decedent's name to their names on February 6, 1985.

Aside from this, petitioners are precluded from raising their supposed lack of capacity to enter into an agreement at that time and they cannot be allowed to now take a posture contrary to that which they took when they entered into the agreement with private respondent Ramona P. Alcaraz. The Civil Code expressly states that:

Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

Having represented themselves as the true owners of the subject property at the time of sale, petitioners cannot claim now that they were not yet the absolute owners thereof at that time.

BLANQUITA E. DELA MERCED, LUISITO E. DELA MERCED, BLANQUITA M. MACATANGAY, MA. OLIVIA M. PAREDES, TERESITA P. RUPISAN, RUBEN M. ADRIANO, HERMINIO M. ADRIANO, JOSELITO M. ADRIANO, ROGELIO M. ADRIANO, WILFREDO M. ADRIANO, VICTOR M. ADRIANO, CORAZON A. ONGOCO, JASMIN A. MENDOZA AND CONSTANTINO M. ADRIANO, PETITIONERS, - VERSUS- JOSELITO P. DELA MERCED, RESPONDENT.

G.R. No. 126707, THIRD DIVISION, February 25, 1999, PURISIMA, J.

Francisco was one of the heirs of his sister, Evarista. Before the estate of Evarista was partitioned, Francisco died. The heirs of Evarista executed an extrajudicial settlement, entitled "Extrajudicial Settlement of the Estate of the Deceased Evarista M. dela Merced" adjudicating the properties of Evarista to them, each set with a share of one-third (1/3) pro-indiviso. The Respondent was an illegitimate child of Francisco and alleged that he was fraudulently omitted from the said settlement made by petitioners, who were fully aware of his relation to the late Francisco. Petitioners, on the other hand, alleged that the Respondent was an illegitimate child of Francisco and under the law he cannot represent his father (who is a legitimate child) in the estate of Evarista.

The Supreme Court held that the law in point in the present case is Article 777 of the New Civil Code which provides that the rights to succession are transmitted from the moment of death of the decedent. Since Evarista died ahead of her brother Francisco, the latter inherited a portion of the estate of the former as one of her heirs. Subsequently, when Francisco died, his heirs, namely: his spouse, legitimate children, and the private respondent, Joselito, an illegitimate child, inherited his (Francisco's) share in the estate of Evarista. It bears stressing that Joselito does not claim to be an heir of Evarista by right of representation but participates in his own right, as an heir of the late Francisco, in the latter's share (or portion thereof) in the estate of Evarista.

FACTS:

Evarista M. dela Merced died intestate, without issue. She left five (5) parcels of land situated in Orambo, Pasig City. At the time of her death, Evarista was survived by three sets of heirs, viz: (1) Francisco M. dela Merced, her legitimate brother; (2) Teresita P. Rupisan, her niece who is the only daughter of Rosa dela Merced-Platon (a sister who died in 1943); and (3) the legitimate children of Eugenia dela Merced-Adriano (another sister of Evarista who died in 1965), namely: Herminio, Ruben, Joselito, Rogelio, Wilfredo, Victor and Constantino, all surnamed Adriano, Corazon Adriano-Ongoco and Jasmin Adriano-Mendoza. Almost a year later, Francisco (Evarista's brother) died. He was survived by his wife and their three legitimate children.

The three sets of heirs of the decedent, executed an extrajudicial settlement, entitled "Extrajudicial Settlement of the Estate of the Deceased Evarista M. dela Merced" adjudicating the properties of Evarista to them, each set with a share of one-third (1/3) pro-indiviso.

Private respondent Joselito P. Dela Merced, illegitimate son of the late Francisco de la Merced, filed a "Petition for Annulment of the Extrajudicial Settlement of the Estate of the Deceased Evarista M. Dela Merced with Prayer for a Temporary Restraining Order", alleging that he was fraudulently omitted from the said settlement made by petitioners, who were fully aware of his relation to the late Francisco. Claiming successional rights, private respondent Joselito prayed that he be included as one of the beneficiaries, to share in the one-third (1/3) pro-indiviso share in the estate of the deceased Evarista, corresponding to the heirs of Francisco.

The trial court dismissed the petition, lifted the temporary restraining order earlier issued, and cancelled the notice of lis pendens on the certificates of title covering the real properties of the deceased Evarista. It is to be noted that Francisco Dela Merced, alleged father of the herein plaintiff, is a legitimate child, not an illegitimate. Plaintiff, on the other hand, is admittedly an illegitimate child of the late Francisco Dela Merced. Hence, as such, he cannot represent his alleged father in the succession of the latter in the intestate estate of the late Evarista Dela Merced, because of the barrier in Art. 992 of the New Civil Code which states that: *An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother, nor shall such children or relatives inherit in the same manner from the illegitimate child.*

Not satisfied with the dismissal of his petition, the private respondent appealed to the Court of Appeals. The Court of Appeals reversed the decision of the trial court of origin and ordered the petitioners to execute an amendatory agreement which shall form part of the original settlement, so as to include private respondent Joselito as a co-heir to the estate of Francisco, which estate includes one-third (1/3) pro indiviso of the latter's inheritance from the deceased Evarista.

In the Petition under consideration, petitioners insist that being an illegitimate child, private respondent Joselito is *barred* from inheriting from Evarista because of the provision of Article 992 of the New Civil Code, which lays down an impassable barrier between the legitimate and illegitimate families.

ISSUE:

Whether or not the Respondent can inherit from Evarista? (YES)

RULING:

Article 992 of the New Civil Code is not applicable because involved here is not a situation where an illegitimate child would inherit *ab intestato* from a legitimate sister of his father, which is prohibited by the aforesaid provision of law. Rather, it is a scenario where an illegitimate child inherits from his father; the latter's share in or portion of, what the latter already inherited from the deceased sister, Evarista.

As opined by the Court of Appeals, the law in point in the present case is Article 777 of the New Civil Code which provides that the rights to succession are transmitted from the moment of death of the decedent. Since Evarista died ahead of her brother Francisco, the latter inherited a portion of the estate of the former as one of her heirs. Subsequently, when Francisco died, his heirs, namely: his spouse, legitimate children, and the private respondent, Joselito, an illegitimate child, inherited his (Francisco's) share in the estate of Evarista. It bears stressing that Joselito does not claim to be an heir of Evarista by right of representation but participates in his own right, as an heir of the late Francisco, in the latter's share (or portion thereof) in the estate of Evarista.

JOSE E. ARUEGO, JR., SIMEONA SAN JUAN ARUEGO, MA. IMMACULADA T. ALANON, ROBERTO A. TORRES, CRISTINA A. TORRES, JUSTO JOSE TORRES AND AGUSTIN TORRES, PETITIONERS, -VERSUS- THE HON. COURT OF APPEALS, THIRTEENTH DIVISION AND ANTONIA ARUEGO, RESPONDENTS. G.R. No. 112193, FIRST DIVISION, March 13, 1996, HERMOSISIMA, JR., J.

Article 175 of the Family Code finds no proper application to the instant case since it will ineluctably affect adversely a right of private respondent and, consequentially, of the minor child she represents, both of which have been vested with the filing of the complaint in court. The trial court is, therefore, correct in applying the provisions of Article 285 of the Civil Code and in holding that private respondent's cause of action has not yet prescribed.

Tayag applies four-square with the case at bench. The action brought by private respondent Antonia Aruego for compulsory recognition and enforcement of successional rights which was filed prior to the advent of the Family Code, must be governed by Article 285 of the Civil Code and not by Article 175, paragraph 2 of the Family Code. The present law cannot be given retroactive effect insofar as the instant case is concerned, as its application will prejudice the vested right of private respondent to have her case decided under Article 285 of the Civil Code. The right was vested to her by the fact that she filed her action under the regime of the Civil Code. Prescinding from this, the conclusion then ought to be that the action was not yet barred, notwithstanding the fact that it was brought when the putative father was already deceased, since private respondent was then still a minor when it was filed, an exception to the general rule provided under Article 285 of the Civil Code. Hence, the trial court, which acquired jurisdiction over the case by the filing of the complaint, never lost jurisdiction over the same despite the passage of E.O. No. 209, also known as the Family Code of the Philippines.

FACTS:

On March 7, 1983, a Complaint for Compulsory Recognition and Enforcement of Successional Rights was filed before the Regional Trial Court of Manila by the minors, private respondent Antonia F. Aruego and her alleged sister Evelyn F. Aruego, represented by their mother and natural guardian, Luz M. Fabian. Named defendants therein were Jose E. Aruego, Jr. and the five (5) minor children of the deceased Gloria A. Torres, represented by their father and natural guardian, Justo P. Torres, Jr., now the petitioners herein.

In essence, the complaint avers that the late Jose M. Aruego, Sr., a married man, had an amorous relationship with Luz M. Fabian sometime in 1959 until his death on March 30, 1982. Out of this relationship were born Antonia F. Aruego and Evelyn F. Aruego. The complaint prayed for an Order praying that herein private respondent and Evelyn be declared the illegitimate children of the deceased Jose M. Aruego, Sr.; that herein petitioners be compelled to recognize and acknowledge them as the compulsory heirs of the deceased Jose M. Aruego; that their share and participation in the estate of their deceased father be determined and ordered delivered to them.

The main basis of the action for compulsory recognition is their alleged "open and continuous possession of the status of illegitimate children".

Petitioners denied all these allegations.

After trial, the lower court rendered judgment, declaring Antonia Aruego as illegitimate daughter of Jose Aruego and Luz Fabian; However, the trial court held that Evelyn Fabian is not an illegitimate daughter of Jose Aruego with Luz Fabian;

Herein petitioners filed a Motion for Partial Reconsideration of the decision alleging loss of jurisdiction on the part of the trial court over the complaint by virtue of the passage of Executive Order No. 209 (as amended by Executive Order No. 227), otherwise known as the Family Code of the Philippines which took effect on August 3, 1988. This motion was denied by the lower court in the Order, dated January 14, 1993.

A Petition for Prohibition and Certiorari with prayer for a Writ of Preliminary Injunction was filed by herein petitioners before respondent Court of Appeals, the petition was dismissed for lack of merit in a decision promulgated on August 31, 1993. A Motion for Reconsideration when filed was denied by the respondent court in a minute resolution, dated October 13, 1993.

Hence, this Petition for Review on Certiorari under Rule 45 alleging the following grounds:

ISSUE:

Whether or not the Family Code be applied in the instant case?

RULING:

In the case at bench, petitioners point out that, since the complaint of private respondent and her alleged sister was filed on March 7, 1983, or almost one (1) year after the death of their presumed father on March 30, 1982, the action has clearly prescribed under the new rule as provided in the Family Code. Petitioners, further, maintain that even if the action was filed prior to the effectivity of the Family Code, this new law must be applied to the instant case pursuant to Article 256 of the Family Code which provides:

This Code shall, have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

The phrase "vested or acquired rights" under Article 256, is not defined by the Family Code. "The Committee did not define what is meant by a 'vested or acquired right,' thus leaving it to the courts

to determine what it means as each particular issue is submitted to them. It is difficult to provide the answer for each and every question that may arise in the future."

In *Tayag vs. Court of Appeals*, a case which involves a similar complaint denominated as "Claim for Inheritance" but treated by this court as one to compel recognition as an illegitimate child brought prior to the effectivity of the Family Code by the mother of the minor child, and based also on the "open and continuous possession of the status of an illegitimate child," we had occasion to rule that:

Under the circumstances obtaining in the case at bar, we hold that the right of action of the minor child has been vested by the filing of the complaint in court under the regime of the Civil Code and prior to the effectivity of the Family Code. We herein adopt our ruling in the recent case of Republic of the Philippines vs. Court of Appeals, et. al. where we held that the fact of filing of the petition already vested in the petitioner her right to file it and to have the same proceed to final adjudication in accordance with the law in force at the time, and such right can no longer be prejudiced or impaired by the enactment of a new law.

Accordingly, Article 175 of the Family Code finds no proper application to the instant case since it will ineluctably affect adversely a right of private respondent and, consequentially, of the minor child she represents, both of which have been vested with the filing of the complaint in court. The trial court is, therefore, correct in applying the provisions of Article 285 of the Civil Code and in holding that private respondent's cause of action has not yet prescribed.

Tayag applies four-square with the case at bench. The action brought by private respondent Antonia Aruego for compulsory recognition and enforcement of successional rights which was filed prior to the advent of the Family Code, must be governed by Article 285 of the Civil Code and not by Article 175, paragraph 2 of the Family Code. The present law cannot be given retroactive effect insofar as the instant case is concerned, as its application will prejudice the vested right of private respondent to have her case decided under Article 285 of the Civil Code. The right was vested to her by the fact that she filed her action under the regime of the Civil Code. Prescinding from this, the conclusion then ought to be that the action was not yet barred, notwithstanding the fact that it was brought when the putative father was already deceased, since private respondent was then still a minor when it was filed, an exception to the general rule provided under Article 285 of the Civil Code. Hence, the trial court, which acquired jurisdiction over the case by the filing of the complaint, never lost jurisdiction over the same despite the passage of E.O. No. 209, also known as the Family Code of the Philippines.

Our ruling herein reinforces the principle that the jurisdiction of a court, whether in criminal or civil cases, once attached cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case.

PABLO LORENZO, as trustee of the estate of Thomas Hanley, deceased, plaintiff-appellant, vs. JUAN POSADAS, JR., Collector of Internal Revenue, defendant-appellant.

G.R. No. L-43082, EN BANC, June 18, 1937, Laurel, J.

Inheritance tax accrues upon the death of the decedent and the date of death is the basis of valuation. The rights to succession of a person are transmitted from the moment of his death.

FACTS:

It appears that on May 27, 1922, one Thomas Hanley died in Zamboanga, Zamboanga, leaving a will (Exhibit 5) and considerable amount of real and personal properties. On June 14, 1922, proceedings for the probate of his will and the settlement and distribution of his estate were begun in the Court of First Instance of Zamboanga. The will was admitted to probate. Said will provides, among other things, as follows:

4. I direct that any money left by me be given to my nephew Matthew Hanley .
5. I direct that all real estate owned by me at the time of my death be not sold or otherwise disposed of for a period of ten (10) years after my death, and that the same be handled by the executors.
6. I direct that ten (10) years after my death, my property be given to the above mentioned Matthew Hanley to be disposed of on the way he thinks most advantageous.

The CFI of Zamboanga considered it proper for the best interest of the estate to appoint a trustee to administer the real properties. Moore took his oath of office and when he resigned, plaintiff was appointed in his stead. During plaintiff's incumbency as trustee, cir assessed the estate an inheritance tax plus surcharges. Plaintiff paid the same under protest and when cir refused to refund the said amount, plaintiff went to court on the principal questions of when does the inheritance tax accrue; and when must it be satisfied and should the inheritance tax be computed on the basis of value of estate at the time of testator's death or its value ten years later.

ISSUES:

When does inheritance tax accrue? What should be the basis of valuation of estate?

RULING:

Inheritance tax accrues upon the death of the decedent and the date of death is the basis of valuation. The rights to succession of a person are transmitted from the moment of his death. The property belongs to the heirs at the moment of death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death. Transmission by inheritance is taxable at the time of predecessor's death, notwithstanding the postponement of the actual possession or enjoyment of the estate by the beneficiary.

If death is the generating source from which the power of the estate to impose inheritance taxes takes its being and if, upon the death of the decedent, succession takes place and the right of the estate to tax vests instantly, the tax should be measured by the value of the estate as it stood at the time of the decedent's death, regardless of any subsequent contingency value of any subsequent increase or decrease in value. "The right of the state to an inheritance tax accrues at the moment of death, and hence is ordinarily measured as to any beneficiary by the value at that time of such property as passes to him. Subsequent appreciation or depreciation is immaterial."

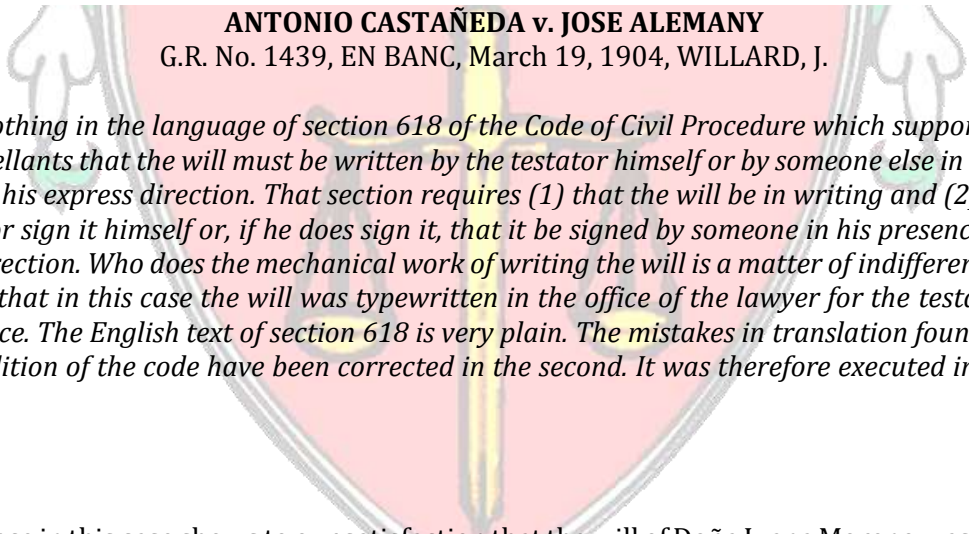
We shall now compute the tax, together with the interest and surcharge due from the estate of Thomas Hanley in accordance with the conclusions we have reached.

At the time of his death, the deceased left real properties valued at P27,920 and personal properties worth P1,465, or a total of P29,385. Deducting from this amount the sum of P480.81, representing allowable deductions under section 1539 of the Revised Administrative Code, we have P28,904.19 as the net value of the estate subject to inheritance tax.

The primary tax, according to section 1536, subsection (c), of the Revised Administrative Code, should be imposed at the rate of one per centum upon the first ten thousand pesos and two per centum upon the amount by which the share exceed thirty thousand pesos, plus an additional two hundred per centum. One per centum of ten thousand pesos is P100. Two per centum of P18,904.19 is P378.08. Adding to these two sums an additional two hundred per centum, or P965.16, we have as primary tax, correctly computed by the defendant, the sum of P1,434.24.

To the primary tax thus computed should be added the sums collectible under section 1544 of the Revised Administrative Code. First should be added P1,465.31 which stands for interest at the rate of twelve per centum per annum from March 10, 1924, the date of delinquency, to September 15, 1932, the date of payment under protest, a period covering 8 years, 6 months and 5 days. To the tax and interest thus computed should be added the sum of P724.88, representing a surcharge of 25 per cent on both the tax and interest, and also P10, the compromise sum fixed by the defendant (Exh. 29), giving a grand total of P3,634.43.

As the plaintiff has already paid the sum of P2,052.74, only the sums of P1,581.69 is legally due from the estate. This last sum is P390.42 more than the amount demanded by the defendant in his counterclaim. But, as we cannot give the defendant more than what he claims, we must hold that the plaintiff is liable only in the sum of P1,191.27 the amount stated in the counterclaim.



ANTONIO CASTAÑEDA v. JOSE ALEMANY
G.R. No. 1439, EN BANC, March 19, 1904, WILLARD, J.

There is nothing in the language of section 618 of the Code of Civil Procedure which supports the claim of the appellants that the will must be written by the testator himself or by someone else in his presence and under his express direction. That section requires (1) that the will be in writing and (2) either that the testator sign it himself or, if he does sign it, that it be signed by someone in his presence and by his express direction. Who does the mechanical work of writing the will is a matter of indifference. The fact, therefore, that in this case the will was typewritten in the office of the lawyer for the testatrix is of no consequence. The English text of section 618 is very plain. The mistakes in translation found in the first Spanish edition of the code have been corrected in the second. It was therefore executed in conformity with law.

FACTS:

The evidence in this case shows to our satisfaction that the will of Doña Juana Moreno was duly signed by herself in the presence of three witnesses, who signed it as witnesses in the presence of the testatrix and of each other. The will was typewritten in the office of the lawyer for the testatrix.

ISSUE:

Whether the will was executed in conformity with law

RULING:

YES. There is nothing in the language of section 618 of the Code of Civil Procedure which supports the claim of the appellants that the will must be written by the testator himself or by someone else in his presence and under his express direction. That section requires (1) that the will be in writing and (2) either that the testator sign it himself or, if he does sign it, that it be signed by someone in his presence and by his express direction. Who does the mechanical work of writing the will is a matter of indifference. The fact, therefore, that in this case the will was typewritten in the office of the lawyer for the testatrix is of no consequence. The English text of section 618 is very plain. The mistakes in translation found in the first Spanish edition of the code have been corrected in the second. It was therefore executed in conformity with law.

The fact that a will was executed with the formalities required by law and that the testator was in a condition to make a will is the only purpose of the proceedings under the new code for the probate of a will. (Sec. 625) The judgment in such proceedings determines and can determine nothing more. In them the court has no power to pass upon the validity of any provisions made in the will. It cannot decide, for example, that a certain legacy is void and another one valid. It could not in this case make any decision upon the question whether the testatrix had the power to appoint by will a guardian for the property of her children by her first husband, or whether the person so appointed was or was not a suitable person to discharge such trust. All such questions must be decided in some other proceeding. The grounds on which a will may be disallowed are stated the section 634. Unless one of those grounds appears the will must be allowed. They all have to do with the personal condition of the testator at the time of its execution and the formalities connected therewith. It follows that neither this court nor the court below has any jurisdiction in his proceedings to pass upon the questions raised by the appellants by the assignment of error relating to the appointment of a guardian for the children of the deceased.

It is claimed by the appellants that there was no testimony in the court below to show that the will executed by the deceased was the same will presented to the court and concerning which this hearing was had. It is true that the evidence does not show that the document in court was presented to the witnesses and identified by them, as should have been done. But we think that we are justified in saying that it was assumed by all the parties during the trial in the court below that the will about which the witnesses were testifying was the document then in court. No suggestion of any kind was then made by the counsel for the appellants that it was not the same instrument. In the last question put to the witness Gonzales the phrase "this will" is used by the counsel for the appellants. In their argument in that court, found on page 15 of the record, they treat the testimony of the witnesses as referring to the will probate they were then opposing.

**IN THE MATTER OF THE PROBATION OF THE WILL OF JOSE RIOSA. MARCELINO CASAS,
APPLICANT AND APPELLANT.**

G.R. No. L-14074, EN BANC, November 7, 1918, Malcolm, J.

The will was executed prior to the enactment of Act No. 2645 and the death occurred after the enactment of this law.

The rule prevailing in many jurisdictions is that the validity of the execution of a will must be tested by the statutes in force at the time of its execution and that statutes subsequently enacted have no retrospective effect. This doctrine is believed to be supported by the weight of authority.

FACTS:

Jose Riosa died on April 17, 1917. He left a will made in the month of January, 1908, in which he disposed of an estate valued at more than P35,000. The will was duly executed in accordance with the law then in force, namely, section 618 of the Code of Civil Procedure. The will was not executed in accordance with Act No. 2645, amendatory of said section 618, prescribing certain additional formalities for the signing and attestation of wills, in force on and after July 1, 1916. In other words, the will was in writing, signed by the testator, and attested and subscribed by three credible witnesses in the presence of the testator and of each other; but was not signed by the testator and the witnesses on the left margin of each and every page, nor did the attestation state these facts. The new law, therefore, went into effect after the making of the will and before the death of the testator, without the testator having left a will that conforms to the new requirements.

ISSUE:

Whether in the Philippine Islands the law existing on the date of the execution of a will, or the law existing at the death of the testator, controls.

HELD:

The will was executed prior to the enactment of Act No. 2645 and the death occurred after the enactment of this law.

The rule prevailing in many jurisdictions is that the validity of the execution of a will must be tested by the statutes in force at the time of its execution and that statutes subsequently enacted have no retrospective effect. This doctrine is believed to be supported by the weight of authority. It was the old English view; in *Downs vs. Townsend*, Lord Hardwicke is reported to have said that "the general rule as to testaments is, that the time of the testament, and not the testator's death, is regarded." It is also the modern view, including among other decisions one of the Supreme Court of Vermont from which State many of the sections of the Code of Civil Procedure of the Philippine Islands relating to wills are taken.

Above all, we cannot lose sight of the fact that the testator has provided in detail for the disposition of his property and that his desires should be respected by the courts.

It is, of course, a general rule of statutory construction, as this court has said, that "all statutes are to be construed as having only a prospective operation unless the purpose and intention of the Legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In every case of doubt, the doubt must be resolved against the retrospective effect." The language of Act No. 2645 gives no indication of retrospective effect.

The strongest argument against our accepting the first two rules comes out of section 634 of the Code of Civil Procedure which, in negative terms, provides that a will shall be disallowed in either of five cases, the first being "if not executed and attested as in this Act provided." Act No. 2645 has, of course, become part and parcel of the Code of Civil Procedure. The will in question is admittedly not executed and attested as provided by the Code of Civil Procedure as amended. Nevertheless, it is proper to observe that the general principle in the law of wills inserts itself even within the provisions of said section 634. Our statute announces a positive rule for the transference of property which must be complied with as completed act at the time of the execution, so far as the act of the testator is

concerned, as to all testaments made subsequent to the enactment of Act No. 2645, but is not effective as to testaments made antecedent to that date.

To answer the question with which we began this decision, we adopt as our own the second rule, particularly as established by the Supreme Court of Pennsylvania. The will of Jose Riosa is valid.

**IN RE: WILL AND TESTAMENT OF THE DECEASED REVEREND SANCHO ABADIA.
SEVERINA A. VDA. DE ENRIQUEZ, ET AL. vs. MIGUEL ABADIA, ET AL,
G.R. No. L-7188, En Banc , August 9, 1954, MONTEMAYOR, J.**

Validity of a will is to be judged by the law enforced at the time the instrument was executed.

FACTS:

On September 6, 1923, Father Sancho Abadia, parish priest of Talisay, Cebu, executed a document purporting to be his Last Will and Testament now marked Exhibit "A. He left properties estimated at P8,000 in value. On October 2, 1946, one Andres Enriquez, one of the legatees, filed a petition for its probate in the Court of First Instance of Cebu. Some cousins and nephews who would inherit the estate of the deceased if he left no will, filed opposition.

During the hearing one of the attesting witnesses, the other two being dead, testified without contradiction that in his presence and in the presence of his co-witnesses, Father Sancho wrote out in longhand Exhibit "A" in Spanish which the testator spoke and understood; that he (testator) signed on the left hand margin of the front page of each of the three folios or sheets of which the document is composed, and numbered the same with Arabic numerals, and finally signed his name at the end of his writing at the last page, all this, in the presence of the three attesting witnesses after telling that it was his last will and that the said three witnesses signed their names on the last page after the attestation clause in his presence and in the presence of each other. The oppositors did not submit any evidence.

The learned trial court found and declared Exhibit "A" to be a holographic will; that it was in the handwriting of the testator and that although at the time it was executed and at the time of the testator's death, holographic wills were not permitted by law still, because at the time of the hearing and when the case was to be decided the new Civil Code was already in force. Said trial court admitted to probate Exhibit "A", as the Last Will and Testament of Father Sancho Abadia. The oppositors are appealing from that decision ; and because only questions of law are involved in the appeal, the case was certified to us by the Court of Appeals.

ISSUE:

Should the will be admitted to probate?

RULING:

No.

The new Civil Code (Republic Act No. 386) under article 810 thereof provides that a person may execute a holographic will which must be entirely written, dated and signed by the testator himself and need not be witnessed. It is a fact, however, that at the time that Exhibit "A" was executed in 1923

and at the time that Father Abadia died in 1943, holographic wills were not permitted, and the law at the time imposed certain requirements for the execution of wills, such as numbering correlatively each page (not folio or sheet) in letters and signing on the left hand margin by the testator and by the three attesting witnesses, requirements which were not complied with in Exhibit "A" because the back pages of the first two folios of the will were not signed by any one, not even by the testator and were not numbered, and as to the three front pages, they were signed only by the testator. Failure of the testator and his witnesses to sign on the left hand margin of every page is radical and totally vitiates the testament.

The above provision is but an expression or statement of the weight of authority to the effect that the validity of a will is to be judged not by the law enforce at the time of the testator's death or at the time the supposed will is presented in court for probate or when the petition is decided by the court but **at the time the instrument was executed**. Although the will operates upon and after the death of the testator, the wishes of the testator about the disposition of his estate among his heirs and among the legatees is given solemn expression at the time the will is executed, and in reality, the legacy or bequest then becomes a completed act.

However, we should not forget that from the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the constitution against a subsequent change in the statute adding new legal requirements of execution of wills which would invalidate such a will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution then upon his death he should be regarded and declared as having died intestate. The general rule is that the Legislature cannot validate void wills.

In view of the foregoing, the order appealed from is reversed, and Exhibit "A" is denied probate.

**TESTATE ESTATE OF JOSEPH G. BRIMO, JUAN MICIANO, ADMINISTRATOR, PETITIONER-APPELLEE, VS. ANDRE BRIMO, OPPONENT-APPELLANT.
G.R. No. L-22595, EN BANC, November 1, 1927, Romualdez, J.**

In the absence of evidence to the contrary foreign laws on a particular subject are presumed to be the same as those of the Philippines.

Moreover, if the condition imposed upon the legatee is that he respect the testator's order that his property be distributed in accordance with the laws of the Philippines and not in accordance with the laws of his nation, said condition is illegal, because, according to article 10 of the Civil Code, said laws govern his testamentary disposition, and, being illegal, shall be considered unwritten, thus making the institution unconditional.

FACTS:

The judicial administrator, Juan Miciano, of the estate of Joseph Brimo (Turkish citizen) filed a scheme of partition. Andre Brimo, one of the brothers of the deceased, opposed it. The court, however, approved it.

As a consequence, Andre Brimo was excluded as a legatee, despite his being designated in the will. This exclusion was based on the last part of the second clause of the will of the testator (Joseph Brimo), to the effect that despite his (Joseph) being a Turkish citizen, it was his wish that his estate

be distributed and disposed of in accordance with the laws in force in the Philippine islands, along with a request to all his relatives to respect this wish; otherwise, whatever disposition found in the will favorable to the person or persons who fail to comply with this request shall be annulled and cancelled.

Andre Brimo's opposition is based on the fact that the partition in question puts into effect the provisions of Joseph G. Brimo's will which are not in accordance with the laws of his Turkish nationality, for which reason they are void as being in violation of article 10 of the Civil Code, which provides (among other things):

"Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the amount of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national law of the person whose succession is in question, whatever may be the nature of the property or the country in which it may be situated."

In this case, however, oppositor (Andre Brimo) did not prove that the testamentary dispositions are not in accordance with the Turkish laws, as he was not also able to present any evidence showing what the Turkish laws are on the matter. In such case, they are presumed to be the same as those of the Philippines.

ISSUE:

Whether the appellant should be excluded as legatee

RULING:

No.

In regard to the first assignment of error which deals with the exclusion of the herein appellant as a legatee, inasmuch as he is one of the persons designated as such in will, it must be taken into consideration that such exclusion is based on the last part of the second clause of the will, which says: Second. I like desire to state that although by law, I am a Turkish citizen, this citizenship having been conferred upon me by conquest and not by free choice, nor by nationality and, on the other hand, having resided for a considerable length of time in the Philippine Islands where I succeeded in acquiring all of the property that I now possess, it is my wish that the distribution of my property and everything in connection with this, my will, be made and disposed of in accordance with the laws in force in the Philippine islands, requesting all of my relatives to respect this wish, otherwise, I annul and cancel beforehand whatever disposition found in this will favorable to the person or persons who fail to comply with this request.

The institution of legatees in this will is conditional, and the condition is that the instituted legatees must respect the testator's will to distribute his property, not in accordance with the laws of his nationality, but in accordance with the laws of the Philippines.

If this condition as it is expressed were legal and valid, any legatee who fails to comply with it, as the herein oppositor who, by his attitude in these proceedings has not respected the will of the testator, as expressed, is prevented from receiving his legacy.

The fact is, however, that the said condition is void, being contrary to law, for article 792 of the civil Code provides the following:

Impossible conditions and those contrary to law or good morals shall be considered as not imposed and shall not prejudice the heir or legatee in any manner whatsoever, even should the testator otherwise provide.

And said condition is contrary to law because it expressly ignores the testator's national law when, according to article 10 of the civil Code above quoted, such national law of the testator is the one to govern his testamentary dispositions.

Said condition then, in the light of the legal provisions above cited, is considered unwritten, and the institution of legatees in said will is unconditional and consequently valid and effective even as to the herein oppositor.

It results from all this that the second clause of the will regarding the law which shall govern it, and to the condition imposed upon the legatees, is null and void, being contrary to law.

All of the remaining clauses of said will with all their dispositions and requests are perfectly valid and effective it not appearing that said clauses are contrary to the testator's national law.

TESTATE ESTATE OF AMOS G. BELLIS, deceased. PEOPLE'S BANK and TRUST COMPANY, executor. MARIA CRISTINA BELLIS and MIRIAM PALMA BELLIS, oppositors-appellants, vs. EDWARD A. BELLIS, ET AL., heirs-appellees

G.R. No. L-23678, EN BANC, June 6, 1967, BENGZON, J.P., J

The parties admit that the decedent, Amos G. Bellis, was a citizen of the State of Texas, U.S.A., and that under the laws of Texas, there are no forced heirs or legitimes. Accordingly, since the intrinsic validity of the provision of the will and the amount of successional rights are to be determined under Texas law, the Philippine law on legitimes cannot be applied to the testacy of Amos G. Bellis.

FACTS:

Amos G. Bellis, born in Texas, was "a citizen of the State of Texas and of the United States." By his first wife, Mary E. Mallen, whom he divorced, he had five legitimate children: Edward, George, (who predeceased him in infancy), Henry, Alexander and Anna Bellis Allsman; by his second wife, Violet Kennedy, who survived him, he had three legitimate children: Edwin, Walter and Dorothy and finally, he had three illegitimate children: Amos Bellis, Jr., Maria Cristina Bellis and Miriam Palma Bellis.

On August 5, 1952, Amos G. Bellis executed a will in the Philippines, in which he directed that after all taxes, obligations, and expenses of administration are paid for, his distributable estate should be divided, in trust, in the following order and manner: (a) \$240,000.00 to his first wife, Mary E. Mallen; (b) P120,000.00 to his three illegitimate children, Amos Bellis, Jr., Maria Cristina Bellis, Miriam Palma Bellis, or P40,000.00 each and (c) after the foregoing two items have been satisfied, the remainder shall go to his seven surviving children by his first and second wives in equal shares.

Subsequently, Amos G. Bellis died a resident of San Antonio, Texas, U.S.A. His will was admitted to probate in the Court of First Instance

The People's Bank and Trust Company, as executor of the will, paid all the bequests therein including the amount of \$240,000.00 in the form of shares of stock to Mary E. Mallen and to the three (3) illegitimate children, Amos Bellis, Jr., Maria Cristina Bellis and Miriam Palma Bellis, and pursuant to the "Twelfth" clause of the testator's Last Will and Testament — divided the residuary estate into seven equal portions for the benefit of the testator's seven legitimate children by his first and second marriages.

Maria Cristina Bellis and Miriam Palma Bellis filed their respective oppositions to the project of partition on the ground that they were deprived of their legitimes as illegitimate children and, therefore, compulsory heirs of the deceased.

After the parties filed their respective memoranda and other pertinent pleadings, the lower court, issued an order overruling the oppositions and approving the executor's final account, report and administration and project of partition. Relying upon Art. 16 of the Civil Code, it applied the national law of the decedent, which in this case is Texas law, which did not provide for legitimes.

ISSUE:

Whether the national law of Amos Bellis should apply in the said partition.

HELD:

YES.

In the present case, it is not disputed that the decedent was both a national of Texas and a domicile thereof at the time of his death. So that even assuming Texas has a conflict of law rule providing that the domiciliary system (law of the domicile) should govern, the same would not result in a reference back (renvoi) to Philippine law, but would still refer to Texas law. Rather, they argue that their case falls under the circumstances mentioned in the third paragraph of Article 17 in relation to Article 16 of the Civil Code.

Article 16, par. 2, and Art. 1039 of the Civil Code, render applicable the national law of the decedent, in intestate or testamentary successions, with regard to four items: (a) the order of succession; (b) the amount of successional rights; (e) the intrinsic validity of the provisions of the will; and (d) the capacity to succeed.

Appellants would however counter that Art. 17, paragraph three, of the Civil Code, stating that — Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country prevails as the exception to Art. 16, par. 2 of the Civil Code afore-quoted. This is not correct. It is evident that whatever public policy or good customs may be involved in our System of legitimes, Congress has not intended to extend the same to the succession of foreign nationals. For it has specifically chosen to leave, inter alia, the amount of successional rights, to the decedent's national law. Specific provisions must prevail over general ones.

The parties admit that the decedent, Amos G. Bellis, was a citizen of the State of Texas, U.S.A., and that under the laws of Texas, there are no forced heirs or legitimes. Accordingly, since the intrinsic validity

of the provision of the will and the amount of successional rights are to be determined under Texas law, the Philippine law on legitimes cannot be applied to the testacy of Amos G. Bellis.

ANTONIO B. BALTAZAR, SEBASTIAN M. BALTAZAR, ANTONIO L. MANGALINDAN, ROSIE M. MATEO, NENITA A. PACHECO, VIRGILIO REGALA, JR., and RAFAEL TITCO, Petitioners, vs. LORENZO LAXA, Respondent.

G.R. No. 174489, FIRST DIVISION, April 11, 2012, DEL CASTILLO, J.

The state of being forgetful does not necessarily make a person mentally unsound so as to render him unfit to execute a will.

FACTS:

Paciencia was a 78-year-old spinster when she made her last will and testament. She bequeathed all her properties to respondent Lorenzo Laxa and his wife Corazon Laxa and their children. Lorenzo was the nephew of Paciencia and was treated as her own son. More than four years after the death of Paciencia, Lorenzo filed a petition for probate proceedings. Antonio Baltazar opposed the petition, alleging that the subject properties should belong to Nicomeda Regala Mangalindan, his predecessor-in-interest. Rosie Mateo, one of the petitioners, testified that Paciencia was referred to as “magulyan” or forgetful, because she would sometimes leave her wallet in the kitchen then start looking for it moments later, hence she was mentally incapable to make a will at the time of its execution.

ISSUE:

Whether or not Paciencia had no testamentary capacity to execute her last will and testament for having been forgetful.

RULING:

No. The state of being forgetful does not necessarily make a person mentally unsound so as to render him unfit to execute a will. Forgetfulness is not equivalent to being of unsound mind. As provided under Art. 799 of the Civil Code, to be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause. It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act. Furthermore, Rosie’s conclusion that Paciencia was magulyan was only based on her personal assessment in contrast to Dra. Limpin’s testimony as to the soundness of mind of Paciencia when the latter went to Judge Limpin’s house and voluntarily executed the Will. The testimony of subscribing witnesses to a Will concerning the testator’s mental condition is entitled to great weight where they are truthful and intelligent. Lastly, the burden to prove that Paciencia was of unsound mind at the time of the execution of the will lies on the shoulders of the petitioners.

CATALINA BUGNAO, proponent-appellee, vs. FRANCISCO UBAG, ET AL., contestants-appellants.

G.R. No. 4445, EN BANC, September 18, 1909, CARSON, J.

Mere weakness of mind, or partial imbecility from the disease of body, or from age, will not render a person incapable of making a will, a weak or feeble minded person may make a valid will, provided he has understanding memory sufficient to enable him to know what he is about, and how or to whom he is disposing of his property. To constitute a sound and disposing mind, it is not necessary that the mind should be unbroken or unimpaired, unshattered by disease or otherwise. It has not been understood that a testator must possess these qualities (of sound and disposing mind and memory) in the highest degree. Few indeed would be the wills confirmed, if this is correct. Pain, sickness, debility of body, from age or infirmity, would, according to its violence or duration, in a greater or less degree, break in upon, weaken, or derange the mind, but the derangement must be such as deprives him of the rational faculties common to man and, that Sound mind does not mean a perfectly balanced mind. The question of soundness is one of degree; on the other hand, it has been held that testamentary incapacity does not necessarily require that a person shall actually be insane or of an unsound mind. Weakness of intellect, whether it arises from extreme old age from disease, or great bodily infirmities or suffering, or from all these combined, may render the testator incapable of making a valid will, providing such weakness really disqualifies her from knowing or appreciating the nature, effects, or consequences of the act she is engaged in.

But for the purposes of this decision it is not necessary for us to attempt to lay down a definition of testamentary capacity which will cover all possible cases which may present themselves, because, as will be seen from what has already been said, the testator was, at the time of making the instrument under consideration, endowed with all the elements of mental capacity set out in the following definition of testamentary capacity which has been frequently announced in courts of last resort in England and the United States; and while in some cases testamentary capacity has been held to exist in the absence of proof of some of these elements, there can be no question that, in the absence of proof of very exceptional circumstances, proof of the existence of all these elements is sufficient to establish the existence of testamentary capacity.

Testamentary capacity is the capacity to comprehend the nature of the transaction which the testator is engaged at the time, to recollect the property to be disposed of and the person who would naturally be supposed to have claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty.

FACTS:

An appeal from the order of the Court of First Instance of Oriental Negros, admitting to probate a document purporting to be the last will and testament of Domingo Ubag was filed. The instrument was propounded by his widow, Catalina Bugnao, the sole beneficiary thereunder, and probate was contested by the appellants, who are brothers and sisters of the deceased, and who would be entitled to share in the distribution of his estate, if probate were denied, as it appears that the deceased left no heirs in the direct ascending or descending line.

Appellants contended, among others, that Ubag was not of sound mind and memory, and was physically and mentally incapable of making a will.

Two of the subscribing witnesses, Victor J. Bingtoy and Catalino Mariño, testified in support of the will, the latter being the justice of the peace of the municipality wherein it was executed; and their testimony was corroborated in all important details by the testimony of the proponent herself, who was present when the will was made. It does not appear from the record why the third subscribing witness was not called; but since counsel for the contestants makes no comment upon his absence, we think it may safely be inferred that there was some good and sufficient reason therefore. In passing, however, it may be well to observe that, when because of death, sickness, absence, or for any other reason, it is not practicable to call to the witness stand all the subscribing witnesses to a will offered for probate, the reason for the absence of any of these witnesses should be made to appear of record, and this especially in cases such as the one at bar, wherein there is a contests.

The contestants put upon the stand four witnesses for the purpose of proving that at the time and on the occasion when the subscribing witnesses testified that the will was executed, these witnesses were not in the house with the testator, and that the alleged testator was at that time in such physical and mental condition that it was impossible for him to have made a will. Two of these witnesses, upon cross-examination, admitted that they were not in the house at or between the hours of four and six in the afternoon of the day on which the will is alleged to have been made, this being the time at which the witnesses in support of the will testified that it was executed. Of the other witnesses, one is a contestant of the will, Macario Ubag, a brother of the testator, and the other, Canuto Sinoy, his close relative. These witnesses swore that they were in the house of the deceased, where he was lying ill, at or about the time when it is alleged that the will was executed, and that at that time the alleged subscribing witnesses were not in the house, and the alleged testator was so sick that he was unable to speak, to understand, or to make himself understood, and that he was wholly incapacitated to make a will. But the testimony of Macario Ubag is in our opinion wholly unworthy of credence. In addition to his manifest interest in the result of the investigation, it clearly discloses a fixed and settled purpose to overthrow the will at all costs, and to that end an utter disregard of the truth, and readiness to swear to any fact which he imagined would aid in securing his object.

In the course of the proceedings, an admittedly genuine signature of the deceased was introduced in evidence, and upon a comparison of this signature with the signature attached to the instrument in question, we are wholly of the opinion of the trial judge, who held in this connection as follows:

No expert evidence has been adduced with regard to these two signatures, and the presiding judge of this court does not claim to possess any special expert knowledge in the matter of signatures; nevertheless, the court has compared these two signatures, and does not find that any material differences exists between the same. It is true that the signature which appears in the document offered for authentication discloses that at the time of writing the subscriber was more deliberate in his movements, but two facts must be acknowledge: First, that the testator was seriously ill, and the other fact, that for some reason which is not stated the testator was unable to see, and was a person who was not in the habit of signing his name every day.

These facts should sufficiently explain whatever difference may exist between the two signatures, but the court finds that the principal strokes in the two signatures are identical.

That the testator was mentally capable of making the will is in our opinion fully established by the testimony of the subscribing witnesses who swore positively that, at the time of its execution, he was of sound mind and memory. It is true that their testimony discloses the fact that he was at that time extremely ill, in an advanced stage of tuberculosis complicated with severe intermittent attacks of

asthma; that he was too sick to rise unaided from his bed; that he needed assistance even to rise himself to a sitting position; and that during the paroxysms of asthma to which he was subject he could not speak; but all this evidence of physical weakness in no wise establishes his mental incapacity or a lack of testamentary capacity, and indeed the evidence of the subscribing witnesses as to the aid furnished them by the testator in preparing the will, and his clear recollection of the boundaries and physical description of the various parcels of land set out therein, taken together with the fact that he was able to give to the person who wrote the will clear and explicit instructions as to his desires touching the disposition of his property, is strong evidence of his testamentary capacity.

ISSUE:

Whether Ubag was mentally capacitated when he executed the will. (YES)

RULING:

It has been said that "the difficulty of stating standards or tests by which to determine the degree of mental capacity of a particular person has been everywhere recognized, and grows out of the inherent impossibility of measuring mental capacity, or its impairment by disease or other causes" (Greene vs. Greene, 145 Ill., 264, 276); and that "it is probable that no court has ever attempted to lay down any definite rule in respect to the exact amount of mental capacity requisite for the making of a valid will, without appreciating the difficulty of the undertaking" (Trish vs. Newell, 62 Ill., 196, 203).

Between the highest degree of soundness of mind and memory which unquestionably carries with it full testamentary capacity, and that degree of mental aberration generally known as insanity or idiocy, there are numberless degrees of mental capacity or incapacity, and while on one hand it has been held that "mere weakness of mind, or partial imbecility from the disease of body, or from age, will not render a person incapable of making a will, a weak or feeble minded person may make a valid will, provided he has understanding memory sufficient to enable him to know what he is about, and how or to whom he is disposing of his property" (Lodge vs. Lodge, 2 Houst. (Del.), 418); that, "To constitute a sound and disposing mind, it is not necessary that the mind should be unbroken or unimpaired, unshattered by disease or otherwise" (Sloan vs. Maxwell, 3 N. J. Eq., 563); that "it has not been understood that a testator must possess these qualities (of sound and disposing mind and memory) in the highest degree. . . . Few indeed would be the wills confirmed, if this is correct. Pain, sickness, debility of body, from age or infirmity, would, according to its violence or duration, in a greater or less degree, break in upon, weaken, or derange the mind, but the derangement must be such as deprives him of the rational faculties common to man" (Den. vs. Vancleve, 5 N. J. L., 680); and, that "Sound mind does not mean a perfectly balanced mind. The question of soundness is one of degree" (Boughton vs. Knight, L. R., 3 P. & D., 64; 42 L. J. P., 25); on the other hand, it has been held that "testamentary incapacity does not necessarily require that a person shall actually be insane or of an unsound mind. Weakness of intellect, whether it arises from extreme old age from disease, or great bodily infirmities or suffering, or from all these combined, may render the testator incapable of making a valid will, providing such weakness really disqualifies her from knowing or appreciating the nature, effects, or consequences of the act she is engaged in" (Manatt vs. Scott, 106 Iowa, 203; 68 Am. St. Rep., 293, 302).

But for the purposes of this decision it is not necessary for us to attempt to lay down a definition of testamentary capacity which will cover all possible cases which may present themselves, because, as

will be seen from what has already been said, the testator was, at the time of making the instrument under consideration, endowed with all the elements of mental capacity set out in the following definition of testamentary capacity which has been frequently announced in courts of last resort in England and the United States; and while in some cases testamentary capacity has been held to exist in the absence of proof of some of these elements, there can be no question that, in the absence of proof of very exceptional circumstances, proof of the existence of all these elements is sufficient to establish the existence of testamentary capacity.

Testamentary capacity is the capacity to comprehend the nature of the transaction which the testator is engaged at the time, to recollect the property to be disposed of and the person who would naturally be supposed to have claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty.

In our opinion, the evidence of record establishes in a strikingly conclusive manner the execution of the instrument propounded as the last will and testament of the deceased; that it was made in strict conformity with the requisites prescribed by law; and that, at the time of its execution, the deceased was of sound mind and memory, and executed the instrument of his own free will and accord.

JULIANA BAGTAS, plaintiffs-appellee, vs. ISIDRO PAGUIO, ET AL., Defendants-Appellants.

G.R. No. L-6801, EN BANC, March 14, 1912, TRENT, J.

*In this jurisdiction **the presumption of law is in favor of the mental capacity of the testator and the burden is upon the contestants of the will to prove the lack of testamentary capacity.***

*The rule of law relating to the presumption of mental soundness is well established, and the testator in the case at bar never having been adjudged insane by a court of competent jurisdiction, this presumption continues, and it is therefore incumbent upon the opponents to overcome this legal presumption by proper evidence. This we think they have failed to do. There are many cases and authorities which we might cite to show that the courts have repeatedly held that **mere weakness of mind and body, induced by age and disease do not render a person incapable of making a will.** The law does not require that a person shall continue in the full enjoyment and use of his pristine physical and mental powers in order to execute a valid will. If such were the legal standard, few indeed would be the number of wills that could meet such exacting requirements. The authorities, both medical and legal, are universal in statement that the question of mental capacity is one of degree, and that there are many gradations from the highest degree of mental soundness to the lowest conditions of diseased mentality which are denominated as insanity and idiocy.*

The striking change in the physical and mental vigor of the testator during the last years of his life may have led some of those who knew him in his earlier days to entertain doubts as to his mental capacity to make a will, yet we think that the statements of the witnesses to the execution of the will and statements of the conduct of the testator at that time all indicate that he unquestionably had mental capacity and that he exercised it on this occasion. At the time of the execution of the will it does not appear that his conduct was irrational in any particular. He seems to have comprehended clearly what the nature of the business was in which he was engaged. The evidence shows that the writing and execution of the will occupied a period several hours and that the testator was present during all this time, taking an active part in all the proceedings. Again, the will in the case at bar is perfectly reasonable and its dispositions are those of a rational person.

FACTS:

An appeal from an order of the Court of First Instance of the Province of Bataan, admitting to probate a document which was offered as the last will and testament of Pioquinto Paguio y Pizarro was filed. The will purports to have been executed in the pueblo of Pilar, Province of Bataan, on the 19th day of April, 1908. The testator died on the 28th of September, 1909, a year and five months following the date of the execution of the will. The will was propounded by the executrix, Juliana Bagtas, widow of the decedent, and the opponents are a son and several grandchildren by a former marriage, the latter being the children of a deceased daughter

The basis of the opposition to the probate of the will is that the same was not executed according to the formalities and requirements of the law touching wills, and **further that the testator was not in the full of enjoyment and use of his mental faculties and was without the mental capacity necessary to execute a valid will.**

The record shows that the testator, x, for some fourteen of fifteen years prior to the time of his death suffered from a paralysis of the left side of his body; that a few years prior to his death his hearing became impaired and that he lost the power of speech. Owing to the paralysis of certain muscles his head fell to one side, and saliva ran from his mouth. He retained the use of his right hand, however, and was able to write fairly well. Through the medium of signs he was able to indicate his wishes to his wife and to other members of his family.

At the time of the execution of the will there were present the four testamentary witnesses, Agustin Paguio, Anacleto Paguio, and Pedro Paguio, and attorney, Señor Marco, and one Florentino Ramos. Anacleto Paguio and the attorney have since died, and consequently their testimony was not available upon the trial of the case in the lower court. The other three testamentary witnesses and the witness Florentino Ramos testified as to the manner in which the will was executed.

On the appellants' second assignment of error, viz, the testator's alleged mental incapacity at the time of the execution of the will. Upon this point considerable evidence was adduced at the trial. One of the attesting witnesses testified that at the time of the execution of the will the testator was in his right mind, and that although he was seriously ill, he indicated by movements of his head what his wishes were. Another of the attesting witnesses stated that he was not able to say whether decedent had the full use of his mental faculties or not, because he had been ill for some years, and that he (the witnesses) was not a physician. The other subscribing witness, Pedro Paguio, testified in the lower court as a witness for the opponents. He was unable to state whether or not the will was the wish of the testator. The only reasons he gave for his statement were the infirmity and advanced age of the testator and the fact that he was unable to speak. The witness stated that the testator signed the will, and he verified his own signature as a subscribing witness.

Florentino Ramos, although not an attesting witness, stated that he was present when the will was executed and his testimony was cumulative in corroboration of the manner in which the will was executed and as to the fact that the testator signed the will. This witness also stated that he had frequently transacted matters of business for the decedent and had written letters and made inventories of his property at his request, and that immediately before and after the execution of the will he had performed offices of his character. He stated that the decedent was able to communicate his thoughts by writing. The testimony of this witness clearly indicates the presence of mental capacity on the part of the testator. Among other witnesses for the opponents were two physician, Doctor Basa and Doctor Viado. Doctor Basa testified that he had attended the testator some four or

five years prior to his death and that the latter had suffered from a cerebral congestion from which the paralysis resulted.

Doctor Basa testified at more length, but the substance of his testimony is that the testator had suffered a paralysis and that he had noticed some mental disorder. He does not say that the testator was not in his right mind at the time of the execution of the will, nor does he give it at his opinion that he was without the necessary mental capacity to make a valid will. He did not state in what way this mental disorder had manifested itself other than that he had noticed that the testator did not reply to him on one occasion when he visited him.

Doctor Viado, the other physician, have never seen the testator, but his answer was in reply to a hypothetical question as to what be the mental condition of a person who was 79 years old and who had suffered from a malady such as the testator was supposed to have had according to the testimony of Doctor Basa, whose testimony Doctor Viado had heard. He replied and discussed at some length the symptoms and consequences of the decease from which the testator had suffered; he read in support of his statements from a work by a German Physician, Dr. Herman Eichost. In answer, however, to a direct question, he stated that he would be unable to certify to the mental condition of a person who was suffering from such a disease.

ISSUE:

Whether Pioquinto Paguio was mentally capacitated when he executed the will. (YES)

RULING:

We do not think that the testimony of these two physicians in any way strengthens the contention of the appellants. Their testimony only confirms the fact that the testator had been for a number of years prior to his death afflicted with paralysis, in consequence of which his physician and mental strength was greatly impaired. Neither of them attempted to state what was the mental condition of the testator at the time he executed the will in question. There can be no doubt that the testator's infirmities were of a very serious character, and it is quite evident that his mind was not as active as it had been in the earlier years of his life. However, we cannot include from this that he wanting in the necessary mental capacity to dispose of his property by will.

The courts have been called upon frequently to nullify wills executed under such circumstances, but the weight of the authority is in support of the principle that it is only when those seeking to overthrow the will have clearly established the charge of mental incapacity that the courts will intervene to set aside a testamentary document of this character. In the case of Bugnao vs. Ubag, the question of testamentary capacity was discussed by this court. The numerous citations there given from the decisions of the United States courts are especially applicable to the case at bar and have our approval. In this jurisdiction the presumption of law is in favor of the mental capacity of the testator and the burden is upon the contestants of the will to prove the lack of testamentary capacity.

The rule of law relating to the presumption of mental soundness is well established, and the testator in the case at bar never having been adjudged insane by a court of competent jurisdiction, this presumption continues, and it is therefore incumbent upon the opponents to overcome this legal presumption by proper evidence. This we think they have failed to do. There are many cases and authorities which we might cite to show that the courts have repeatedly held that mere weakness of mind and body, induced by age and disease do not render a person incapable of making a will. The

law does not require that a person shall continue in the full enjoyment and use of his pristine physical and mental powers in order to execute a valid will. If such were the legal standard, few indeed would be the number of wills that could meet such exacting requirements. The authorities, both medical and legal, are universal in statement that the question of mental capacity is one of degree, and that there are many gradations from the highest degree of mental soundness to the lowest conditions of diseased mentality which are denominated as insanity and idiocy.

The right to dispose of property by testamentary disposition is as sacred as any other right which a person may exercise and this right should not be nullified unless mental incapacity is established in a positive and conclusive manner. In discussing the question of testamentary capacity, it is stated in volume 28, 70, of the American and English Encyclopedia of Law, that -

Contrary to the very prevalent lay impression, perfect soundness of mind is not essential to testamentary capacity. A testator may be afflicted with a variety of mental weaknesses, disorders, or peculiarities and still be capable in law of executing a valid will.

The rule relating to testamentary capacity is stated in Buswell on Insanity, section 365, and quoted with approval in *Campbell vs. Campbell* (130 Ill., 466), as follows:

To constitute a sound and disposing mind, it is not necessary that the mind shall be wholly unbroken, unimpaired, or unshattered by disease or otherwise, or that the testator should be in the full possession of his reasoning faculties.

The question is not so much that was the degree of memory possessed by the testator, as, had he a disposing memory? Was he able to remember the property he was about to bequeath, the manner of disturbing it, and the objects of his bounty? In a word, were his mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time when he executed his will.

In *Wilson vs. Mitchell* (101 Penn., 495), the following facts appeared upon the trial of the case: The testator died at the age of nearly 102 years. In his early years he was an intelligent and well informed man. About seven years prior to his death he suffered a paralytic stroke and from that time his mind and memory were much enfeebled. He became very dull of hearing and in consequence of the shrinking of his brain he was affected with senile cataract causing total blindness. He became filthy and obscene in his habits, although formerly he was observant of the properties of life. The court, in commenting upon the case, said:

Neither age, nor sickness, nor extreme distress, nor debility of body will affect the capacity to make a will, if sufficient intelligence remains. The failure of memory is not sufficient to create the incapacity, unless it be total, or extend to his immediate family or property. . . .

x x x x x x x x

Dougal (the testator) had lived over one hundred years before he made the will, and his physical and mental weakness and defective memory were in striking contrast with their strength in the meridian of his life. He was blind; not deaf, but hearing impaired; his mind acted slowly, he was forgetful or recent events, especially of names, and repeated questions in conversation; and sometimes, when aroused for sleep or slumber, would seem bewildered. It is not singular that some of those who had known him when he was remarkable for vigor and intelligence, are of the opinion that his reason was

so far gone that he was incapable of making a will, although they never heard him utter an irrational expression.

In the above case the will was sustained. In the case at bar we might draw the same contrast as was pictured by the court in the case just quoted. The striking change in the physical and mental vigor of the testator during the last years of his life may have led some of those who knew him in his earlier days to entertain doubts as to his mental capacity to make a will, yet we think that the statements of the witnesses to the execution of the will and statements of the conduct of the testator at that time all indicate that he unquestionably had mental capacity and that he exercised it on this occasion. At the time of the execution of the will it does not appear that his conduct was irrational in any particular. He seems to have comprehended clearly what the nature of the business was in which he was engaged. The evidence show that the writing and execution of the will occupied a period several hours and that the testator was present during all this time, taking an active part in all the proceedings. Again, the will in the case at bar is perfectly reasonable and its dispositions are those of a rational person.

TRINIDAD NEYRA, Plaintiff-Appellant, vs. ENCARNACION NEYRA, Defendant-Appellee.
C.A. No. 8075, EN BANC, March 25, 1946, DE JOYA, J.

Insomnia, in spite of the testimony of two doctors, who testified for the opponents to the probate of a will, to the effect that it tended to destroy mental capacity, was held not to effect the full possession of mental faculties deemed necessary and sufficient for its execution. The testatrix was held to have been compos mentis, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will.

Where it appears that a few hours and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of the execution of the will.

Judging by the authorities above cited, the logical conclusion is that Encarnacion Neyra was of sound mind and possessed the necessary testamentary and mental capacity, at the time of the execution of the agreement and will, dated November 3, 1942.

FACTS:

Severo Neyra died intestate in the City of Manila leaving certain properties and two children, by his first marriage, named Encarnacion Neyra and Trinidad Neyra, and other children by his second marriage. After the death of Severo Neyra, the two sisters, Encarnacion Neyra and Trinidad Neyra, had serious misunderstandings, in connection with the properties left by their deceased father, and so serious were their dissensions that they had two litigations in the Court of First Instance of Manila, concerning said properties. In the first case, filed in March 31, 1939, Trinidad Neyra and others demanded by Encarnacion Neyra and others the annulment of the sale of the property located at No.

366 Raon Street, Manila which was finally decided in favor of the defendants, in the court of first instance, and in the Court of Appeals, on December 21, 1943; and the second is the instance case.

In the meanwhile, Encarnacion Neyra had become seriously ill, suffering from Addison's disease, and on October 31, 1942, she sent for her religious adviser and confessor, Mons. Vicente Fernandez of the Quiapo Church to make confession. Mons. Fernandez caused the necessary arrangements to be made, and, on November 1, 1942, holy mass was solemnized in her house by Father Teodoro Garcia. On which occasion, Encarnacion Neyra, who remained in bed, took holy communion. After the mass, Father Garcia talked to Encarnacion Neyra and advised reconciliation between the two sisters, Encarnacion and Trinidad Neyra. Encarnacion accepted said advise and, at about noon of the same day (November 1, 1942), sent Eustaquio Mendoza to fetch her sister Trinidad, who came at about 2:30 that same afternoon. The two sisters greeted each other in most affectionate manner, and became reconciled and two had a long and cordial conversation, in the course of which they also talked about the properties left by their father and their litigations which had reached the Court of Appeals for the City of Manila, the instant case being the second, and they agreed to have the latter dismissed, on the condition that the property involved therein should be given exclusively to Trinidad Neyra, that the latter should waive her share in the rents of said property collected by Encarnacion, and the Trinidad had no more indebtedness to Encarnacion. They also agreed to send for Atty. Alejandro M. Panis, to prepare the necessary document embodying the said agreement, but Attorney Panis could come only in the afternoon of the following day, November 2, 1942, when Encarnacion gave him instructions for the preparation of the document embodying their agreement, and other instructions for the preparation of her last will and testament. Attorney Panis prepared said document of compromise as well as the new will and testament, naming Trinidad Neyra and Eustaquio Mendoza beneficiaries therein, pursuant to Encarnacion's express instructions, and the two documents were prepared, in duplicate, and were ready for signature, since the morning of November 3, 1942. In the afternoon of that day, A compromise and last will and testament of Encarnacion Neyra was prepared in the presence of Father Teodoro Garcia, Dr. Moises B. Abad, Dr. Eladio Aldecoa, Trinidad Neyra, and others. After which he asked her if their terms were in accordance with her wishes, or if she wanted any change made in said documents. Encarnacion Neyra did not suggest any change, and asked for the pad and the two documents, and, with the help of a son of Trinidad, placed her thumbmark at the foot of each one of the two documents, in duplicate, on her bed in the sala, in the presence of attesting witnesses, Dr. Moises B. Abad, Dr. Eladio R. Aldecoa and Atty. Alejandro M. Panis, after which said witnesses signed at the foot of the will, in the presence of Encarnacion Neyra, and of each other. The agreement was also signed by Trinidad Neyra, as party, and by Dr. M. B. Abad and Eustaquio Mendoza, a protege, as witnesses. Father Teodoro Garcia was also present at the signing of the two documents, at the request of Encarnacion Neyra.

The foregoing facts have been established by the witnesses presented by Trinidad Neyra, who are all trustworthy men, and who had absolutely no interest in the final outcome of this case. Two of them are ministers of the Gospel, while three of the attesting witnesses are professional men of irreproachable character, who had known and seen and actually talked to the testatrix.

Teodora Neyra, half sister of Encarnacion, and her young daughter Ceferina de la Cruz, and Presentacion Blanco, daughter of petitioner Maria Jacobo Vda. de Blanco, substantially corroborated the testimony of the witnesses presented by Trinidad Neyra, with reference to the signing of documents, in the bedroom of Encarnacion Neyra, in the afternoon of November 3, 1942. However, they testified that when the thumbmark of Encarnacion Neyra was affixed to the agreement and will in question, she was sleeping on her bed in the sala; and that the attesting witnesses were not present, as they were in the caida.

But Ceferina de la Cruz also stated that the attesting witnesses signed the documents thumbmarked by Encarnacion Neyra, in the sala near her bed, thus contradicting herself and Teodora Neyra and Presentacion Blanco.

ISSUE:

Whether Encarnacion Neyra was mentally capacitated when she executed the will. (YES)

RULING:

Insomnia, in spite of the testimony of two doctors, who testified for the opponents to the probate of a will, to the effect that it tended to destroy mental capacity, was held not to effect the full possession of mental faculties deemed necessary and sufficient for its execution. The testatrix was held to have been *compos mentis*, in spite of the physician's testimony to the contrary, to the effect that she was very weak, being in the third or last stage of tuberculosis. The testimony of the attending physician that the deceased was suffering from diabetes and had been in a comatose condition for several days, prior to his death, was held not sufficient to establish testamentary incapacity, in view of the positive statement of several credible witnesses that he was conscious and able to understand what was said to him and to communicate his desires. Where the mind of the testator is in perfectly sound condition, neither old age, nor ill health, nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will.

Where it appears that a few hours and also a few days after the execution of the will, the testator intelligently and intelligibly conversed with other persons, although lying down and unable to move or stand up unassisted, but could still effect the sale of property belonging to him, these circumstances show that the testator was in a perfectly sound mental condition at the time of the execution of the will.

Presentacion Blanco, in the course of her cross-examination, frankly admitted that, in the morning and also at about 6 o'clock in the afternoon of November 3, 1942, Encarnacion Neyra talked to her that they understood each other clearly, thus showing that the testatrix was really of sound mind, at the time of signing and execution of the agreement and will in question.

It may, therefore, be reasonably concluded that the mental faculties of persons suffering from Addison's disease, like the testatrix in this case, remain unimpaired, partly due to the fact that, on account of the sleep they enjoy, they necessarily receive the benefit of physical and mental rest. And that like patients suffering from tuberculosis, insomnia or diabetes, they preserve their mental faculties until the moments of their death.

Judging by the authorities above cited, the logical conclusion is that Encarnacion Neyra was of sound mind and possessed the necessary testamentary and mental capacity, at the time of the execution of the agreement and will, dated November 3, 1942.

In re estate of Piraso, deceased. SIXTO ACOP, Petitioner-Appellant, v. SALMING PIRASO, ET AL., Appellees.

G.R. No. 28946, EN BANC, January 16, 1929, ROMUALDEZ, J

No will shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator.

The fact is, we repeat, that it is quite certain that the instrument Exhibit A was written in English, which the supposed testator Piraso did not know, and this is sufficient to invalidate said will according to the clear and positive provisions of the law, and inevitably prevents its probate.

FACTS:

An appeal was filed questioning the judgment of the Court of First Instance of Benguet, denying the probate of the instrument Exhibit A, as the last will and testament of the deceased Piraso. The said will was prepared in English, a language unknown to the testator.

ISSUE:

Whether the will executed by Picaso is valid considering that it was written in English, a language unknown to the testator. (NO)

RULING:

Section 618 of the Code of Civil Procedure, strictly provides that:

"No will, except as provided in the preceding section" (as to wills executed by a Spaniard or a resident of the Philippine Islands, before the present Code of Civil Procedure went into effect), "shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator," etc. (Parenthesis and italics ours.) Nor can the presumption in favor of a will established by this court in *Abangan v. Abangan* (40 Phil., 476), to the effect that the testator is presumed to know the dialect of the locality where he resides, unless there is proof to the contrary, even be invoked in support of the probate of said document Exhibit A, as a will, because, in the instant case, not only is it not proven that English is the language of the City of Baguio where the deceased Piraso lived and where Exhibit A was drawn, but that the record contains positive proof that said Piraso knew no other language than the Igorrote dialect, with a smattering of Ilocano; that is, he did not know the English language in which Exhibit A is written. So that even if such a presumption could have been raised in this case it would have been wholly contradicted and destroyed.

We consider the other questions raised in this appeal needless and immaterial to the adjudication of this case, it having been, as it was, proven, that the instrument in question could not be probated as the last will and testament of the deceased Piraso, having been written in the English language with which the latter was unacquainted.

Such a result based upon solidly established facts would be the same whether or not it be technically held that said will, in order to be valid, must be written in the Ilocano dialect; whether or not the Igorrote or Inibaloi dialect is a cultivated language and used as a means of communication in writing, and whether or not the testator Piraso knew the Ilocano dialect well enough to understand a will

written in said dialect. The fact is, we repeat, that it is quite certain that the instrument Exhibit A was written in English, which the supposed testator Piraso did not know, and this is sufficient to invalidate said will according to the clear and positive provisions of the law, and inevitably prevents its probate.

REYNALDO P. BASCARA, Petitioner, v. SHERIFF ROLANDO G. JAVIER AND EVANGELINE PANGILINAN, Respondent.

G.R. No. 188069, THIRD DIVISION, June 17, 2015, PERALTA, J.

*It is not amiss to point that the execution of Pardo of donation mortis causa in favor of petitioner does not immediately transfer title to the property to the latter. **Considering that the alleged donation is one of mortis causa, the same partake of the nature of testamentary provision. As such, said deed must be executed in accordance with the requisites on solemnities of wills and testaments under Articles 805 and 806 of the New Civil Code; otherwise, the donation is void and would produce no effect. Unless and until the alleged donation is probated, i.e., proved and allowed in the proper court, no right to the subject property has been transmitted to petitioner.***

FACTS:

On August 1, 2006, respondent Evangeline C. Pangilinan (Pangilinan) filed an ex parte petition for the issuance of a writ of possession. Essentially, the petition alleged that, on August 13, 2004, Rosalina P. Pardo (Pardo) executed in favor of Pangilinan a real estate mortgage (REM) over a parcel of land covered by Transfer Certificate of Title (TCT) No. 135066 as a security for the payment of a loan in the amount of P200,000.00; that Pardo failed to comply with the terms and conditions of the promissory note with REM; that upon compliance with the statutory requirements, the mortgaged property was sold at public auction to Pangilinan as the highest bidder; that the one-year redemption period already elapsed without Pardo exercising the right to redeem the subject property; that the title over the lot was consolidated and transferred in the name of Pangilinan as evidenced by TCT No. 147777; and, that Pardo, her agents, and persons claiming rights under her failed and refused to vacate the subject premises despite several demands.

On January 31, 2007, the trial court granted the petition. The Notice to Vacate and Surrender Possession was issued by respondent Sheriff Rolando G. Javier (Javier) on April 15 2007 pursuant to the writ of possession issued by the court on March 26, 2007.

Claiming as the true, lawful and absolute owner of the subject property that is in his possession, petitioner filed an Affidavit of Third-Party Claim and a Motion to Recall Writ of Possession on April 23, 2007. The motion alleged, among others, that during her lifetime, or on May 15, 1999, Pardo executed a duly notarized deed of **Donation Mortis Causa** donating the Subject Property to and in favor of Petitioner, and Pardo having passed away intestate and without issue and by virtue of the Donation Mortis Causa, Petitioner became the owner of the Subject Property.

ISSUE:

Whether the execution of Pardo of a donation mortis causa automatically transferred the title of the property in favor of the Petitioner. (NO)

RULING:

Moreover, it is not amiss to point that the execution of Pardo of donation mortis causa in favor of petitioner does not immediately transfer title to the property to the latter. Considering that the alleged donation is one of mortis causa, the same partake of the nature of testamentary provision. As such, said deed must be executed in accordance with the requisites on solemnities of wills and testaments under Articles 805 and 806 of the New Civil Code; otherwise, the donation is void and would produce no effect. Unless and until the alleged donation is probated, i.e., proved and allowed in the proper court, no right to the subject property has been transmitted to petitioner.

LETICIA VALMONTE ORTEGA, Petitioner, vs. JOSEFINA C. VALMONTE, Respondent.

G.R. No. 157451, THIRD DIVISION, December 16, 2005, PANGANIBAN, J.

The burden of proof that the testator was not of sound mind at the time of making his dispositions is on the person who opposes the probate of the will; but if the testator, one month, or less, before making his will was publicly known to be insane, the person who maintains the validity of the will must prove that the testator made it during a lucid interval.

*Between the highest degree of soundness of mind and memory which unquestionably carries with it full testamentary capacity, and that degrees of mental aberration generally known as insanity or idiocy, there are numberless degrees of mental capacity or incapacity and while on one hand it has been held that **mere weakness of mind, or partial imbecility from disease of body, or from age, will not render a person incapable of making a will**; a weak or feeble-minded person may make a valid will, **provided he has understanding and memory sufficient to enable him to know what he is about to do and how or to whom he is disposing of his property**. To constitute a sound and disposing mind, it is not necessary that the mind be unbroken or unimpaired or unshattered by disease or otherwise. It has been held that testamentary incapacity does not necessarily require that a person shall actually be insane or of unsound mind.*

*According to Article 799, the three things that the testator must have the ability to know to be considered of sound mind are as follows: (1) **the nature of the estate to be disposed of**, (2) **the proper objects of the testator's bounty**, and (3) **the character of the testamentary act**. Applying this test to the present case, we find that the appellate court was correct in holding that Placido had testamentary capacity at the time of the execution of his will.*

It must be noted that despite his advanced age, he was still able to identify accurately the kinds of property he owned, the extent of his shares in them and even their locations. As regards the proper objects of his bounty, it was sufficient that he identified his wife as sole beneficiary. As we have stated earlier, the omission of some relatives from the will did not affect its formal validity. There being no showing of fraud in its execution, intent in its disposition becomes irrelevant.

FACTS:

Placido executed a notarial last will and testament written in English and consisting of two (2) pages, and dated June 15, 1983 but acknowledged only on August 9, 1983. The first page contains the entire testamentary dispositions and a part of the attestation clause, and was signed at the end or bottom of that page by the testator and on the left hand margin by the three instrumental witnesses. The second page contains the continuation of the attestation clause and the acknowledgment, and was

signed by the witnesses at the end of the attestation clause and again on the left hand margin. It provides in the body that:

'LAST WILL AND TESTAMENT OF PLACIDO VALMONTE IN THE NAME OF THE LORD AMEN:

'I, PLACIDO VALMONTE, of legal age, married to Josefina Cabansag Valmonte, and a resident of 9200 Catmon Street, Makati, Metro Manila, 83 years of age and being of sound and disposing mind and memory, do hereby declare this to be my last will and testament:

1. It is my will that I be buried in the Catholic Cemetery, under the auspices of the Catholic Church in accordance with the rites and said Church and that a suitable monument to be erected and provided my by executrix (wife) to perpetuate my memory in the minds of my family and friends;

2. I give, devise and bequeath unto my loving wife, JOSEFINA C. VALMONTE, one half (1/2) portion of the follow-described properties, which belongs to me as [co-owner]:

a. Lot 4-A, Block 13 described on plan Psd-28575, LRC, (GLRO), situated in Makati, Metro Manila, described and covered by TCT No. 123468 of the Register of Deeds of Pasig, Metro-Manila registered jointly as co-owners with my deceased sister (Ciriaca Valmonte), having share and share alike;

b. 2-storey building standing on the above-described property, made of strong and mixed materials used as my residence and my wife and located at No. 9200 Catmon Street, Makati, Metro Manila also covered by Tax Declaration No. A-025-00482, Makati, Metro-Manila, jointly in the name of my deceased sister, Ciriaca Valmonte and myself as co-owners, share and share alike or equal co-owners thereof;

3. All the rest, residue and remainder of my real and personal properties, including my savings account bank book in USA which is in the possession of my nephew, and all others whatsoever and wherever found, I give, devise and bequeath to my said wife, Josefina C. Valmonte;

4. I hereby appoint my wife, Josefina C. Valmonte as sole executrix of my last will and testament, and it is my will that said executrix be exempt from filing a bond;

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of June 1983 in Quezon City, Philippines.'

The oppositor Leticia declared that Josefina should not inherit alone because aside from her there are other children from the siblings of Placido who are just as entitled to inherit from him. She attacked the mental capacity of the testator, declaring that at the time of the execution of the notarial will the testator was already 83 years old and was no longer of sound mind. She knew whereof she spoke because in 1983 Placido lived in the Makati residence and asked Leticia's family to live with him and they took care of him. During that time, the testator's physical and mental condition showed deterioration, aberrations and senility. This was corroborated by her daughter Mary Jane Ortega for whom Placido took a fancy and wanted to marry.

ISSUE:

Whether Placido had mental capacity when he executed his will. (YES)

RULING:

In determining the capacity of the testator to make a will, the Civil Code gives the following guidelines:

"Article 798. In order to make a will it is essential that the testator be of sound mind at the time of its execution.

"Article 799. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or shattered by disease, injury or other cause.

"It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act.

"Article 800. The law presumes that every person is of sound mind, in the absence of proof to the contrary.

"The burden of proof that the testator was not of sound mind at the time of making his dispositions is on the person who opposes the probate of the will; but if the testator, one month, or less, before making his will was publicly known to be insane, the person who maintains the validity of the will must prove that the testator made it during a lucid interval."

According to Article 799, the three things that the testator must have the ability to know to be considered of sound mind are as follows: (1) the nature of the estate to be disposed of, (2) the proper objects of the testator's bounty, and (3) the character of the testamentary act. Applying this test to the present case, we find that the appellate court was correct in holding that Placido had testamentary capacity at the time of the execution of his will.

It must be noted that despite his advanced age, he was still able to identify accurately the kinds of property he owned, the extent of his shares in them and even their locations. As regards the proper objects of his bounty, it was sufficient that he identified his wife as sole beneficiary. As we have stated earlier, the omission of some relatives from the will did not affect its formal validity. There being no showing of fraud in its execution, intent in its disposition becomes irrelevant.

Worth reiterating in determining soundness of mind is *Alsua-Betts v. CA*, which held thus:

"Between the highest degree of soundness of mind and memory which unquestionably carries with it full testamentary capacity, and that degrees of mental aberration generally known as insanity or idiocy, there are numberless degrees of mental capacity or incapacity and while on one hand it has been held that mere weakness of mind, or partial imbecility from disease of body, or from age, will not render a person incapable of making a will; a weak or feebleminded person may make a valid will, provided he has understanding and memory sufficient to enable him to know what he is about to do and how or to whom he is disposing of his property. To constitute a sound and disposing mind, it is not necessary that the mind be unbroken or unimpaired or unshattered by disease or otherwise. It has been held that testamentary incapacity does not necessarily require that a person shall actually be insane or of unsound mind."

IN THE MATTER OF THE PETITION FOR THE PROBATE OF THE LAST WILL AND TESTAMENT OF ENRIQUE S. LOPEZ RICHARD B. LOPEZ, Petitioner, vs. DIANA JEANNE LOPEZ, MARYBETH DE LEON and VICTORIA L. TUAZON, Respondents.

G.R. No. 189984, SECOND DIVISION, November 12, 2012, PERLAS-BERNABE, J.

*The law is clear that **the attestation must state the number of pages used upon which the will is written**. The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages.*

While Article 809 allows substantial compliance for defects in the form of the attestation clause, Richard likewise failed in this respect. The statement in the Acknowledgment portion of the subject last will and testament that it "consists of 7 pages including the page on which the ratification and acknowledgment are written" cannot be deemed substantial compliance. The will actually consists of 8 pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of evidence aliund. On this score is the comment of Justice J.B.L. Reyes regarding the application of Article 809, to wit:

The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.

FACTS:

On June 21, 1999, Enrique S. Lopez (Enrique) died leaving his wife, Wendy B. Lopez, and their four legitimate children, namely, petitioner Richard B. Lopez (Richard) and the respondents Diana Jeanne Lopez (Diana), Marybeth de Leon (Marybeth) and Victoria L. Tuazon (Victoria) as compulsory heirs. Before Enrique's death, he executed a Last Will and Testament on August 10, 1996 and constituted Richard as his executor and administrator.

On September 27, 1999, Richard filed a petition for the probate of his father's Last Will and Testament before the RTC of Manila with prayer for the issuance of letters testamentary in his favor. Marybeth opposed the petition contending that the purported last will and testament was not executed and attested as required by law, and that it was procured by undue and improper pressure and influence on the part of Richard. The said opposition was also adopted by Victoria.

After submitting proofs of compliance with jurisdictional requirements, Richard presented the attesting witnesses, namely: Reynaldo Maneja; Romulo Monteiro; Ana Maria Lourdes Manalo (Manalo); and the notary public who notarized the will, Atty. Perfecto Nolasco (Atty. Nolasco). The instrumental witnesses testified that after the late Enrique read and signed the will on each and every page, they also read and signed the same in the latter's presence and of one another. Photographs of the incident were taken and presented during trial. Manalo further testified that she was the one who prepared the drafts and revisions from Enrique before the final copy of the will was made.

Likewise, Atty. Nolasco claimed that Enrique had been his client for more than 20 years. Prior to August 10, 1996, the latter consulted him in the preparation of the subject will and furnished him the list of his properties for distribution among his children. He prepared the will in accordance with Enrique's instruction and that before the latter and the attesting witnesses signed it in the presence of one another, he translated the will which was written in English to Filipino and added that Enrique was in good health and of sound mind at that time.

In the Decision dated August 26, 2005, the RTC disallowed the probate of the will for failure to comply with Article 805 of the Civil Code which requires a statement in the attestation clause of the number of pages used upon which the will is written. It held that while Article 809 of the same Code requires mere substantial compliance of the form laid down in Article 805 thereof, the rule only applies if the number of pages is reflected somewhere else in the will with no evidence aliunde or extrinsic evidence required. While the acknowledgment portion stated that the will consists of 7 pages including the page on which the ratification and acknowledgment are written, the RTC observed that it has 8 pages including the acknowledgment portion. As such, it disallowed the will for not having been executed and attested in accordance with law.

ISSUE:

Whether the will executed is valid. (NO)

RULING:

The provisions of the Civil Code on Forms of Wills, particularly, Articles 805 and 809 of the Civil Code provide:

ART. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

ART. 809. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

The law is clear that the attestation must state the number of pages used upon which the will is written. The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages.

While Article 809 allows substantial compliance for defects in the form of the attestation clause, Richard likewise failed in this respect. The statement in the Acknowledgment portion of the subject last will and testament that it "consists of 7 pages including the page on which the ratification and acknowledgment are written" cannot be deemed substantial compliance. The will actually consists of 8 pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of evidence aliund. On this score is the comment of Justice J.B.L. Reyes regarding the application of Article 809, to wit:

x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.

Hence, the CA properly sustained the disallowance of the will.

GERMAN JABONETA, *Petitioner*, -versus- RICARDO GUSTILO, ET AL., *Respondents*

G.R. No. 1641, EN BANC, JANUARY 19, 1906, CARSON, J.

It was held that it is sufficient if it witnesses are together for the purpose of witnessing the execution of the will, and in a position to actually see the testator write, if they choose to do so; and there are many cases which law down the rule that the true test of vision is not whether the testator actually saw the witness sign, but whether he might have seen him sign, considering his mental and physical condition and position at the time of the subscription.

The fact that Jena was still in the room when he saw Javellana moving his hand and pen in the act of affixing his signature to the will, taken together with the testimony of the remaining witnesses, which shows that Javellana did in fact there and then sign his name to the will, convinces us that the signature was affixed in the presence of Jena. The fact that he was in the act of leaving, and that his back was turned while a portion of the name of the witness was being written, is of no importance. He, with the other witnesses and the testator, has assembled for the purpose of execution the testament, and were together in the same room for that purpose, and at the moment when the witness Javellana signed the document he was actually and physically present and in such position with relation to Javellana that he could see everything which took place by merely casting his eyes in the proper direction, and without any physical obstruction to prevent his doing so, therefore we are of opinion that the document was in fact signed before he finally left the room.

FACTS:

Macario Jaboneta executed under the following circumstances the document in question, which has been presented for probate as his will:

"Being in the house of Arcadio Jarandilla, in Jaro, in this province, he ordered that the document in question be written, and calling Julio Javellana, Aniceto Jalbuena, and Isabelo Jena as witnesses, executed the said document as his will. They were all together, and were in the room where Jaboneta was, and were present when he signed the document, Isabelo Jena signing afterwards as a witness, at his request, and in his presence and in the presence of the other two witnesses. Aniceto Jalbuena then signed as a witness to the presence of the testator, and in the presence of the other two persons who signed as witnesses. At that moment Isabelo Jena, being in a hurry to leave, took his hat and left the room. As he was leaving the house Julio Javellana took the pen in his hand and put himself in position to sign the will as a witness, but did not sign in the presence of Isabelo Jena; but nevertheless, after Jena had left the room the said Julio Javellana signed as a witness in the presence of the testator and of the witness Aniceto Jalbuena"

The probate court denied the last will and testament of Macario Jaboneta, deceased. The lower court was of the opinion from the evidence adduced at the hearing that Julio Javellana, one of the witnesses, did not attach his signature thereto in the presence of Isabelo Jena, another of the witnesses, as required by the provisions of section 618 of the Code of Civil Procedure.

ISSUE:

Whether the lower court was correct in holding that the one of the witnesses, Julio, did not sign in the presence of another witness, Isabelo. (NO)

RULING:

We cannot agree with so much of the above findings of facts as holds that the signature of Javellana was not signed in the presence of Jena, in compliance with the provisions of section 618 of the Code of Civil Procedure. The fact that Jena was still in the room when he saw Javellana moving his hand and pen in the act of affixing his signature to the will, taken together with the testimony of the remaining witnesses, which shows that Javellana did in fact there and then sign his name to the will, convinces us that the signature was affixed in the presence of Jena. The fact that he was in the act of leaving, and that his back was turned while a portion of the name of the witness was being written, is of no importance. He, with the other witnesses and the testator, has assembled for the purpose of execution the testament, and were together in the same room for that purpose, and at the moment when the witness Javellana signed the document he was actually and physically present and in such position with relation to Javellana that he could see everything which took place by merely casting his eyes in the proper direction, and without any physical obstruction to prevent his doing so, therefore we are of opinion that the document was in fact signed before he finally left the room.

"The purpose of a statutory requirement that the witness sign in the presence of the testator is said to be that the testator may have ocular evidence of the identity of the instrument subscribed by the witness and himself, and the generally accepted tests of presence are vision and mental apprehension. (See Am. & Eng. Enc. of Law, vol. 30, p. 599, and cases there cited.)"

In the matter of *Bedell* (2 Connoly (N.Y.) , 328) it was held that it is sufficient if it witnesses are together for the purpose of witnessing the execution of the will, and in a position to actually see the testator write, if they choose to do so; and there are many cases which law down the rule that the true test of vision is not whether the testator actually saw the witness sign, but whether he might have seen him sign, considering his mental and physical condition and position at the time of the subscription. (*Spoonemore v. Cables*, 66 Mo., 579.)

The principles on which these cases rest and the tests of presence as between the testator and the witnesses are equally applicable in determining whether the witnesses signed the instrument in the presence of each other, as required by the statute, and applying them to the facts proven in these proceedings we are of opinion that the statutory requisites as to the execution of the instrument were complied with, and that the lower court erred in denying probate to the will on the ground stated in the ruling appealed from.

EUTIQUIA AVERA, *Petitioner*, -versus MARINO GARCIA, and JUAN RODRIGUEZ, as guardian of the minors Cesar Garcia and Jose Garcia, *Respondents*
G.R. No. 15566, EN BANC, SEPTEMBER 14, 1921, STREET, J.

The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of will and testaments and to guarantee their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded.

The instrument now before us contains the necessary signatures on every page, and the only point of deviation from the requirement of the statute is that these signatures appear in the right margin instead of the left. By the mode of signing adopted every page and provision of the will is authenticated and guarded from possible alteration in exactly the same degree that it would have been protected by being signed in the left margin; and the resources of casuistry could be exhausted without discovering the slightest difference between the consequences of affixing the signatures in one margin or the other.

FACTS:

Eutiquia Avera instituted the proceedings for the probate of the will of one Esteban Garcia. Marino Garcia and Juan Rodriguez, the latter in the capacity of guardian for the minors Jose Garcia and Cesar Garcia contested.

Upon the date appointed for the hearing, the proponent of the will introduced one of the three attesting witnesses who testified that the will was executed with all necessary external formalities, and that the testator was at the time in full possession of disposing faculties. Upon the latter point the witness was corroborated by the person who wrote the will at the request of the testator. Two of the attesting witnesses were not introduced, nor was their absence accounted for by the proponent of the will.

Trial judge found that the testator at the time of the making of the will was of sound mind and disposing memory and that the will had been properly executed. He accordingly admitted the will to probate.

From this judgment an appeal was taken in behalf of the persons contesting the will, and the only errors here assigned have reference to the two following points, namely, first, whether a will can be admitted to probate, where opposition is made, upon the proof of a single attesting witness, without producing or accounting for the absence of the other two; and, secondly, whether the will in question is rendered invalid by reason of the fact that the signature of the testator and of the three attesting witnesses are written on the right margin of each page of the will instead of the left margin.

ISSUES:

I. Whether a will can be admitted to probate, where opposition is made, upon the proof of a single attesting witness. (YES)

II. Whether the will in question is rendered invalid by reason of the fact that the signature of the testator and of the three attesting witnesses are written on the right margin of each page of the will instead of the left margin (NO).

RULING:

I.

While it is undoubtedly true that an uncontested will may be proved by the testimony of only one of the three attesting witnesses, nevertheless in *Cabang vs. Delfinado* (34 Phil., 291), this court declared after an elaborate examination of the American and English authorities that when a contest is instituted, all of the attesting witnesses must be examined, if alive and within reach of the process of the court.

In the present case no explanation was made at the trial as to why all three of the attesting witnesses were not produced, but the probable reason is found in the fact that, although the petition for the probate of this will had been pending from December 21, 1917, until the date set for the hearing, which was April 5, 1919, no formal contest was entered until the very day set for the hearing; and it is probable that the attorney for the proponent, believing in good faith the probate would not be contested, repaired to the court with only one of the three attesting witnesses at hand, and upon finding that the will was contested, incautiously permitted the case to go to proof without asking for a postponement of the trial in order that he might produce all the attesting witnesses.

Although this circumstance may explain why the three witnesses were not produced, it does not in itself supply any basis for changing the rule expounded in the case above referred to; and were it not for a fact now to be mentioned, this court would probably be compelled to reverse this case on the ground that the execution of the will had not been proved by a sufficient number of attesting witnesses.

It appears, however, that this point was not raised by the appellant in the lower court either upon the submission of the cause for determination in that court or upon the occasion of the filing of the motion for a new trial. Accordingly it is insisted for the appellee that this question cannot now be raised for the first time in this court. We believe this point is well taken, and the first assignment of error must be declared not well taken.

II.

It is true that the statute says that the testator and the instrumental witnesses shall sign their names on the left margin of each and every page; and it is undeniable that the general doctrine is to the effect that all statutory requirements as to the execution of wills must be fully complied with. The same doctrine is also deducible from cases heretofore decided by this court.

Still some details at times creep into legislative enactments which are so trivial it would be absurd to suppose that the Legislature could have attached any decisive importance to them. The provision to the effect that the signatures of the testator and witnesses shall be written on the left margin of each page — rather than on the right margin — seems to be this character. So far as concerns the

authentication of the will, and of every part thereof, it can make no possible difference whether the names appear on the left or no the right margin, provided they are on one or the other. In *Caraig vs. Tatlonghari* (R. G. No. 12558, decided March 23, 1918, not reported), this court declared a will void which was totally lacking in the signatures required to be written on its several pages; and in the case of *Re estate of Saguinsin* (41 Phil., 875), a will was likewise declared void which contained the necessary signatures on the margin of each leaf (folio), but not in the margin of each page containing written matter.

The instrument now before us contains the necessary signatures on every page, and the only point of deviation from the requirement of the statute is that these signatures appear in the right margin instead of the left. By the mode of signing adopted every page and provision of the will is authenticated and guarded from possible alteration in exactly the same degree that it would have been protected by being signed in the left margin; and the resources of casuistry could be exhausted without discovering the slightest difference between the consequences of affixing the signatures in one margin or the other.

The same could not be said of a case like that of *Estate of Saguinsin*, supra, where only the leaves, or alternate pages, were signed and not each written page; for as observed in that case by our late lamented Chief Justice, it was possible that in the will as there originally executed by the testatrix only the alternative pages had been used, leaving blanks on the reverse sides, which conceivably might have been filled in subsequently.

The controlling considerations on the point now before us were well stated in *Re will of Abangan* (40 Phil., 476, 479), where the court, speaking through Mr. Justice Avanceña, in a case where the signatures were placed at the bottom of the page and not in the margin, said:

The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of will and testaments and to guarantee their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded.

In the case before us, where ingenuity could not suggest any possible prejudice to any person, as attendant upon the actual deviation from the letter of the law, such deviation must be considered too trivial to invalidate the instrument.

IN THE MATTER OF THE TESTATE ESTATE OF THE LATE JOSEFA VILLACORTA. CELSO ICASIANO, *Petitioner*, -versus- NATIVIDAD ICASIANO and ENRIQUE ICASIANO, *Respondents*
G.R. No. L-18979, EN BANC, JUNE 30, 1964, REYES, J.B.L., *J.*

The inadvertent failure of one witness to affix his signature to one page of a testament, due to the simultaneous lifting of two pages in the course of signing, is not per se sufficient to justify denial of probate. Impossibility of substitution of this page is assured not only the fact that the testatrix and two other witnesses did sign the defective page, but also by its bearing the coincident imprint of the seal of the notary public before whom the testament was ratified by testatrix and all three witnesses. The law should not be so strictly and literally interpreted as to penalize the testatrix on account of the

inadvertence of a single witness over whose conduct she had no control, where the purpose of the law to guarantee the identity of the testament and its component pages is sufficiently attained, no intentional or deliberate deviation existed, and the evidence on record attests to the full observance of the statutory requisites.

FACTS:

on June 2, 1956, the late Josefa Villacorte executed a last will and testament in duplicate at the house of her daughter Mrs. Felisa Ino, published before and attested by three instrumental witnesses, namely; that the will was acknowledged by the testatrix and by the said three instrumental witnesses on the same date before attorney Jose Oyengco Ong, Notary Public in and for the City of Manila; and that the will was actually prepared by attorney Fermin Samson, who was also present during the execution and signing of the decedent's last will and testament, together with former Governor Emilio Rustia of Bulacan, Judge Ramon Ino, and a little girl.

Of the said three instrumental witnesses to the execution of the decedent's last will and testament attorneys Torres and Natividad were in the Philippines at the time of the hearing, and both testified as to the due execution and authenticity of the said will. So did the Notary Public before whom the will was acknowledged by the testatrix and attesting witnesses, and also attorney Fermin Samson, who actually prepared the document. The latter also testified upon cross examination that he prepared one original and two copies of Josefa Villacorte's last will and testament at his house in Baliuag, Bulacan, but he brought only one original and one signed copy to Manila, retaining one unsigned copy in Bulacan.

The records show that the original of the will, which was surrendered simultaneously with the filing of the petition and marked as Exhibit "A", consists of five pages, and while signed at the end and in every page, it does not contain the signature of one of the attesting witnesses, Atty. Jose V. Natividad, on page three (3) thereof; but the duplicate copy attached to the amended and supplemental petition and marked as Exhibit "A-1" is signed by the testatrix and her three attesting witnesses in each and every page.

Witness Natividad, who testified on his failure to sign page three (3) of the original, admits that he may have lifted two pages instead of one when he signed the same, but affirmed that page three (3) was signed in his presence..

ISSUE:

Whether the will shall be admitted to probate. (YES)

RULING:

We hold that the inadvertent failure of one witness to affix his signature to one page of a testament, due to the simultaneous lifting of two pages in the course of signing, is not per se sufficient to justify denial of probate. Impossibility of substitution of this page is assured not only the fact that the testatrix and two other witnesses did sign the defective page, but also by its bearing the coincident imprint of the seal of the notary public before whom the testament was ratified by testatrix and all three witnesses. The law should not be so strictly and literally interpreted as to penalize the testatrix on account of the inadvertence of a single witness over whose conduct she had no control, where the purpose of the law to guarantee the identity of the testament and its component pages is sufficiently

attained, no intentional or deliberate deviation existed, and the evidence on record attests to the full observance of the statutory requisites. Otherwise, as stated in *Vda. de Gil v. Murciano*, 88 Phil. 260; 49 Off. Gaz. 1459, at 1479 (decision on reconsideration) "witnesses may sabotage the will by muddling or bungling it or the attestation clause."

That the failure of witness Natividad to sign page three (3) was entirely through pure oversight is shown by his own testimony as well as by the duplicate copy of the will, which bears a complete set of signatures in every page. The text of the attestation clause and the acknowledgment before the Notary Public likewise evidence that no one was aware of the defect at the time.

This would not be the first time that this Court departs from a strict and literal application of the statutory requirements, where the purposes of the law are otherwise satisfied. Thus, despite the literal tenor of the law, this Court has held that a testament, with the only page signed at its foot by testator and witnesses, but not in the left margin, could nevertheless be probated (*Abangan v. Abangan*, 41 Phil. 476); and that despite the requirement for the correlative lettering of the pages of a will, the failure to mark the first page either by letters or numbers is not a fatal defect (*Lopez v. Liboro*, 81 Phil. 429). These precedents exemplify the Court's policy to require satisfaction of the legal requirements in order to guard against fraud and bad faith but without undue or unnecessary curtailment of the testamentary privilege.

The appellants also argue that since the original of the will is in existence and available, the duplicate (Exh. A-1) is not entitled to probate. Since they opposed probate of the original because it lacked one signature in its third page, it is easily discerned that oppositors-appellants run here into a dilemma: if the original is defective and invalid, then in law there is no other will but the duly signed carbon duplicate (Exh. A-1), and the same is probatable. If the original is valid and can be probated, then the objection to the signed duplicate need not be considered, being superfluous and irrelevant. At any rate, said duplicate, Exhibit A-1, serves to prove that the omission of one signature in the third page of the original testament was inadvertent and not intentional.

That the carbon duplicate, Exhibit A-1, was produced and admitted without a new publication does not affect the jurisdiction of the probate court, already conferred by the original publication of the petition for probate. The amended petition did not substantially alter the one first filed, but merely supplemented it by disclosing the existence of the duplicate, and no showing is made that new interests were involved (the contents of Exhibit A and A-1 are admittedly identical); and appellants were duly notified of the proposed amendment. It is nowhere proved or claimed that the amendment deprived the appellants of any substantial right, and we see no error in admitting the amended petition.

Testate estate of the late VICENTE CAGRO. JESUSA CAGRO, *Petitioner*, -versus- PELAGIO CAGRO, ET AL., *Respondents*

G.R. No. L-5826, EN BANC, APRIL 29, 1953, PARAS, C.J.

An unsigned attestation clause cannot be considered as an act of the witnesses, since the omission of their signatures at the bottom thereof negatives their participation.

The petitioner and appellee contends that signatures of the three witnesses on the left-hand margin conform substantially to the law and may be deemed as their signatures to the attestation clause. This is untenable, because said signatures are in compliance with the legal mandate that the will be signed on the left-hand margin of all its pages. If an attestation clause not signed by the three witnesses at the

bottom thereof, be admitted as sufficient, it would be easy to add such clause to a will on a subsequent occasion and in the absence of the testator and any or all of the witnesses.

FACTS:

This is an appeal interposed by the oppositors from a decision of the Court of First Instance of Samar, admitting to probate the will allegedly executed by Vicente Cagro who died in Laoangan, Pambujan, Samar, on February 14, 1949.

The main objection insisted upon by the appellant in that the will is fatally defective, because its attestation clause is not signed by the attesting witnesses. There is no question that the signatures of the three witnesses to the will do not appear at the bottom of the attestation clause, although the page containing the same is signed by the witnesses on the left-hand margin.

ISSUE:

Whether the objection to the will is meritorious. (YES)

RULING:

The attestation clause is 'a memorandum of the facts attending the execution of the will' required by law to be made by the attesting witnesses, and it must necessarily bear their signatures. An unsigned attestation clause cannot be considered as an act of the witnesses, since the omission of their signatures at the bottom thereof negatives their participation.

The petitioner and appellee contends that signatures of the three witnesses on the left-hand margin conform substantially to the law and may be deemed as their signatures to the attestation clause. This is untenable, because said signatures are in compliance with the legal mandate that the will be signed on the left-hand margin of all its pages. If an attestation clause not signed by the three witnesses at the bottom thereof, be admitted as sufficient, it would be easy to add such clause to a will on a subsequent occasion and in the absence of the testator and any or all of the witnesses.

BEATRIZ NERA, ET AL., *Petitioners*, -versus- NARCISA RIMANDO, *Respondent*
G.R. No. L-5971, EN BANC, FEBRUARY 27, 1911, CARSON, J.

The true test of presence of the testator and the witnesses in the execution of a will is not whether they actually saw each other sign, but whether they might have been seen each other sign, had they chosen to do so, considering their mental and physical condition and position with relation to each other at the moment of inscription of each signature..

A majority of the members of the court is of opinion that this subscribing witness was in the small room with the testator and the other subscribing witnesses at the time when they attached their signatures to the instrument, and this finding, of course, disposes of the appeal and necessitates the affirmance of the decree admitting the document to probate as the last will and testament of the deceased.

FACTS:

At the time the will was executed, in a large room connecting with a smaller room by a doorway where a curtain hangs across, one of the witnesses was in the outside room when the other witnesses were attaching their signatures to the instrument.

The trial court did not consider the determination of the issue as to the position of the witness as of vital importance in determining the case. It agreed with the ruling in the case of *Jaboneta v. Gustillo* that the alleged fact being that one of the subscribing witnesses was in the outer room while the signing occurred in the inner room, would not be sufficient to invalidate the execution of the will.

ISSUE:

Whether the will shall be admitted to probate. (YES)

RULING:

A majority of the members of the court is of opinion that this subscribing witness was in the small room with the testator and the other subscribing witnesses at the time when they attached their signatures to the instrument, and this finding, of course, disposes of the appeal and necessitates the affirmance of the decree admitting the document to probate as the last will and testament of the deceased.

But we are unanimously of opinion that had this subscribing witness been proven to have been in the outer room at the time when the testator and the other subscribing witnesses attached their signatures to the instrument in the inner room, it would have been invalid as a will, the attaching of those signatures under circumstances not being done "in the presence" of the witness in the outer room. This because the line of vision from this witness to the testator and the other subscribing witnesses would necessarily have been impeded by the curtain separating the inner from the outer one "at the moment of inscription of each signature."

In the case just cited, on which the trial court relied, we held that:

The true test of presence of the testator and the witnesses in the execution of a will is not whether they actually saw each other sign, but whether they might have been seen each other sign, had they chosen to do so, considering their mental and physical condition and position with relation to each other at the moment of inscription of each signature.

But it is especially to be noted that the position of the parties with relation to each other at the moment of the subscription of each signature, must be such that they may see each other sign if they choose to do so. This, of course, does not mean that the testator and the subscribing witnesses may be held to have executed the instrument in the presence of each other if it appears that they would not have been able to see each other sign at that moment, without changing their relative positions or existing conditions. The evidence in the case relied upon by the trial judge discloses that "at the moment when the witness Javellana signed the document he was actually and physically present and in such position with relation to Jaboneta that he could see everything that took place by merely casting his eyes in the proper direction and without any physical obstruction to prevent his doing so." And the decision merely laid down the doctrine that the question whether the testator and the subscribing witnesses to an alleged will sign the instrument in the presence of each other does not

depend upon proof of the fact that their eyes were actually cast upon the paper at the moment of its subscription by each of them, but that at that moment existing conditions and their position with relation to each other were such that by merely casting the eyes in the proper direction they could have seen each other sign. To extend the doctrine further would open the door to the possibility of all manner of fraud, substitution, and the like, and would defeat the purpose for which this particular condition is prescribed in the code as one of the requisites in the execution of a will.

TEODORO CANEDA, LORENZA CANEDA, TERESA CANEDA, JUAN CABALLERO, AUREA CABALLERO, OSCAR LAROSA, HELEN CABALLERO, SANTOS CABALLERO, PABLO CABALLERO, VICTOR RAGA, MAURICIA RAGA, QUIRICA RAGA, RUPERTO ABAPO, represented herein by his Attorney-in-Fact, ARMSTICIA * ABAPO VELANO, and CONSESO CANEDA, represented herein by his heirs, JESUS CANEDA, NATIVIDAD CANEDA and ARTURO CANEDA, Petitioners, -versus- HON. COURT OF APPEALS and WILLIAM CABRERA, as Special Administrator of the Estate of Mateo Caballero, Respondents
G.R. No. 103554, SECOND DIVISION, MAY 28, 1993, REGALADO, J.

What is fairly apparent upon a careful reading of the attestation clause herein assailed is the fact that while it recites that the testator indeed signed the will and all its pages in the presence of the three attesting witnesses and states as well the number of pages that were used, the same does not expressly state therein the circumstance that said witnesses subscribed their respective signatures to the will in the presence of the testator and of each other.

The rule, as it now stands, is that omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed. However, those omissions which cannot be supplied except by evidence aliunde would result in the invalidation of the attestation clause and ultimately, of the will itself.

That is precisely the defect complained of in the present case since there is no plausible way by which we can read into the questioned attestation clause statement, or an implication thereof, that the attesting witness did actually bear witness to the signing by the testator of the will and all of its pages and that said instrumental witnesses also signed the will and every page thereof in the presence of the testator and of one another.

FACTS:

On December 5, 1978, Mateo Caballero, a widower without any children and already in the twilight years of his life, executed a last will and testament at his residence in Talisay, Cebu before three attesting witnesses, namely, Cipriano Labuca, Gregorio Cabando and Flaviano Toregosa. The said testator was duly assisted by his lawyer, Atty. Emilio Lumontad, and a notary public, Atty. Filoteo Manigos, in the preparation of that last will. It was declared therein, among other things, that the testator was leaving by way of legacies and devises his real and personal properties to Presentacion Gaviola, Angel Abatayo, Rogelio Abatayo, Isabelito Abatayo, Benoni G. Cabrera and Marcosa Alcantara, all of whom do not appear to be related to the testator.

An examination of the last will and testament of Mateo Caballero shows that it is comprised of three sheets all of which have been numbered correlatively, with the left margin of each page thereof bearing the respective signatures of the testator and the three attesting witnesses. The part of the will containing the testamentary dispositions is expressed in the Cebuano-Visayan dialect and is

signed at the foot thereof by the testator. The attestation clause in question, on the other hand, is recited in the English language and is likewise signed at the end thereof by the three attesting witnesses hereto. Since it is the proverbial bone of contention, we reproduce it again for facility of reference:

We, the undersigned attesting Witnesses, whose Residences and postal addresses appear on the Opposite of our respective names, we do hereby certify that the Testament was read by him and the testator, MATEO CABALLERO; has published unto us the foregoing Will consisting of THREE PAGES, including the Acknowledgment, each page numbered correlatively in the letters on the upper part of each page, as his Last Will and Testament and he has the same and every page thereof, on the spaces provided for his signature and on the left hand margin, in the presence of the said testator and in the presence of each and all of us.

Oppositors of the will asserted that the will in question is null and void for the reason that its attestation clause is fatally defective since it fails to specifically state that the instrumental witnesses to the will witnessed the testator signing the will in their presence and that they also signed the will and all the pages thereof in the presence of the testator and of one another.

The trial court admitted the will to probate. The CA affirmed. It held that the attestation clause substantially complied with the requirements under the Code.

ISSUE:

Whether the attestation clause contained in the last will and testament of the late Mateo Caballero complies with the requirements of Article 805, in relation to Article 809, of the Civil Code. (NO)

RULING:

What is fairly apparent upon a careful reading of the attestation clause herein assailed is the fact that while it recites that the testator indeed signed the will and all its pages in the presence of the three attesting witnesses and states as well the number of pages that were used, the same does not expressly state therein the circumstance that said witnesses subscribed their respective signatures to the will in the presence of the testator and of each other.

The phrase "and he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin," obviously refers to the testator and not the instrumental witnesses as it is immediately preceded by the words "as his Last Will and Testament." On the other hand, although the words "in the presence of the testator and in the presence of each and all of us" may, at first blush, appear to likewise signify and refer to the witnesses, it must, however, be interpreted as referring only to the testator signing in the presence of the witnesses since said phrase immediately follows the words "*he* has signed the same and every page thereof, on the spaces provided for *his* signature and on the left hand margin." What is then clearly lacking, in the final logical analysis, is *the statement that the witnesses signed the will and every page thereof in the presence of the testator and of one another.*

It is our considered view that the absence of that statement required by law is a fatal defect or imperfection which must necessarily result in the disallowance of the will that is here sought to be admitted to probate. Petitioners are correct in pointing out that the aforestated defect in the

attestation clause obviously cannot be characterized as merely involving the form of the will or the language used therein which would warrant the application of the substantial compliance rule

While it may be true that the attestation clause is indeed subscribed at the end thereof and at the left margin of each page by the three attesting witnesses, it certainly cannot be conclusively inferred therefrom that the said witness affixed their respective signatures in the presence of the testator and of each other since, as petitioners correctly observed, the presence of said signatures only establishes the fact that it was indeed signed, but it does not prove that the attesting witnesses did subscribe to the will in the presence of the testator and of each other. The execution of a will is supposed to be one act so that where the testator and the witnesses sign on various days or occasions and in various combinations, the will cannot be stamped with the imprimatur of effectivity.

We believe that the further comment of former Justice J.B.L. Reyes regarding Article 809, wherein he urged caution in the application of the substantial compliance rule therein, is correct and should be applied in the case under consideration, as well as to future cases with similar questions:

... The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, *and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.*

We stress once more that under Article 809, the defects and imperfections must only be with respect to the form of the attestation or the language employed therein. Such defects or imperfections would not render a will invalid should it be proved that the will was really executed and attested in compliance with Article 805. In this regard, however, the manner of proving the due execution and attestation has been held to be limited to merely an examination of the will itself without resorting to evidence *aliunde*, whether oral or written.

The foregoing considerations do not apply where the attestation clause totally omits the fact that the attesting witnesses signed each and every page of the will in the presence of the testator and of each other. In such a situation, the defect is not only in the form or language of the attestation clause but the total absence of a specific element required by Article 805 to be specifically stated in the attestation clause of a will. That is precisely the defect complained of in the present case since there is no plausible way by which we can read into the questioned attestation clause statement, or an implication thereof, that the attesting witness did actually bear witness to the signing by the testator of the will and all of its pages and that said instrumental witnesses also signed the will and every page thereof in the presence of the testator and of one another.

Furthermore, the rule on substantial compliance in Article 809 cannot be revoked or relied on by respondents since it presupposes that the defects in the attestation clause can be cured or supplied by the text of the will or a consideration of matters apparent therefrom which would provide the data not expressed in the attestation clause or from which it may necessarily be gleaned or clearly inferred that the acts not stated in the omitted textual requirements were actually complied within the execution of the will. In other words, defects must be remedied by intrinsic evidence supplied by the will itself.

In the case at bar, contrarily, proof of the acts required to have been performed by the attesting witnesses can be supplied by only extrinsic evidence thereof, since an overall appreciation of the contents of the will yields no basis whatsoever from which such facts may be plausibly deduced. What the private respondent insists on are the testimonies of his witnesses alleging that they saw the compliance with such requirements by the instrumental witnesses, oblivious of the fact that he is thereby resorting to extrinsic evidence to prove the same and would accordingly be doing by the indirection what in law he cannot do directly.

The so-called liberal rule, the Court said in *Gil vs. Murciano*, "does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The later decisions do tell us when and where to stop; they draw the dividing line with precision. They do not allow evidence *aliunde* to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration into its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results."

It may thus be stated that the rule, as it now stands, is that omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed. However, those omissions which cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause and ultimately, of the will itself.

AGAPITA N. CRUZ, *Petitioner*, -versus- HON. JUDGE GUILLERMO P. VILLASOR, Presiding Judge of Branch I, Court of First Instance of Cebu, and MANUEL B. LUGAY, *Respondents*

G.R. No. L-32213, FIRST DIVISION, NOVEMBER 26, 1973, ESGUERRA, J.

The notary public before whom the will was acknowledged cannot be considered as the third instrumental witness since he cannot acknowledge before himself his having signed the will. To acknowledge before means to avow; to own as genuine, to assent, to admit; and "before" means in front or preceding in space or ahead of. Consequently, if the third witness were the notary public himself, he would have to avow assent, or admit his having signed the will in front of himself. This cannot be done because he cannot split his personality into two so that one will appear before the other to acknowledge his participation in the making of the will. To permit such a situation to obtain would be sanctioning a sheer absurdity.

FACTS:

One of the three instrumental witnesses in the will of Agapita N. Cruz is Atty. Angel H. Teves, Jr. He was, at the same time, the Notary Public before whom the will was supposed to have been acknowledged. Reduced to simpler terms, the question was attested and subscribed by at least three credible witnesses in the presence of the testator and of each other, considering that the three attesting witnesses must appear before the notary public to acknowledge the same. As the third witness is the notary public himself, petitioner argues that the result is that only two witnesses appeared before the notary public to acknowledge the will. On the other hand, private respondent-appellee, Manuel B. Lugay, who is the supposed executor of the will, following the reasoning of the trial court, maintains that there is substantial compliance with the legal requirement of having at least three attesting witnesses even if the notary public acted as one of them, bolstering up his stand with 57 American Jurisprudence, p. 227 which, insofar as pertinent, reads as follows:

It is said that there are, practical reasons for upholding a will as against the purely technical reason that one of the witnesses required by law signed as certifying to an acknowledgment of the testator's signature under oath rather than as attesting the execution of the instrument.

ISSUE:

Whether the notary public before whom the will was acknowledged can be considered as the third instrumental witness. (NO)

RULING:

The notary public before whom the will was acknowledged cannot be considered as the third instrumental witness since he cannot acknowledge before himself his having signed the will. To acknowledge before means to avow (Javellana v. Ledesma, 97 Phil. 258, 262; Castro v. Castro, 100 Phil. 239, 247); to own as genuine, to assent, to admit; and "before" means in front or preceding in space or ahead of. (The New Webster Encyclopedic Dictionary of the English Language, p. 72; Funk & Wagnalls New Standard Dictionary of the English Language, p. 252; Webster's New International Dictionary 2d. p. 245.) Consequently, if the third witness were the notary public himself, he would have to avow assent, or admit his having signed the will in front of himself. This cannot be done because he cannot split his personality into two so that one will appear before the other to acknowledge his participation in the making of the will. To permit such a situation to obtain would be sanctioning a sheer absurdity.

Furthermore, the function of a notary public is, among others, to guard against any illegal or immoral arrangement Balinon v. De Leon, 50 O. G. 583.) That function would be defeated if the notary public were one of the attesting instrumental witnesses. For then he would be interested in sustaining the validity of the will as it directly involves him and the validity of his own act. It would place him in an inconsistent position and the very purpose of acknowledgment, which is to minimize fraud (Report of Code Commission p. 106-107), would be thwarted.

Admittedly, there are American precedents holding that a notary public may, in addition, act as a witness to the execution of the document he has notarized. (Mahilum v. Court Appeals, 64 O. G. 4017; 17 SCRA 482; Sawyer v. Cox, 43 Ill. 130). There are others holding that his signing merely as notary in a will nonetheless makes him a witness thereon (Ferguson v. Ferguson, 47 S. E. 2d. 346; In Re Douglas Will, N. Y. S. 2d. 641; Ragsdal v. Hill, 269 S. W. 2d. 911, Tyson Utterback, 122 So. 496; In Re Baybee's Estate 160 N. 900; W. Merrill v. Boal, 132 A. 721; See also Trenwith v. Smallwood, 15 So. 1030). But these authorities do not serve the purpose of the law in this jurisdiction or are not decisive of the issue herein because the notaries public and witnesses referred to in the cited cases merely acted as instrumental, subscribing attesting witnesses, and not as acknowledging witnesses. He the notary public acted not only as attesting witness but also as acknowledging witness, a situation not envisaged by Article 805 of the Civil Code which reads:

ART. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will or file another with the office of the Clerk of Court. [Emphasis supplied]

To allow the notary public to act as third witness, or one of the attesting and acknowledging witnesses, would have the effect of having only two attesting witnesses to the will which would be in contravention of the provisions of Article 80 which requires at least three credible witnesses to act as

such and of Article 806 which requires that the testator and the required number of witnesses must appear before the notary public to acknowledge the will. The result would be, as has been said, that only two witnesses appeared before the notary public for or that purpose. In the circumstances, the law would not be duly in observed.

**FELIX AZUELA, *Petitioner*, -versus – COURT OF APPEALS, GERALDA AIDA CASTILLO
substituted by ERNESTO G. CASTILLO, *Respondents*.**

G.R. No. 122880, THIRD DIVISION, April 12, 2006, TINGA, J.

A will whose attestation clause does not contain the number of pages on which the will is written is fatally defective. A will whose attestation clause is not signed by the instrumental witnesses is fatally defective. And perhaps most importantly, a will which does not contain an acknowledgment, but a mere jurat, is fatally defective. Any one of these defects is sufficient to deny probate. A notarial will with all three defects is just aching for judicial rejection.

In this case, the attestation clause was not signed by the instrumental witnesses. While the signatures of the instrumental witnesses appear on the left-hand margin of the will, they do not appear at the bottom of the attestation clause which after all consists of their averments before the notary public.

In lieu of an acknowledgment, the notary public, Petronio Y. Bautista, wrote "Nilagdaan ko at ninotario ko ngayong 10 ng Hunyo 10 (sic), 1981 dito sa Lungsod ng Maynila." By no manner of contemplation can those words be construed as an acknowledgment.

FACTS

Felix Azuela sought to admit to probate the notarial will of Eugenia E. Igsolo, which was notarized on 10 June 1981. Petitioner is the son of the cousin of the decedent. The will consisted of two (2) pages and written in the vernacular Pilipino. The three named witnesses to the will affixed their signatures on the left-hand margin of both pages of the will, but not at the bottom of the attestation clause.

The petition was opposed by Geralda Aida Castillo (Geralda Castillo), who represented herself as the attorney-in-fact of "the 12 legitimate heirs" of the decedent. Geralda Castillo claimed that the will is a forgery and that the will was not executed and attested to in accordance with law. She pointed out that decedent's signature did not appear on the second page of the will, and the will was not properly acknowledged.

The RTC admitted the will to probate. The RTC favorably took into account the testimony of the three (3) witnesses to the will, Quirino Agrava, Lamberto Leano, and Juanito Estrada. The RTC also called to fore "the modern tendency in respect to the formalities in the execution of a will x x x with the end in view of giving the testator more freedom in expressing his last wishes;"

Upon appeal, the Court of Appeals, reversed the trial court's decision and ordered the dismissal of the petition for probate. It noted that the attestation clause failed to state the number of pages used in the will, thus rendering the will void and undeserving of probate.

ISSUES

Whether the will complied with the requirements of the law and, hence, should be admitted to probate. (NO)

RULING

A will whose attestation clause does not contain the number of pages on which the will is written is fatally defective. A will whose attestation clause is not signed by the instrumental witnesses is fatally defective. And perhaps most importantly, a will which does not contain an acknowledgment, but a mere jurat, is fatally defective. Any one of these defects is sufficient to deny probate. A notarial will with all three defects is just aching for judicial rejection.

The Supreme Court held that upon examination of the will itself, it revealed a couple of even more critical defects that should necessarily lead to its rejection.

For one, the attestation clause was not signed by the instrumental witnesses. While the signatures of the instrumental witnesses appear on the left-hand margin of the will, they do not appear at the bottom of the attestation clause which after all consists of their averments before the notary public.

The attestation clause is "a memorandum of the facts attending the execution of the will" required by law to be made by the attesting witnesses, and it must necessarily bear their signatures. An unsigned attestation clause cannot be considered as an act of the witnesses, since the omission of their signatures at the bottom thereof negatives their participation.

An unsigned attestation clause results in an unattested will. Even if the instrumental witnesses signed the left-hand margin of the page containing the unsigned attestation clause, such signatures cannot demonstrate these witnesses' undertakings in the clause, since the signatures that do appear on the page were directed towards a wholly different avowal.

It is the witnesses, and not the testator, who are required under Article 805 to state the number of pages used upon which the will is written; the fact that the testator had signed the will and every page thereof; and that they witnessed and signed the will and all the pages thereof in the presence of the testator and of one another. The only proof in the will that the witnesses have stated these elemental facts would be their signatures on the attestation clause.

Thus, the subject will cannot be considered to have been validly attested to by the instrumental witnesses, as they failed to sign the attestation clause.

Also, the requirement under Article 806 was not complied with which provides that "every will must be acknowledged before a notary public by the testator and the witnesses" has also not been complied with. The importance of this requirement is highlighted by the fact that it had been segregated from the other requirements under Article 805 and entrusted into a separate provision, Article 806. The non-observance of Article 806 in this case is equally as critical as the other cited flaws in compliance with Article 805, and should be treated as of equivalent import.

In lieu of an acknowledgment, the notary public, Petronio Y. Bautista, wrote "Nilagdaan ko at ninotario ko ngayong 10 ng Hunyo 10 (sic), 1981 dito sa Lungsod ng Maynila." By no manner of contemplation can those words be construed as an acknowledgment. An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed. It involves an extra step undertaken whereby the signor actually declares to the notary that the executor of a document has attested to the notary that the same is his/her own free act and deed.

It might be possible to construe the averment as a jurat, even though it does not hew to the usual language thereof. A jurat is that part of an affidavit where the notary certifies that before him/her, the document was subscribed and sworn to by the executor. Ordinarily, the language of the jurat should avow that the document was subscribed and sworn before the notary public, while in this case, the notary public averred that he himself "signed and notarized" the document. Possibly though, the word "nintario" or "notarized" encompasses the signing of and swearing in of the executors of the document, which in this case would involve the decedent and the instrumental witnesses.

Yet even if we consider what was affixed by the notary public as a jurat, the will would nonetheless remain invalid, as the express requirement of Article 806 is that the will be "acknowledged", and not merely subscribed and sworn to. The will does not present any textual proof, much less one under oath, that the decedent and the instrumental witnesses executed or signed the will as their own free act or deed. The acknowledgment made in a will provides for another all-important legal safeguard against spurious wills or those made beyond the free consent of the testator. An acknowledgement is not an empty meaningless act. The acknowledgment coerces the testator and the instrumental witnesses to declare before an officer of the law that they had executed and subscribed to the will as their own free act or deed. Such declaration is under oath and under pain of perjury, thus allowing for the criminal prosecution of persons who participate in the execution of spurious wills, or those executed without the free consent of the testator. It also provides a further degree of assurance that the testator is of certain mindset in making the testamentary dispositions to those persons he/she had designated in the will.

A notarial will that is not acknowledged before a notary public by the testator and the witnesses is fatally defective, even if it is subscribed and sworn to before a notary public.

IN THE MATTER OF THE INTESTATE ESTATE OF ANDRES G. DE JESUS AND BIBIANA ROXAS DE JESUS, SIMEON R. ROXAS & PEDRO ROXAS DE JESUS, *Petitioners*, -versus – ANDRES R. DE JESUS, JR., *Respondent*.

G.R. No. L-38338, FIRST DIVISION, January 28, 1985, GUTIERREZ, JR., *J.*

As a general rule, the "date" in a holographic Will should include the day, month, and year of its execution.

However, when as in the case at bar, there is no appearance of fraud, bad faith, undue influence and pressure and the authenticity of the Will is established and the only issue is whether or not the date "FEB./61" appearing on the holographic Will is a valid compliance with Article 810 of the Civil Code, probate of the holographic Will should be allowed under the principle of substantial compliance.

FACTS

After the death of spouses Andres G. de Jesus and Bibiana Roxas de Jesus, special proceeding entitled "In the Matter of the Intestate Estate of Andres G. de Jesus and Bibiana Roxas de Jesus" was filed by petitioner Simeon R. Roxas, the brother of the deceased Bibiana Roxas de Jesus. Simeon R. Roxas was appointed administrator. After Letters of Administration had been granted to the petitioner, he delivered to the lower court a document purporting to be the holographic Will of the deceased Bibiana Roxas de Jesus.

Petitioner Simeon R. Roxas testified that he found a notebook belonging to the deceased Bibiana R. de Jesus and that on pages 21, 22, 23 and 24 thereof, a letter-will addressed to her children and

entirely written and signed in the handwriting of the deceased Bibiana R. de Jesus was found. The will is dated "FEB./61 " and states: "This is my will which I want to be respected although it is not written by a lawyer.

The testimony of Simeon R. Roxas was corroborated by the testimonies of Pedro Roxas de Jesus and Manuel Roxas de Jesus who likewise testified that the letter dated "FEB./61 " is the holographic Will of their deceased mother, Bibiana R. de Jesus. Both recognized the handwriting of their mother and positively identified her signature. They further testified that their deceased mother understood English, the language in which the holographic Will is written, and that the date "FEB./61 " was the date when said Will was executed by their mother.

Respondent opposed the probate of the will claiming that alleged holographic will of the deceased Bibiana R. de Jesus was not dated as required by Article 810 of the Civil Code. Respondent contended that the law requires that the Will should contain the day, month and year of its execution and that this should be strictly complied with.

ISSUE

Whether the date "FEB./61 " appearing on the holographic Will of the deceased Bibiana Roxas de Jesus is a valid compliance with the Article 810 of the Civil Code. (YES)

RULING

ART. 810. A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed.

The underlying and fundamental objectives permeating the provisions of the law on wigs in this Project consists in the liberalization of the manner of their execution with the end in view of giving the testator more freedom in expressing his last wishes, but with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator.

If the testator, in executing his Will, attempts to comply with all the requisites, although compliance is not literal, it is sufficient if the objective or purpose sought to be accomplished by such requisite is actually attained by the form followed by the testator.

The purpose of the solemnities surrounding the execution of Wills has been expounded by this *Court* in *Abangan v. Abanga 40 Phil. 476*, where we ruled that:

The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity.

In particular, a complete date is required to provide against such contingencies as that of two competing Wills executed on the same day, or of a testator becoming insane on the day on which a Will was executed (*Velasco v. Lopez, 1 Phil. 720*). There is no such contingency in this case.

We have carefully reviewed the records of this case and found no evidence of bad faith and fraud in its execution nor was there any substitution of Wins and Testaments. There is no question that the

holographic Will of the deceased Bibiana Roxas de Jesus was entirely written, dated, and signed by the testatrix herself and in a language known to her. There is also no question as to its genuineness and due execution. All the children of the testatrix agree on the genuineness of the holographic Will of their mother and that she had the testamentary capacity at the time of the execution of said Will. The objection interposed by the oppositor-respondent Luz Henson is that the holographic Will is fatally defective because the date "FEB./61 " appearing on the holographic Will is not sufficient compliance with Article 810 of the Civil Code. This objection is too technical to be entertained.

As a general rule, the "date" in a holographic Will should include the day, month, and year of its execution. However, when as in the case at bar, there is no appearance of fraud, bad faith, undue influence and pressure and the authenticity of the Will is established and the only issue is whether or not the date "FEB./61" appearing on the holographic Will is a valid compliance with Article 810 of the Civil Code, probate of the holographic Will should be allowed under the principle of substantial compliance.

IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF MELECIO LABRADOR. SAGRADO LABRADOR (Deceased), substituted by ROSITA LABRADOR, ENRICA LABRADOR, and CRISTOBAL LABRADOR, *Petitioners-Appellants*, -versus - COURT OF APPEALS, GAUDENCIO LABRADOR, and JESUS LABRADOR, *Respondents-Appellees*.

G.R. No. 83843-44, SECOND DIVISION, April 5, 1990, PARAS, J.

The law does not specify a particular location where the date should be placed in the will. The only requirements are that the date be in the will itself and executed in the hand of the testator. These requirements are present in the subject will.

The intention to show 17 March 1968 as the date of the execution of the will is plain from the tenor of the succeeding words of the paragraph. As aptly put by petitioner, the will was not an agreement but a unilateral act of Melecio Labrador who plainly knew that what he was executing was a will.

FACTS

Melecio Labrador died leaving behind a parcel of land designated as Lot No. 1916. Sagrado Labrador filed in court a petition for the probate docketed of the alleged holographic will.

Subsequently, Jesus Labrador and Gaudencio Labrador filed an opposition to the petition on the ground that the will has been extinguished or revoked by implication of law, alleging that before Melecio's death, he (Melecio) sold to them the parcel of land. Earlier however, in 1973, Jesus Labrador sold said parcel of land to Navat.

Sagrado thereupon filed for the annulment of said purported Deed of Absolute Sale over a parcel of land.

The trial court rendered a joint decision allowing the probate of the holographic will and declaring null and void the Deed of Absolute sale. Upon appeal, the Court of Appeals modified said joint decision of the court a quo by denying the allowance of the probate of the will for being undated.

ISSUE

Whether the alleged holographic will of one Melecio Labrador is dated, as provided for in Article 8102 of the New Civil Code. (YES)

RULING

It is worthy of note to quote the first paragraph of the second page of the holographic will, viz:

And this is the day in which we agreed that we are making the partitioning and assigning the respective assignment of the said fishpond, and this being in the month of March, 17th day, in the year 1968, and this decision and or instruction of mine is the matter to be followed. And the one who made this writing is no other than MELECIO LABRADOR, their father. (emphasis supplied) (p. 46, Rollo)

The law does not specify a particular location where the date should be placed in the will. The only requirements are that the date be in the will itself and executed in the hand of the testator. These requirements are present in the subject will.

Respondents claim that the date 17 March 1968 in the will was when the testator and his beneficiaries entered into an agreement among themselves about "the partitioning and assigning the respective assignments of the said fishpond," and was not the date of execution of the holographic will; hence, the will is more of an "agreement" between the testator and the beneficiaries thereof to the prejudice of other compulsory heirs like the respondents. This was thus a failure to comply with Article 783 which defines a will as "an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death."

Respondents are in error. The intention to show 17 March 1968 as the date of the execution of the will is plain from the tenor of the succeeding words of the paragraph. As aptly put by petitioner, the will was not an agreement but a unilateral act of Melecio Labrador who plainly knew that what he was executing was a will. The act of partitioning and the declaration that such partitioning as the testator's instruction or decision to be followed reveal that Melecio Labrador was fully aware of the nature of the estate property to be disposed of and of the character of the testamentary act as a means to control the disposition of his estate.

SPOUSES ROBERTO AND THELMA AJERO, *Petitioners*, -versus – THE COURT OF APPEALS AND CLEMENTE SAND, *Respondents*.

G.R. No. 106720, SECOND DIVISION, September 15, 1994, PUNO, *J.*

A reading of Article 813 of the New Civil Code shows that its requirement affects the validity of the dispositions contained in the holographic will, but not its probate. If the testator fails to sign and date some of the dispositions, the result is that these dispositions cannot be effectuated. Such failure, however, does not render the whole testament void.

Thus, unless the unauthenticated alterations, cancellations or insertions were made on the date of the holographic will or on testator's signature, their presence does not invalidate the will itself. The lack of authentication will only result in disallowance of such changes.

FACTS

The holographic will of Annie Sand who died on November 25, 1982 was submitted for probate. Petitioners alleged that at the time of its execution, testator was of sound and disposing mind, not acting under duress, fraud or undue influence, and was in every respect capacitated to dispose of her estate by will.

Private respondent opposed the petition on the grounds that: neither the testament's body nor the signature therein was in decedent's handwriting; it contained alterations and corrections which were not duly signed by decedent; and, the will was procured by petitioners through improper pressure and undue influence. The petition was likewise opposed by Dr. Jose Ajero. He contested the disposition in the will of a house and lot located in Cabadbaran, Agusan Del Norte. He claimed that said property could not be conveyed by decedent in its entirety, as she was not its sole owner.

Notwithstanding the oppositions, the trial court admitted the decedent's holographic will to probate.

On appeal, said Decision was reversed by the Court of Appeals, and the petition for probate of decedent's will was dismissed. The Court of Appeals found that, "the holographic will fails to meet the requirements for its validity." It held that the decedent did not comply with Articles 813 and 814 of the New Civil Code.

ISSUE

Whether the CA erred in holding that Articles 813 and 814 of the NCC were not complied with. (YES)

RULING

In *Abangan vs. Abangan*, 40 Phil. 476, 479 (1919), the Supreme Court held that:

The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore, the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded.

For purposes of probating non-holographic wills, these formal solemnities include the subscription, attestation, and acknowledgment requirements under Articles 805 and 806 of the New Civil Code.

In the case of holographic wills, on the other hand, what assures authenticity is the requirement that they be totally autographic or handwritten by the testator himself, as provided under Article 810 of the New Civil Code, thus:

A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed. (Emphasis supplied.)

Failure to strictly observe other formalities will not result in the disallowance of a holographic will that is unquestionably handwritten by the testator.

A reading of Article 813 of the New Civil Code shows that its requirement affects the validity of the dispositions contained in the holographic will, but not its probate. If the testator fails to sign and date some of the dispositions, the result is that these dispositions cannot be effectuated. Such failure, however, does not render the whole testament void.

Likewise, a holographic will can still be admitted to probate, notwithstanding non-compliance with the provisions of Article 814. In the case of *Kalaw vs. Relova* 132 SCRA 237 242 (1984), the Court held:

Ordinarily, when a number of erasures, corrections, and interlineations made by the testator in a holographic Will have not been noted under his signature, . . . the Will is not thereby invalidated as a whole, but at most only as respects the particular words erased, corrected or interlined. Manresa gave an identical commentary when he said "la omission de la salvedad no anula el testamento, segun la regla de jurisprudencia establecida en la sentencia de 4 de Abril de 1985." (Citations omitted.)

Thus, unless the unauthenticated alterations, cancellations or insertions were made on the date of the holographic will or on testator's signature, their presence does not invalidate the will itself. The lack of authentication will only result in disallowance of such changes.

It is also proper to note that the requirements of authentication of changes and signing and dating of dispositions appear in provisions (Articles 813 and 814) separate from that which provides for the necessary conditions for the validity of the holographic will (Article 810). The distinction can be traced to Articles 678 and 688 of the Spanish Civil Code, from which the present provisions covering holographic wills are taken. They read as follows:

Art. 678: A will is called holographic when the testator writes it himself in the form and with the requisites required in Article 688.

Art. 688: Holographic wills may be executed only by persons of full age.

In order that the will be valid it must be drawn on stamped paper corresponding to the year of its execution, written in its entirety by the testator and signed by him, and must contain a statement of the year, month and day of its execution.

If it should contain any erased, corrected, or interlined words, the testator must identify them over his signature.

Foreigners may execute holographic wills in their own language.

This separation and distinction adds support to the interpretation that only the requirements of Article 810 of the New Civil Code — and not those found in Articles 813 and 814 of the same Code — are essential to the probate of a holographic will.

ROSA K. KALAW, *Petitioner, -versus* – HON. JUDGE BENJAMIN RELOVA, Presiding Judge of the CFI of Batangas, Branch VI, Lipa City, and GREGORIO K. KALAW, *Respondents*.
G.R. No. L-40207, FIRST DIVISION, September 4, 1984, MELENCIO-HERRERA, J.

Ordinarily, when a number of erasures, corrections, and interlineations made by the testator in a holographic Will, item not been noted under his signature, ... the Will is not thereby invalidated as a whole, but at most only as respects the particular words erased, corrected or interlined.

However, when as in this case, the holographic Will in dispute had only one substantial provision, which was altered by substituting the original heir with another, but which alteration did not carry the requisite of full authentication by the full signature of the testator, the effect must be that the entire Will is voided or revoked for the simple reason that nothing remains in the Will after that which could remain valid.

FACTS

Private respondent GREGORIO K. KALAW, claiming to be the sole heir of his deceased sister, Natividad K. Kalaw, filed a petition for the probate of her holographic Will.

The holographic Will, as first written, named ROSA K. Kalaw, a sister of the testatrix as her sole heir.

The will contained two (2) alterations: a) Rosa's name, designated as the sole heir was crossed out and instead "Rosario" was written above it. Such was not initialed, b) Rosa's name was crossed out as sole executrix and Gregorio's name was written above it. This alteration was initialed by the testator.

Hence, on November 10, 1971, petitioner ROSA K. Kalaw opposed probate alleging, in substance, that the holographic Will contained alterations, corrections, and insertions without the proper authentication by the full signature of the testatrix as required by Article 814 of the Civil Code.

After trial, respondent Judge denied probate in an Order. From that Order, GREGORIO moved for reconsideration arguing that since the alterations and/or insertions were the testatrix, the denial to probate of her holographic Will would be contrary to her right of testamentary disposition.

ISSUE

Whether the will is valid (NO)

RULING

Ordinarily, when a number of erasures, corrections, and interlineations made by the testator in a holographic Will, item not been noted under his signature, ... the Will is not thereby invalidated as a whole, but at most only as respects the particular words erased, corrected or interlined. Manresa gave an Identical commentary when he said "la omision de la salvedad no anula el testamento, segun la regla de jurisprudencia establecida en la sentencia de 4 de Abril de 1895."

However, when as in this case, the holographic Will in dispute had only one substantial provision, which was altered by substituting the original heir with another, but which alteration did not carry the requisite of full authentication by the full signature of the testator, the effect must be that the

entire Will is voided or revoked for the simple reason that nothing remains in the Will after that which could remain valid.

To state that the Will as first written should be given efficacy is to disregard the seeming change of mind of the testatrix. But that change of mind can neither be given effect because she failed to authenticate it in the manner required by law by affixing her full signature.

The ruling in *Velasco, supra*, must be held confined to such insertions, cancellations, erasures or alterations in a holographic Will, which affect only the efficacy of the altered words themselves but not the essence and validity of the Will itself. As it is, with the erasures, cancellations and alterations made by the testatrix herein, her real intention cannot be determined with certitude.

SALUD TEODORO VDA.. DE PEREZ, *Petitioner*, -versus -HON. ZOTICO A. TOLETE in his capacity as Presiding Judge, Branch 18, RTC Bulacan, *Respondent*.

G.R. No. 76714, FIRST DIVISION, June 2, 1994, QUIAZON, J.

The evidence necessary for the reprobate or allowance of wills which have been probated outside of the Philippines are as follows: (1) the due execution of the will in accordance with the foreign laws; (2) the testator has his domicile in the foreign country and not in the Philippines; (3) the will has been admitted to probate in such country; (4) the fact that the foreign tribunal is a probate court, and (5) the laws of a foreign country on procedure and allowance of wills.

What the law expressly prohibits is the making of joint wills either for the testators' reciprocal benefit or for the benefit of a third person (Civil Code of the Philippines, Article 818). In the case at bench, the Cunanan spouses executed separate wills. Since the two wills contain essentially the same provisions and pertain to property which in all probability are conjugal in nature, practical considerations dictate their joint probate.

FACTS

Dr. Jose F. Cunanan and his wife, Dr. Evelyn Perez-Cunanan, who became American citizens and residents of New York each executed, a will. Both will contain same provisions, that in the event of death, to bequeath to the spouse surviving "all the remainder" of their real and personal property at the time of his or her death "whosoever situated".

In 1982, Dr. Cunanan and his entire family perished when they were trapped by fire that gutted their home. Thereafter, Dr. Rafael Cunanan, Jr. as trustee and substitute executor of the two wills, filed separate proceedings for the probate thereof. The two wills were admitted to probate and letters testamentary were issued in his favor.

Later, Salud Teodoro Perez, the mother of Dr. Evelyn P. Cunanan, filed a petition for the reprobate of the two wills ancillary to the probate proceedings in New York. The trial court directed the issuance of letters of special administration in favor of Salud.

The Cunanan heirs filed a motion to nullify the proceedings and to set aside the appointment of, or to disqualify, petitioner as special administratrix of the estates of Dr. Jose F. Cunanan and Dr. Evelyn Perez-Cunanan. Thereafter, the Cunanan heirs filed a motion requiring petitioner to submit an inventory or accounting of all monies received by her in trust for the estate.

In her opposition, petitioner asserted that she was the "sole and only heir" of her daughter, Dr. Evelyn Perez-Cunanan to the exclusion of the "Cunanan collaterals" hence they were complete strangers to the proceedings and were not entitled to notice.

In 1984, the trial court issued an order, disallowing the reprobate of the two wills, recalling the appointment of petitioner as special administratrix, requiring the submission of petitioner of an inventory of the property received by her as special administratrix and declaring all pending incidents moot and academic. Judge de la Llana reasoned out that petitioner failed to prove the law of New York on procedure and allowance of wills and the court had no way of telling whether the wills were executed in accordance with the law of New York. In the absence of such evidence, the presumption is that the law of succession of the foreign country is the same as the law of the Philippines. However, he noted, that there were only two witnesses to the wills of the Cunanan spouses and the Philippine law requires three witnesses and that the wills were not signed on each and every page, a requirement of the Philippine law.

ISSUE

Whether the reprobate of the wills should be allowed. (YES)

RULING

"Art. 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes."

Thus, proof that both wills conform with the formalities prescribed by New York laws or by Philippine laws is imperative.

The evidence necessary for the reprobate or allowance of wills which have been probated outside of the Philippines are as follows: (1) the due execution of the will in accordance with the foreign laws; (2) the testator has his domicile in the foreign country and not in the Philippines; (3) the will has been admitted to probate in such country; (4) the fact that the foreign tribunal is a probate court, and (5) the laws of a foreign country on procedure and allowance of wills (III Moran Commentaries on the Rules of Court, 1970 ed., pp. 419-429; *Suntay v. Suntay*, 95 Phil. 500 [1954]; *Fluemer v. Hix*, 54 Phil. 610 [1930]). Except for the first and last requirements, the petitioner submitted all the needed evidence.

The necessity of presenting evidence on the foreign laws upon which the probate in the foreign country is based is impelled by the fact that our courts cannot take judicial notice of them (*Philippine Commercial and Industrial Bank v. Escolin*, 56 SCRA 266 [1974]).

Petitioner must have perceived this omission as in fact she moved for more time to submit the pertinent procedural and substantive New York laws but which request respondent Judge just glossed over. While the probate of a will is a special proceeding wherein courts should relax the rules on evidence, the goal is to receive the best evidence of which the matter is susceptible before a purported will is probated or denied probate (*Vda. de Ramos v. Court of Appeals*, 81 SCRA 393 [1978]).

There is merit in petitioner's insistence that the separate wills of the Cunanan spouses should be probated jointly. Respondent Judge's view that the Rules on allowance of wills is couched in singular

terms and therefore should be interpreted to mean that there should be separate probate proceedings for the wills of the Cunanan spouses is too literal and simplistic an approach. Such view overlooks the provisions of Section 2, Rule 1 of the Revised Rules of Court, which advise that the rules shall be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

A literal application of the Rules should be avoided if they would only result in the delay in the administration of justice (*Acain v. Intermediate Appellate Court*, 155 SCRA 100 [1987]; *Roberts v. Leonidas*, 129 SCRA 33 [1984]).

What the law expressly prohibits is the making of joint wills either for the testators' reciprocal benefit or for the benefit of a third person (Civil Code of the Philippines, Article 818). In the case at bench, the Cunanan spouses executed separate wills. Since the two wills contain essentially the same provisions and pertain to property which in all probability are conjugal in nature, practical considerations dictate their joint probate. As this Court has held a number of times, it will always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation (*Motoomull v. Dela Paz*, 187 SCRA 743 [1990]).

This petition cannot be completely resolved without touching on a very glaring fact — petitioner has always considered herself the sole heir of Dr. Evelyn Perez Cunanan and because she does not consider herself an heir of Dr. Jose F. Cunanan, she noticeably failed to notify his heirs of the filing of the proceedings. Thus, even in the instant petition, she only impleaded respondent Judge, forgetting that a judge whose order is being assailed is merely a nominal or formal party. The rule that the court having jurisdiction over the reprobate of a will shall "cause notice thereof to be given as in case of an original will presented for allowance" (Revised Rules of Court, Rule 27, Section 2) means that with regard to notices, the will probated abroad should be treated as if it were an "original will" or a will that is presented for probate for the first time. Accordingly, compliance with Sections 3 and 4 of Rule 76, which require publication and notice by mail or personally to the "known heirs, legatees, and devisees of the testator resident in the Philippines" and to the executor, if he is not the petitioner, are required.

The brothers and sisters of Dr. Jose F. Cunanan, contrary to petitioner's claim are entitled to notices of the time and place for proving the wills. Under Section 4 of Rule 76 of the Revised Rules of Court, the "court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator, . . ."

**TESTATE ESTATE OF C. O. BOHANAN, deceased. PHILIPPINE TRUST CO., *Executor-Appellee*, -
versus - MAGDALENA C. BOHANAN, EDWARD C. BOHANAN, and MARY LYDIA BOHANAN,
Oppositors-Appellants.**

G.R. No. L-12105, EN BANC, January 30, 1960, LABRADOR, J.

The old Civil Code, which is applicable to this case because the testator died in 1944, expressly provides that successional rights to personal property are to be earned by the national law of the person whose succession is in question.

As in accordance with Article 10 of the old Civil Code, the validity of testamentary dispositions are to be governed by the national law of the testator, and as it has been decided and it is not disputed that the national law of the testator is that of the State of Nevada, already indicated above, which allows a testator to dispose of all his property according to his will, as in the case at bar, the order of the court

approving the project of partition made in accordance with the testamentary provisions, must be, as it is hereby affirmed.

FACTS

On April 24, 1950, the Court of First Instance of Manila, Hon. Rafael Amparo, presiding, admitted to probate a last will and testament of C. O. Bohanan, executed by him on April 23, 1944 in Manila. Testator was born in Nebraska and notwithstanding the long residence of the decedent in the Philippines he continued and remained to be a citizen of the United States.

The executor filed a project of partition, making, in accordance with the provisions of the will.

The wife Magdalena C. Bohanan and her two children question the validity of the testamentary provisions disposing of the estate, claiming that they have been deprived of the legitimate that the laws of the form concede to them. Magdalena argued that it was error for the trial court to have recognized the Reno divorce secured by the testator from her, and that said divorce should be declared a nullity in the Philippine jurisdiction.

The court refused to recognize the claim of the widow on the ground that the laws of Nevada, of which the deceased was a citizen, allowed him to dispose of all of his properties without requiring him to leave any portion of his estate to his wife.

ISSUE

Whether the testamentary dispositions, especially those for the children which are short of the legitime given them by the Civil Code of the Philippines, are valid. (YES)

RULING

The old Civil Code, which is applicable to this case because the testator died in 1944, expressly provides that successional rights to personal property are to be earned by the national law of the person whose succession is in question.

In the proceedings for the probate of the will, it was found out and it was decided that the testator was a citizen of the State of Nevada because he had selected this as his domicile and his permanent residence.

It is not disputed that the laws of Nevada allow a testator to dispose of all his properties by will. It does not appear that at time of the hearing of the project of partition, the above-quoted provision was introduced in evidence, as it was the executor's duty to do. The law of Nevada, being a foreign law can only be proved in our courts in the form and manner provided for by our Rules, which are as follows:

SEC. 41. Proof of public or official record. - An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy tested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. . . .

We have, however, consulted the records of the case in the court below and have found that during the hearing on the motion of Magdalena C. Bohanan, the foreign law, especially Section 9905, Compiled Nevada Laws, was introduced in evidence by appellant's counsel. Again said laws presented by the counsel for the executor and admitted by the Court. In addition, the other appellants, children of the testator, do not dispute the above-quoted provision of the laws of the State of Nevada. Under all the above circumstances, we are constrained to hold that the pertinent law of Nevada, especially Section 9905 of the Compiled Nevada Laws of 1925, can be taken judicial notice of by us, without proof of such law having been offered at the hearing of the project of partition.

As in accordance with Article 10 of the old Civil Code, the validity of testamentary dispositions are to be governed by the national law of the testator, and as it has been decided and it is not disputed that the national law of the testator is that of the State of Nevada, already indicated above, which allows a testator to dispose of all his property according to his will, as in the case at bar, the order of the court approving the project of partition made in accordance with the testamentary provisions, must be, as it is hereby affirmed.

**IN THE MATTER OF THE TESTATE ESTATE OF EDWARD E. CHRISTENSEN, DECEASED.
ADOLFO C. AZNAR, Executor and LUCY CHRISTENSEN, Heir of the deceased, Executor and
Heir-appellees –versus- HELEN CHRISTENSEN GARCIA, Oppositor-appellant.**

G.R. No. L-16749, EN BANC, January 31, 1963, LABRADOR, J.

What Article 16 of the Civil Code of the Philippines pointed out as the national law is the internal law of California. But as above explained the laws of California have prescribed two sets of laws for its citizens, one for residents therein and another for those domiciled in other jurisdictions. Reason demands that We should enforce the California internal law prescribed for its citizens residing therein, and enforce the conflict of laws rules for the citizens domiciled abroad.

We note that Article 946 of the California Civil Code is its conflict of laws rule which provides that "If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile".

FACTS:

The will was executed in Manila on March 5, 1951 and contains the following provisions:

3. I declare ... that I have but ONE (1) child, named MARIA LUCY CHRISTENSEN (now Mrs. Bernard Daney).

4. I further declare that I now have no living ascendants, and no descendants except my above named daughter, MARIA LUCY CHRISTENSEN DANEY.

7. I give, devise and bequeath unto MARIA HELEN CHRISTENSEN, who, notwithstanding the fact that she was baptized Christensen, is not in any way related to me, nor has she been at any time adopted by me the sum of THREE THOUSAND SIX HUNDRED PESOS (P3,600.00).

12. I hereby give, devise and bequeath, unto my well-beloved daughter, the said MARIA LUCY CHRISTENSEN DANEY (Mrs. Bernard Daney), all the income from the rest, remainder, and residue of my property and estate, real, personal and/or mixed, of whatsoever kind or

character, and wheresoever situated, of which I may be possessed at my death and which may have come to me from any source whatsoever, during her lifetime.

It is in accordance with the above-quoted provisions that the executor in his final account and project of partition ratified the payment of only P3,600 to Helen Christensen Garcia and proposed that the residue of the estate be transferred to his daughter, Maria Lucy Christensen.

Opposition to the approval of the project of partition was filed by Helen Christensen Garcia, insofar as it deprives her (Helen) of her legitime as an acknowledged natural child, she having been declared by the Court in G.R. Nos. L-11483-84 an acknowledged natural child of the deceased Edward E. Christensen.

The legal grounds of opposition are (a) that the distribution should be governed by the laws of the Philippines, and (b) that said order of distribution is contrary thereto insofar as it denies to Helen Christensen, one of two acknowledged natural children, one-half of the estate in full ownership.

The Court of First Instance ruled that as Edward E. Christensen was a citizen of the United States and of the State of California at the time of his death, the successional rights and intrinsic validity of the provisions in his will are to be governed by the law of California. The CFI approved among things the final accounts of the executor, directing the executor to reimburse Maria Lucy Christensen the amount of P3,600 paid by her to Helen Christensen Garcia as her legacy, and declaring Maria Lucy Christensen entitled to the residue of the property.

ISSUE:

1. What is the citizenship and domicile of Edward Christensen? (US Citizen; domiciled in the Phil)
2. What law should govern the determination of the validity of the testamentary provisions of Christensen's will? (Philippine Law)

RULING:

1. There is no question that Edward E. Christensen was a citizen of the United States and of the State of California at the time of his death. But there is also no question that at the time of his death he was domiciled in the Philippines,

In arriving at the conclusion that the domicile of the deceased is the Philippines, we are persuaded by the fact that he was born in New York, migrated to California and resided there for nine years, and since he came to the Philippines in 1913 he returned to California very rarely and only for short visits (perhaps to relatives), and considering that he appears never to have owned or acquired a home or properties in that state, which would indicate that he would ultimately abandon the Philippines and make home in the State of California.

As to his citizenship, however, We find that the citizenship that he acquired in California when he resided in Sacramento, California from 1904 to 1913, was never lost by his stay in the Philippines, for the latter was a territory of the United States (not a state) until 1946 and the deceased appears to have considered himself as a citizen of California by the fact that when he executed his will in 1951 he declared that he was a citizen of that State; so that he appears never to have intended to abandon his California citizenship by acquiring another. This conclusion is in accordance with the following principle expounded by Goodrich in his Conflict of Laws.

"Residence simply requires bodily presence of an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile."

2. The law that governs the validity of his testamentary dispositions is defined in Article 16 of the Civil Code of the Philippines, which is as follows:

ART. 16. Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country where said property may be found.

"national law" as used therein can refer to no other than the private law of the State of California.

Under the California Probate Code, a testator may dispose of his property by will in the form and manner he desires.

But appellant invokes the provisions of Article 946 of the Civil Code of California, which is as follows:

If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Appellee, on the other hand, relies on the case cited in the decision and testified to by a witness. (Only the case of Kaufman is correctly cited.) It is argued on executor's behalf that as the deceased Christensen was a citizen of the State of California, the internal law thereof, which is that given in the abovesited case, should govern the determination of the validity of the testamentary provisions of Christensen's will, such law being in force in the State of California of which Christensen was a citizen.

Appellant, on the other hand, insists that Article 946 should be applicable, and in accordance therewith and following the doctrine of the *renvoi*, the question of the validity of the testamentary provision in question should be referred back to the law of the decedent's domicile, which is the Philippines.

The theory of the doctrine of *renvoi* is that the court of the forum, in determining the question before it, must take into account the whole law of the other jurisdiction, but also its rules as to conflict of laws, and then apply the law to the actual question which the rules of the other jurisdiction prescribe. This may be the law of the forum.

The recognition of the *renvoi* theory implies that the rules of the conflict of laws are to be understood as incorporating not only the ordinary or internal law of the foreign state or country, but its rules of the conflict of laws as well. According to this theory 'the law of a country' means the whole of its law.

We note that Article 946 of the California Civil Code is its conflict of laws rule, while the rule applied in *In re Kaufman, Supra*, its internal law. If the law on succession and the conflict of laws rules of California are to be enforced jointly, each in its own intended and appropriate

sphere, the principle cited *In re Kaufman* should apply to citizens living in the State, but Article 946 should apply to such of its citizens as are not domiciled in California but in other jurisdictions.

Appellees argue that what Article 16 of the Civil Code of the Philippines pointed out as the *national law* is the internal law of California. But as above explained the laws of California have prescribed two sets of laws for its citizens, one for residents therein and another for those domiciled in other jurisdictions. Reason demands that we should enforce the California internal law prescribed for its citizens residing therein, and enforce the conflict of laws rules for the citizens domiciled abroad.

It is argued on appellees' behalf that the clause "if there is no law to the contrary in the place where the property is situated" in Sec. 946 of the California Civil Code refers to Article 16 of the Civil Code of the Philippines and that the law to the contrary in the Philippines is the provision in said Article 16 that the *national law* of the deceased should govern. This contention cannot be sustained.

As explained in the various authorities cited above the national law mentioned in Article 16 of our Civil Code is the law on conflict of laws in the California Civil Code, i.e., Article 946, which authorizes the reference or return of the question to the law of the testator's domicile. The conflict of laws rule in California, Article 946, Civil Code, precisely refers back the case, when a decedent is not domiciled in California, to the law of his domicile, the Philippines in the case at bar. The court of the domicile cannot and should not refer the case back to California; such action would leave the issue incapable of determination because the case will then be like a football, tossed back and forth between the two states, between the country of which the decedent was a citizen and the country of his domicile. The Philippine court must apply its own law as directed in the conflict of laws rule of the state of the decedent, if the question has to be decided, especially as the application of the internal law of California provides no legitime for children while the Philippine law, Arts. 887(4) and 894, Civil Code of the Philippines, makes natural children legally acknowledged forced heirs of the parent recognizing them.

We therefore find that as the domicile of the deceased Christensen, a citizen of California, is the Philippines, the validity of the provisions of his will depriving his acknowledged natural child, the appellant, should be governed by the Philippine Law, the domicile, pursuant to Art. 946 of the Civil Code of California, not by the internal law of California.

WHEREFORE, the decision appealed from is hereby reversed and the case returned to the lower court with instructions that the partition be made as the Philippine law on succession provides.

IN RE WILL OF JOSEFA ZALAMEA Y ABELLA, DECEASED.

PEDRO UNSON, *Petitioner-appellee* -versus- ANTONIO ABELLA, ET AL., *Opponents-appellants*
G.R. No. 17857, EN BANC, June 12, 1922, VILLAMOR, J

The general rule is that, where opposition is made to the probate of a will, the attesting witnesses must be produced. But there are exceptions to this rule, for instance, when a witness is dead, or cannot be served with process of the court, or his reputation for truth has been questioned or he appears hostile to the cause of the proponent. In such cases, the will may be admitted to probate without the testimony of said witness, if, upon the other proofs adduced in the case, the court is satisfied that the will has been duly executed.

We do not desire to intimate that the numbering in letters is a requisite of no importance. But since its principal object is to give the correlation of the pages, we hold that his object may be attained by writing one, two, three, etc., as well as by writing A, B, C, etc. We see no reason why the same rule should not be applied where the paging is in Arabic numerals, instead of in letters, as in the inventory in question.

FACTS:

On July 19, 1918, Doña Josefa Zalamea y Abella, single, 60 years old, who was residing in the municipality of Pagsanjan, Province of Laguna, executed her last will and testament with an attached inventory of her properties, in the presence of three witnesses, who signed with her all the pages of said documents.

The testatrix died on the 6th of January, 1921, and, as the record shows, the executor appointed in the will, Pedro Unson, filed in the court of First Instance of Laguna on the 19th of January of the same year an application for the probate of the will and the issuance of the proper letters of administration in his favor.

To said application an opposition was presented by Antonio Abella, Ignacia Abella, Avicencia Abella, and Santiago Vito, alleging that the supposed will of the deceased Zalamea was not executed in conformity with the provisions of the law, inasmuch as it was not paged correlatively in letters, nor was there any attestation clause in it, nor was it signed by the testatrix and the witnesses in the presence of each other.

Trial having been held, the judge a quo overruled the opposition of the contestants, and ordered the probate of the will.

From the judgment of the court below, the contestants have appealed, and in their brief they assign three errors, which, in their opinion, justify the reversal of the judgment appealed from.

ISSUES:

1. W/N the court erred in admitting the will to probate notwithstanding the omission of the proponent to produce one of the attesting witnesses. (NO)
2. W/N the probate of the will is proper despite the fact that this exhibit has no attestation clause in it, and its paging is made in Arabic numerals and not in letters. (YES)

RULING:

1. In the case of *Avera vs. Garcia and Rodriguez* (42 Phil., 145), recently decided by this court, in deciding the question whether a will can be admitted to probate, where opposition is made, upon the proof of a single attesting witness, without producing or accounting for the absence of the other two, it was said; "while it is undoubtedly true that an uncontested will may be proved by the testimony of only one of the three attesting witnesses,

In the case at bar, we do not think this question properly to have been raised at the trial, but in the memorandum submitted by the attorney for the appellants to the trial court, he contended that the will could not be admitted to probate because one of the witnesses to the will was not produced, and that the voluntary non-production of this witness raises a presumption against the pretension of the proponent. The trial court found that the evidence introduced by the proponent, consisting of the

testimony of the two attesting witnesses and the other witness who was present at the execution, and had charge of the preparation of the will and the inventory was sufficient. As announced in *Cabang vs. Delfinado, supra*, the general rule is that, where opposition is made to the probate of a will, the attesting witnesses must be produced. But there are exceptions to this rule, for instance, when a witness is dead, or cannot be served with process of the court, or his reputation for truth has been questioned or he appears hostile to the cause of the proponent. In such cases, the will may be admitted to probate without the testimony of said witness, if, upon the other proofs adduced in the case, the court is satisfied that the will has been duly executed. Wherefore, we find that the non-production of the attesting witness, Pedro de Jesus, as accounted for by the attorney for the proponent at the trial, does not render void the decree of the court *a quo*, allowing the probate.

But supposing that said witness, when cited, had testified adversely to the application, this would not by itself have change the result reached by the court *a quo*, for section 632 of the Code of Civil Procedure provides that a will can be admitted to probate, notwithstanding that one or more witnesses do not remember having attested it, provided the court is satisfied upon the evidence adduced that the will has been executed and signed in the manner prescribed by the law.

2. In the third paragraph of the will, reference is made to the inventory, Exhibit A-1, and at the bottom of said will, the testatrix Josefa Zalamea says:

In witness whereof, I sign this will composed of ten folios including the page containing the signatures and the attestation of the witnesses; I have likewise signed the inventory attached to this will composed of ten folios in the presence of Messrs. Gonzalo Abaya, Eugenio Zalamea, Pedro de Jesus, in this municipality of Pagsanjan, Laguna, Philippine Islands, this 19th of July, 1918.

And the attestation clause is as follows:

The foregoing will composed of ten folios including this one whereunto we have affixed our signatures, as well as the inventory of the properties of Doña Josefa Zalamea y Abella, was read to Doña Josefa Zalamea y Abella, and the latter affixed her name to the last, and each and every page of this will and inventory composed of ten folios in our presence; and she declared this to be her last will and testament and at her request we have affixed hereunto our respective signatures in her presence and in the presence of each other as witnesses to the will and the inventory this 19th of July, 1918, at Pagsanjan, Laguna, P.I.

(Sgd.) GONZALO ABAYA, EUGENIO ZALAMEA, PEDRO DE JESUS.

In view of the fact that the inventory is referred to in the will as an integral part of it, we find that the foregoing attestation clause is in compliance with section 1 of Act No. 2645, which requires this solemnity for the validity of a will, and makes unnecessary any other attestation clause at the end of the inventory.

As to the paging of the will in Arabic numerals, instead of in letters, we adhere to the doctrine announced in the case of *Aldaba vs. Roque* (p. 378, *ante*), recently decided by this court. In that case the validity of the will was assailed on the ground that its folios were paged with the letters A, B, C, etc., instead of with the letters "one," two," "three," etc. It was held that this way of numbering the pages of a will is in compliance with the spirit of the law, inasmuch as either one of these methods indicates the correlation of the pages and serves to prevent the abstraction of any of them. In the course of the decision, we said: "It might be said that the object of the law in requiring that the paging

be made in letters is to make falsification more difficult, but it should be noted that since all the pages of the testament are signed at the margin by the testatrix and the witnesses, the difficulty of forging the signatures in either case remains the same. In other words the more or less degree of facility to imitate the writing of the letters A, B, C, etc., does not make for the easiness to forge the signatures. And as in the present case there exists the guaranty of the authenticity of the testament, consisting in the signatures on the left margins of the testament and the paging thereof as declared in the attestation clause, the holding of this court in *Abangan vs. Abangan* (40 Phil., 476), might as well be repeated:

"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless, and frustrative of the testator's last will, must be disregarded."

"Still some details at time creep into legislative enactments which are so trivial that it would be absurd to suppose that the Legislature could have attached any decisive importance to them. The provision to the effect that the signatures of the testator and witnesses shall be written on the left margin of each page — rather than on the margin — seems to be of this character. So far as concerns the authentication of the will, and of every part thereof, it can make no possible difference whether the names appear on the left or on the right margin, provided they are on one or the other.

We do not desire to intimate that the numbering in letters is a requisite of no importance. But since its principal object is to give the correlation of the pages, we hold that his object may be attained by writing one, two, three, etc., as well as by writing A, B, C, etc.

We see no reason why the same rule should not be applied where the paging is in Arabic numerals, instead of in letters, as in the inventory in question. So that, adhering to the view taken by this court in the case of *Abangan vs. Abangan*, and followed in *Aldava vs. Roque*, with regard to the appreciation of the solemnities of a will, we find that the judgement appealed from should be, as is hereby, affirmed.

TESTATE ESTATE OF THE LATE ADRIANA MALOTO, ALDINA MALOTO CASIANO, CONSTANCIO MALOTO, PURIFICACION MIRAFLOR, ROMAN CATHOLIC CHURCH OF MOLO, AND ASILO DE MOLO, *Petitioners* -versus- COURT OF APPEALS, PANFILO MALOTO AND FELINO MALOTO, *Respondents*.

G.R. No. 76464, SECOND DIVISION, February 29, 1988, SARMIENTO, J.

In this case, while animus revocandi or the intention to revoke, may be conceded, for that is a state of mind, yet that requisite alone would not suffice. "Animus revocandi is only one of the necessary elements for the effective revocation of a last will and testament. The intention to revoke must be accompanied by the overt physical act of burning, tearing, obliterating, or cancelling the will carried out by the testator or by another person in his presence and under his express direction. There is paucity of evidence to show compliance with these requirements. For one, the document or papers burned by Adriana's maid, Guadalupe, was not satisfactorily established to be a will at all, much less the will of Adriana Maloto. For another, the burning was not proven to have been done under the express direction

of Adriana. And then, the burning was not in her presence. Both witnesses, Guadalupe and Eladio, were one in stating that they were the only ones present at the place where the stove (presumably in the kitchen) was located in which the papers proffered as a will were burned.

FACTS:

On October 20, 1963, Adriana Maloto died leaving as heirs her niece and nephews, the petitioners Aldina Maloto-Casiano and Constancio, Maloto, and the private respondents Panfilo Maloto and Felino Maloto. Believing that the deceased did not leave behind a last will and testament, these four heirs commenced on November 4, 1963 an intestate proceeding for the settlement of their aunt's estate. However, while the case was still in progress, or to be exact on February 1, 1964, the parties — Aldina, Constancio, Panfilo, and Felino — executed an agreement of extrajudicial settlement of Adriana's estate. The agreement provided for the division of the estate into four equal parts among the parties. The Malotos then presented the extrajudicial settlement agreement to the trial court for approval which the court did on March 21, 1964.

Three years later, or sometime in March 1967, Atty. Sulpicio Palma, a former associate of Adriana's counsel, the late Atty. Eliseo Hervas, discovered a document entitled "KATAPUSAN NGA PAGBUBULAT-AN (Testamento)," dated January 3, 1940, and purporting to be the last will and testament of Adriana. Atty. Palma claimed to have found the testament, the original copy, while he was going through some materials inside the cabinet drawer formerly used by Atty. Hervas. The document was submitted to the office of the clerk of the Court of First Instance of Iloilo on April 1, 1967. Incidentally, while Panfilo and Felino are still named as heirs in the said will, Aldina and Constancio are bequeathed much bigger and more valuable shares in the estate of Adriana than what they received by virtue of the agreement of extrajudicial settlement they had earlier signed. The will likewise gives devises and legacies to other parties, among them being the petitioners Asilo de Molo, the Roman Catholic Church of Molo, and Purificacion Miraflor.

Thus, on May 24, 1967, Aldina and Constancio, joined by the other devisees and legatees named in the will, filed a motion for reconsideration and annulment of the proceedings and for the allowance of the will. When the trial court denied their motion, the petitioner came to us by way of a petition for certiorari and mandamus assailing the orders of the trial court. We dismissed that petition and advised that a separate proceeding for the probate of the alleged will would be the appropriate vehicle to thresh out the matters raised by the petitioners.

Significantly, the appellate court while finding as inconclusive the matter on whether or not the document or papers allegedly burned by the househelp of Adriana, Guadalupe Maloto Vda. de Coral, upon instructions of the testatrix, was indeed the will, contradicted itself and found that the will had been revoked. The respondent court stated that the presence of *animus revocandi* in the destruction of the will had, nevertheless, been sufficiently proven. The appellate court based its finding on the facts that the document was not in the two safes in Adriana's residence, by the testatrix going to the residence of Atty. Hervas to retrieve a copy of the will left in the latter's possession, and, her seeking the services of Atty. Palma in order to have a new will drawn up.

ISSUE:

Whether or not the will was revoked by Adriana.

RULING:

We do not view such facts, even considered collectively, as sufficient bases for the conclusion that Adriana Maloto's will had been effectively revoked.

The provisions of the new Civil Code pertinent to the issue can be found in Article 830.

Art. 830. No will shall be revoked except in the following cases:

(1) By implication of law; or

(2) By some will, codicil, or other writing executed as provided in case of wills: or

(3) *By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn cancelled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.*

It is clear that the physical act of destruction of a will, like burning in this case, does not per se constitute an effective revocation, unless the destruction is coupled with *animus revocandi* on the part of the testator. It is not imperative that the physical destruction be done by the testator himself. It may be performed by another person but under the *express direction* and in the *presence* of the testator. Of course, it goes without saying that the document destroyed must be the will itself.

In this case, while *animus revocandi* or the intention to revoke, may be conceded, for that is a state of mind, yet that requisite alone would not suffice. "*Animus revocandi* is only one of the necessary elements for the effective revocation of a last will and testament. The intention to revoke must be accompanied by the overt physical act of burning, tearing, obliterating, or cancelling the will carried out by the testator or by another person in his presence and under his express direction. There is paucity of evidence to show compliance with these requirements. For one, the document or papers burned by Adriana's maid, Guadalupe, was not satisfactorily established to be a will at all, much less the will of Adriana Maloto. For another, the burning was not proven to have been done under the express direction of Adriana. And then, the burning was not in her *presence*. Both witnesses, Guadalupe and Eladio, were one in stating that they were the only ones present at the place where the stove (presumably in the kitchen) was located in which the papers proffered as a will were burned.

The testimony of the two witnesses who testified in favor of the will's revocation appear "inconclusive." Nowhere in the records before us does it appear that the two witnesses, Guadalupe Vda. de Corral and Eladio Itchon, both illiterates, were unequivocally positive that the document burned was indeed Adriana's will. Guadalupe, we think, believed that the papers she destroyed was the will only because, according to her, Adriana told her so. Eladio, on the other hand, obtained his

information that the burned document was the will because Guadalupe told him so, thus, his testimony on this point is double hearsay.

Testate Estate of the Deceased MARIANO MOLO Y LEGASPI. JUANA JUAN VDA. DE MOLO, *Petitioner-appellee*, -versus- LUZ, GLICERIA and CORNELIO MOLO, *Oppositors-appellants*.

G.R. No. L-2538, EN BANC, September 21, 1951, BAUTISTA ANGELO, J.

The rule is established that where the act of destruction is connected with the making of another will so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of a new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force. We hold therefore, that even in the supposition that the destruction of the original will by the testator could be presumed from the failure of the petitioner to produce it in court, such destruction cannot have the effect of defeating the prior will of 1918 because of the fact that it is founded on the mistaken belief that the will of 1939 has been validly executed and would be given due effect.

It is true that our law on the matter (sec. 623, Code Civil Procedure) provides that a will may be some will, codicil, or other writing executed as proved in case of wills" but it cannot be said that the 1939 will should be regarded, not as a will within the meaning of said word, but as "other writing executed as provided in the case of wills", simply because it was denied probate. And even if it be regarded as any other writing within the meaning of said clause, there is authority for holding that unless said writing is admitted to probate, it cannot have the effect of revocation

FACTS:

Mariano Molo y Legaspi died on January 24, 1941, in the municipality of Pasay, province of Rizal, without leaving any forced heir either in the descending or ascending line. He was survived, however, by his wife, the herein petitioner Juana Juan Vda. de Molo, and by his nieces and nephew, the oppositors-appellants, Luz Glicería and Cornelio, all surnamed Molo, who were the legitimate children of Candido Molo y Legaspi, deceased brother of the testator. Mariano Molo y Legaspi left two wills, one executed on August 17, 1918, and another executed on June 20, 1939. The later will executed in 1918.

On February 7, 1941, Juana Juan Vda. de Molo, filed in the Court of First Instance of Rizal a petition docketed as special proceeding no.8022 seeking the probate of the will executed by the deceased on June 20, 1939. There being no opposition, the will was probated. However, upon petition filed by the herein oppositors, the order of the court admitting the will to probate was set aside and the case was reopened. After hearing, at which both parties presented their evidence, the court rendered decision denying the probate of said will on the ground that the petitioner failed to prove that the same was executed in accordance with law.

In view of the disallowance of the will executed on June 20, 1939, the widow on February 24, 1944, filed another petition for the probate of the will executed by the deceased on August 17, 1918, which was docketed as special proceeding No. 56, in the same court. Again, the same oppositors filed an opposition to the petition based on three grounds: (1) that petitioner is now estopped from seeking

the probate of the will of 1918; (2) that said will has not been executed in the manner required by law and (3) that the will has been subsequently revoked. But before the second petition could be heard, the battle for liberation came and the records of the case were destroyed.

Consequently, a petition for reconstitution was filed, but the same was found to be impossible because neither petitioner nor oppositors could produce the copies required for its reconstitution. As a result, petitioner filed a new petition on September 14, 1946, similar to the one destroyed, to which the oppositors filed an opposition based on the same grounds as those contained in their former opposition. The court issued an order admitting the will to probate.

ISSUES:

1. W/N the probate court erred in not holding that the alleged will of 1918 was deliberately revoked by Molo himself. (NO)
2. W/N the lower court erred in not holding that Molo's will of 1918 was subsequently revoked by the decedent's will of 1939. (NO)

RULING:

1. The oppositors contend that the testator, after executing the 1939 will, and with full knowledge of the revocatory clause contained said will, himself deliberately destroyed the original of the 1918 will, and for that reason the will submitted by petitioner for probate in these proceedings is only a duplicate of said original.

There is no evidence which may directly indicate that the testator deliberately destroyed the original of the 1918 will because of his knowledge of the revocatory clause contained in the will he executed in 1939.

Granting for the sake of argument that the earlier will was voluntarily destroyed by the testator after the execution of the second will, which revoked the first, could there be any doubt, under this theory, that said earlier will was destroyed by the testator in the honest belief that it was no longer necessary because he had expressly revoked it in his will of 1939? In other words, can we not say that the destruction of the earlier will was but the necessary consequence of the testator's belief that the revocatory clause contained in the subsequent will was valid and the latter would be given effect? If such is the case, then it is our opinion that the earlier will can still be admitted to probate under the principle of "dependent relative revocation".

The rule is established that where the act of destruction is connected with the making of another will so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of a new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force.

We hold therefore, that even in the supposition that the destruction of the original will by the testator could be presumed from the failure of the petitioner to produce it in court, such destruction cannot have the effect of defeating the prior will of 1918 because of the fact that it is founded on the mistaken belief that the will of 1939 has been validly executed and would be given due effect. The theory on which this principle is predicated is that the testator did not intend to die intestate. And this intention is clearly manifest when he executed two wills on two different occasions and instituted his wife as his universal heir. There can therefore be no mistake as to his intention of dying testate.

2. The next contention of appellants refers to the revocatory clause contained in 1939 will of the deceased which was denied probate. They contend that, notwithstanding the disallowance of said will, the revocatory clause is valid and still has the effect of nullifying the prior of 1918.

A subsequent will, containing a clause revoking a previous will, having been disallowed, for the reason that it was not executed in conformity with the provisions of section 618 of the Code of Civil Procedure as to the making of wills, cannot produce the effect of annulling the previous will, inasmuch as said revocatory clause is void.

It is universally agreed that where the second will is invalid on account of not being executed in accordance with the provisions of the statute, or where the testator who has not sufficient mental capacity to make a will or the will is procured through undue influence, or the such, in other words, where the second will is really no will, it does not revoke the first will or affect it in any manner.

It is true that our law on the matter (sec. 623, Code Civil Procedure) provides that a will may be some will, codicil, or other writing executed as proved in case of wills" but it cannot be said that the 1939 will should be regarded, not as a will within the meaning of said word, but as "other writing executed as provided in the case of wills", simply because it was denied probate. And even if it be regarded as any *other writing* within the meaning of said clause, there is authority for holding that unless said writing is admitted to probate, it cannot have the effect of revocation.

**IN RE ESTATE OF THE DECEASED GREGORIO TOLENTINO. ADELAIDA TOLENTINO, *Petitioner-appellee*, -versus- NATALIA FRANCISCO, ET AL., *Oppositors-appellants*.
G.R. No. L-35993, EN BANC, December 19, 1932, STREET, J.**

When a will is contested it is the duty of the proponent to call all of the attesting witnesses, if available but the validity of the will in no wise depends upon the united support of the will by all of those witnesses. A will may be admitted to probate notwithstanding the fact that one or more of the subscribing witnesses do not unite with the other, or others, in proving all the facts upon which the validity of the will rests. It is sufficient if the court is satisfied from all the proof that the will was executed and attested in the manner required by law. In this case we feel well assured that the contested will was properly executed and the order admitting to it probate was entirely proper.

FACTS:

At the time of his death on November 9, 1930, Gregorio Tolentino was sixty-six years of age. During the more vigorous years of his life he had been married to Benita Francisco, but she predeceased him years ago. By their industry and frugality the two had accumulated a very considerable estate which does not appear to have suffered any material diminution in the years of Tolentino's widowhood. The pair had no children, and the generous instincts of the survivor prompted him to gather around him in his comfortable and commodious home a number of his wife's kin; and by him various younger members of the connection were supported and educated. At one time Tolentino contemplated leaving his property mainly to these kin of his wife, of the surname Francisco; and for several years prior to his death, he had kept a will indicating this desire. However, in October, 1930, strained relations, resulting from grave disagreements, developed between Tolentino and the Francisco relations and he determined to make a new will in which, apart from certain legacies in favor of a few individuals, the bulk of his estate, worth probably about P150,000, should be given to Adelaida Tolentino de Concepcion, as his universal heir.

To this end, on October 17, 1930, Tolentino went to the office of Eduardo Gutierrez Repide, an attorney at 97 General Luna, Manila, and informed him that he wanted to make a new will and desired Repide to draft it for him. As the instrument was taking shape Tolentino stated that he wanted the will to be signed in Repide's office, with Repide himself as one of the attesting witnesses. For the other two witnesses Tolentino requested that two attorneys attached to the office, namely, Leoncio B. Monzon and Ramon L. Sunico, should serve. For this reason, in the draft of the will, as it at first stood, the names of the three above mentioned were inserted as the names of the three attesting witnesses.

On the morning of October 21 he again appeared in Repide's office and returned to him the draft of the will with certain corrections. Among the changes thus made was the suppression of the names of Monzon, Sunico, and Repide as attesting witnesses, these names being substituted by the names of Jose Syyap, Agustin Vergel de Dios, and Vicente Legarda. The explanation given by the testator for desiring this change was that he had met Jose Syyap on the Escolta, the day before, and had committed the indiscretion of communicating the fact that he (Tolentino) was having a new will made in which Monzon, Sunico, and Repide would appear as the attesting witnesses. Now Syyap had been the draftsman of the former will of Tolentino, and in this same will the name of Syyap appeared as one of the attesting witnesses, the other two being Vicente Legarda and Vergel de Dios. When, therefore, Syyap learned that a new will was being drawn up without his intervention, he showed profound disappointment, saying to Tolentino that he considered it a gross offense that he, Legarda, and Vergel de Dios should be eliminated as witnesses to the new will. Upon this manifestation of feeling by Syyap, Tolentino decided to avail himself of Syyap, Legarda, and Vergel de Dios as witnesses to this will also, and he therefore requested Repide to change the names of the attesting witnesses. After this point had been settled Tolentino stated that he would request Syyap, Legarda, and Vergel de Dios to appear at the office of Repide for the purpose of signing the will. To this end Tolentino went away but returned later saying that he had spoken to Syyap about it and that the latter strenuously objected, observing that the will should be signed at a chop-suey restaurant (*panciteria*). Tolentino further stated to his attorney in this conversation that he had arranged with Syyap and the other two intending witnesses to meet at five o'clock in the afternoon of the next day, which was October 22, for the purpose of executing the will.

At about 4:30 p. m. on the same day, which was October 22, Tolentino started in his car to pick up Syyap and Vergel de Dios at their respective homes on Antipolo and Benavides streets. He then caused his chauffeur to drive with the three to La Previsora Filipina, on Rizal Avenue, where Vicente Legarda, the third intending witness was to be found. Arriving at this place, the three entered the office of Legarda, who was manager of the establishment. Tolentino asked Legarda to permit the will to be signed in his office, and to this request Legarda acceded.

Tolentino thereupon drew two documents from his pocket saying that it was his last will and testament, done in duplicate, and he proceeded to read the original to the witnesses. After this had been completed, Legarda himself took the will in hand and read it himself. He then returned it to Tolentino, who thereupon proceeded, with pen and ink, to number the pages of the will thus, "Pagina Primera", "Pagina Segunda", etc. He then paged the duplicate copy of the will in the same way. He next proceeded to sign the original will and each of its pages by writing his name "G. Tolentino" in the proper places. Following this, each of the three witnesses signed their own respective names at the end of the will, at the end of the attesting clause, and in the left margin of each page of the instrument. During this ceremony all of the persons concerned in the act of attestation were present together, and all fully advertent to the solemnity that engaged their attention.

After the original of the will had been executed in the manner just stated, the testator expressed his desire that the duplicate should be executed in the same manner. To this Syyap objected, on the ground that it was unnecessary; and in this view he was supported by Vergel de Dios, with the result that the wishes of the testator on this point could not be carried out. As the party was about to break up Tolentino used these words: "For God's sake, as a favor, I request you not to let any one know the contents of this will." The meeting then broke up and Tolentino returned Syyap and Vergel de Dios to their homes in his car. He then proceeded to the law office of Repide, arriving about 6:15 p. m. After preliminary explanations had been made, Tolentino requested Repide to keep the will overnight in his safe, as it was already too late to place it in the compartment which Tolentino was then renting in the Oriental Safe Deposit, in the Kneeder Building. In this connection the testator stated that he did not wish to take the will to his home, as he knew that his relatives were watching him and would take advantage of any carelessness on his part to pry into his papers. Also, in this conversation Tolentino informed Repide of the refusal of Syyap to execute the duplicate of the will.

Promptly at nine o'clock the next morning Tolentino presented himself at Repide's office for the purpose of securing the will. Repide happened to be out and Tolentino went away, but again returned the next day and received the will. With the instrument thus in his possession he proceeded at once to the Oriental Safe Deposit and there left the instrument in his private compartment, No. 333, in which place it remained until withdrawn some two weeks later by order of the court.

On the morning of November 9, 1930, Gregorio Tolentino was found dead in his bed, having perished by the hands of an assassin.

The peculiarity of this case is that, upon the trial of this proceeding for the probate of the will of the decedent, two of the attesting witnesses, Jose Syyap and Vergel de Dios, repudiated their participation in the execution of the will at the time and place stated; and while admitting the genuineness of their signatures to the will, pretended that they had severally signed the instrument, at the request of the testator, at different places. Thus Syyap, testifying as a witness, claimed that the testator brought the will to Syyap's house on the afternoon of October 21 - a time, be it remembered, when the will had not yet left the hands of the draftsman - and upon learning that Syyap could not be present at the time and place then being arranged for the execution of the will, he requested Syyap, as a mere matter of complaisance, to sign the will then, which Syyap did. Vergel de Dios has another story to tell of isolated action, claiming that he signed the will in the evening of October 22 at the Hospital of San Juan de Dios in Intramuros.

ISSUE:

W/N a will may be admitted to probate notwithstanding the fact that one or more of the subscribing witnesses do not unite with the other, or others, in proving all the facts upon which the validity of the will rests. (YES)

RULING:

We are unable to give any credence to the testimony of these two witnesses on this point, the same being an evident fabrication designed for the purpose of defeating the will. In the first place, the affirmative proof showing that the will was properly executed is adequate, consistent, and convincing, consisting of the testimony of the third attesting witness, Vicente Legarda, corroborated by Miguel Legarda and Urbana Rivera, two disinterested individuals, employees of La Previsora Filipina, who were present in Legarda's office when the will was executed and who lent a discerning

attention to what was being done. In the second place, each of the seven signatures affixed to his will by Syyap appear to the natural eye to have been made by using the same pen and ink that was used by Legarda in signing the will. The same is also probably true of the seven signatures made by Vergel de Dios. This could hardly have happened if the signatures of Syyap and Vergel de Dios had been affixed, as they now pretend, at different times and places. In the third place, Both Syyap and Vergel de Dios are impeached by proof of contradictory statements made by them on different occasions prior to their appearance as witnesses in this case. In this connection we note that, after the murder of Gregorio Tolentino, and while the police authorities were investigating his death, Nemesio Alferez, a detective, sent for Syyap and questioned him concerning his relations with the deceased. Upon this occasion Syyap stated that Gregorio Tolentino had lately made a will, that it had been executed at the office of La Previsora Filipina under the circumstances already stated, and that he himself had served as one of the attesting witnesses.

These circumstances and other incidents revealed in the proof leave no room for doubt in our mind that Syyap and Vergel de Dios have entered into a conspiracy between themselves, and in concert with the opponents, to defeat the will of Gregorio Tolentino although they are well aware that said will was in all respects properly executed; and the trial court, in our opinion, committed no error in admitting the will to probate.

When a will is contested it is the duty of the proponent to call all of the attesting witnesses, if available but the validity of the will in no wise depends upon the united support of the will by all of those witnesses. A will may be admitted to probate notwithstanding the fact that one or more of the subscribing witnesses do not unite with the other, or others, in proving all the facts upon which the validity of the will rests. It is sufficient if the court is satisfied from all the proof that the will was executed and attested in the manner required by law. In this case we feel well assured that the contested will was properly executed and the order admitting to it probate was entirely proper.

ANTILANO G. MERCADO, Petitioner, -versus- ALFONSO SANTOS, Judge of First Instance of Pampanga, Respondents and ROSARIO BASA DE LEON, ET AL., Intervenors.
G.R. No. 45629, EN BANC, September 22, 1938, LAUREL, J.

In view of the provisions of sections 306, 333 and 625 of our Code of Civil Procedure, criminal action will not lie in this jurisdiction against the forger of a will which had been duly admitted to probate by a court of competent jurisdiction.

FACTS:

On May 28, 1931, the petitioner herein filed in the Court of First Instance of Pampanga a petition for the probate of the will of his deceased wife, Ines Basa. Without any opposition, and upon the testimony of Benigno F. Gabino, one of the attesting witnesses, the probate court, on June 27, 1931, admitted the will to probate. Almost three years later, on April 11, 1934, the five intervenors herein moved *ex parte* to reopen the proceedings, alleging lack of jurisdiction of the court to probate the will and to close the proceedings. Because filed *ex parte*, the motion was denied. The same motion was filed a second time, but with notice to the adverse party. The motion was nevertheless denied by the probate court.

It appears that on October 27, 1932, *i. e.*, sixteen months after the probate of the will of Ines Basa, intervenor Rosario Basa de Leon filed with the justice of the peace court of San Fernando, Pampanga, a complaint against the petitioner herein, for falsification or forgery of the will probated as above indicated. The petitioner was arrested. He put up a bond in the sum of P4,000 and engaged the

services of an attorney to undertake his defense. Preliminary investigation of the case was continued twice upon petition of the complainant. The complaint was finally dismissed, at the instance of the complainant herself, in an order dated December 8, 1932.

Three months later, or on March 2, 1933, the same intervenor charged the petitioner for the second time with the same offense, presenting the complaint this time in the justice of the peace court of Mexico, Pampanga. The petitioner was again arrested, again put up a bond in the sum of P4,000, and engaged the services of counsel to defend him. This second complaint, after investigation, was also dismissed, again at the instance of the complainant herself who alleged that the petitioner was in poor health.

On February 2, 1934, to be exact, the same intervenor accused the same petitioner for the third time of the same offense. The information was filed by the provincial fiscal of Pampanga in the justice of the peace court of Mexico. The petitioner was again arrested, again put up a bond of P4,000, and engaged the services of defense counsel. The case was dismissed, after due investigation, on the ground that the will alleged to have been falsified had already been probated and there was no evidence that the petitioner had forged the signature of the testatrix appearing thereon, but that, on the contrary, the evidence satisfactorily established the authenticity of the signature aforesaid.

Dissatisfied with the result, the provincial fiscal, on May 9, 1934, moved in the Court of First Instance of Pampanga for reinvestigation of the case. The motion was granted and, for the fourth time, the petitioner was arrested, filed a bond and engaged the services of counsel to handle his defense. The reinvestigation dragged on for almost a year until February 18, 1934, when the Court of First Instance ordered that the case be tried on the merits.

The petitioner interposed a demurrer on the ground that the will alleged to have been forged had already been probated. This demurrer was overruled. The motion for reconsideration and the proposed appeal were denied. The case proceeded to trial, and forthwith petitioner moved to dismiss the case claiming again that the will alleged to have been forged had already been probated and, further, that the order probating the will is conclusive as to the authenticity and due execution thereof.

ISSUE:

Whether or not the probate of a will bars criminal prosecution of the alleged forger of the probate will. (YES)

RULING:

Section 306 of our Code of Civil Procedure provides as to the effect of judgments.

SEC. 306. Effect of judgment. — The effect of a judgment or final order in an action or special proceeding before a court or judge of the Philippine Islands or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows.

1. In case of a judgment or order against a specific thing, or *in respect to the probate of a will*, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, *the judgment or order is conclusive upon* the title of the thing, *the will* or administration, or the condition or relation of

the person *Provided*, That the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate.

Section 625 of the same Code is more explicit as to the conclusiveness of the due execution of a probate will. It says.

SEC. 625. *Allowance Necessary, and Conclusive as to Execution.* — No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution.

(In *Manahan vs. Manahan* 58 Phil., 448, 451), we held:

... The decree of probate is conclusive with respect to the due execution thereof and it cannot be impugned on any of the grounds authorized by law, except that of fraud, in any separate or independent action or proceeding.

In 28 R. C. L., p. 377, section 378, it is said.

The probate of a will by the probate court having jurisdiction thereof is usually considered as conclusive as to its due execution and validity, and is also conclusive that the testator was of sound and disposing mind at the time when he executed the will, and was not acting under duress, menace, fraud, or undue influence, and that the will is genuine and not a forgery.

As our law on wills, particularly section 625 of our Code of Civil Procedure aforequoted, was taken almost bodily from the Statutes of Vermont, the decisions of the Supreme Court of the State relative to the effect of the probate of a will are of persuasive authority in this jurisdiction.

Said the Supreme Court of Vermont in the case of *Missionary Society vs. Eells*: "*The probate of a will by the probate court having jurisdiction thereof, upon the due notice, is conclusive as to its due execution against the whole world.*"

The probate of a will in this jurisdiction is a proceeding *in rem*. The provision of notice by Publication as a prerequisite to the allowance of a will is constructive notice to the whole world, and when probate is granted, the judgment of the court is binding upon everybody, even against the State.

Section 333, paragraph 4, of the Code of Civil Procedure establishes an incontrovertible presumption in favor of judgments declared by it to be conclusive.

SEC. 333. *Conclusive Presumptions.* — The following presumptions or deductions, which the law expressly directs to be made from particular facts, are deemed conclusive.

4. The judgment or order of a court, when declared by this code to be conclusive.

Not only does the law surround the execution of the will with the necessary formalities and require probate to be made after an elaborate judicial proceeding, but section 113, not to speak of section 513, of our Code of Civil Procedure provides for an adequate remedy to any party who might have been adversely affected by the probate of a forged will, much in the same way as other parties against whom a judgment is rendered under the same or similar circumstances. (*Pecson vs. Coronel*, 43 Phil.,

358.)The aggrieved party may file an application for relief with the proper court within a reasonable time, but in no case exceeding six months after said court has rendered the judgment of probate, on the ground of mistake, inadvertence, surprise or excusable neglect. An appeal lies to review the action of a court of first instance when that court refuses to grant relief. After a judgment allowing a will to be probated has become final and unappealable, and after the period fixed by section 113 of the Code of Civil Procedure has expired, the law as an expression of the legislative wisdom goes no further and the case ends there.

We hold, therefore, that in view of the provisions of sections 306, 333 and 625 of our Code of Civil Procedure, criminal action will not lie in this jurisdiction against the forger of a will which had been duly admitted to probate by a court of competent jurisdiction.

**REMEDIOS NUGUID, *Petitioner*, -versus - FELIX NUGUID and PAZ SALONGA NUGUID,
Respondents.**

G.R. No. L-23445, EN BANC, June 23, 1966, SANCHEZ, J.

Preterition consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, are neither instituted as heirs nor are expressly disinherited. In the case at bar, Rosario left no descendants but left forced heirs in the direct ascending line, her parents. It must be noted that the subject will completely omits both the mother and the father, thus, they were deprived of their legitime. This is a clear case of preterition which rendered the will a complete nullity considering that no specific legacies or bequests were provided for in the will. Rosario died intestate.

This is not a case of effective disinheritance as claimed by Remedios. Disinheritance is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law. In the case at bar, the will does not explicitly disinherit Rosario's parents, the forced heirs.

FACTS:

Rosario Nuguid died single and without descendants, legitimate or illegitimate. Surviving her were her legitimate parents, Felix and Paz, and 6 brothers and sisters, namely: Alfredo, Federico, Remedios, Conrado, Lourdes and Alberto.

Remedios filed in the Court of First Instance a holographic will allegedly executed by Rosario, 11 years before her demise for it to be admitted to probate and for the letters of administration to be issued to her. Felix and Paz, however, filed an opposition. They claimed that by the institution of Remedios as the universal heir of Rosario, they, as the compulsory heirs in the direct ascending line, were illegally preterited. As such, the institution is void. Remedios, on the other hand, believed that there is effective disinheritance instead of preterition in this case. The court ruled in favor of the parents.

ISSUE:

Whether the institution of Remedios preterited the compulsory heirs. (YES)

RULING:

Article 854 of the Civil Code, in part, provides:

The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

Preterition consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, are neither instituted as heirs nor are expressly disinherited. In the case at bar, Rosario left no descendants but left forced heirs in the direct ascending line, her parents. It must be noted that the subject will completely omits both the mother and the father, thus, they were deprived of their legitime. This is a clear case of preterition which rendered the will a complete nullity considering that no specific legacies or bequests were provided for in the will. Rosario died intestate.

This is not a case of effective disinheritance as claimed by Remedios. Disinheritance is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law. It is a voluntary act, unlike preterition, supported by a legal cause specified in the will itself. In the case at bar, the will does not explicitly disinherit Rosario's parents, the forced heirs. It simply omits their names altogether.

It must be noted that the legacies and devises, under Article 854, merit consideration only when they are so expressly given as such in a will. Nothing in Article 854 suggests that the mere institution of a universal heir in a will would give the heir so instituted a share in the inheritance. There must be, in addition to such institution, a testamentary disposition granting him bequests or legacies apart and separate from the nullified institution of heir. In the case at bar, there is no other provision in the will except the institution of Remedios as universal heir.

The disputed order declares the will in question "a complete nullity". Article 854 of the Civil Code, on the other hand, merely nullifies "the institution of heir". Considering, however, that the will before us solely provides for the institution of Remedios as universal heir, and nothing more, the result is the same. The entire will is null.

IRIS MORALES, *Petitioner*, -versus - ANA MARIA OLONDRIZ, ALFONSO JUAN OLONDRIZ, JR., ALEJANDRO MORENO OLONDRIZ, ISABEL ROSA OLONDRIZ and FRANCISCO JAVIER MARIA OLONDRIZ, *Respondents*.

G.R. No. 198994, SECOND DIVISION, February 3, 2016, BRION, J.

Preterition consists in the omission of a compulsory heir from the will, either because he is not named or, although he is named as a father, son, etc., he is neither instituted as an heir nor assigned any part of the estate without expressly being disinherited – tacitly depriving the heir of his legitime. It requires that the omission be total which means that the heir did not also receive any legacy, devise, or advance on his legitime. In the case at bar, the decedent's will evidently omitted Francisco Olondriz as an heir, legatee, or devisee when in fact he, being an illegitimate son, is a compulsory heir in the direct line. Unless Morales could show otherwise, Francisco's omission from the will leads to the conclusion of his preterition. No evidence, however, was adduced that would show that donations inter vivos and advances on his legitime were received by Francisco. As such, considering that the subject will does not contain specific legacy or devise and that Francisco's preterition annulled the institution of heirs, the total abrogation of the will resulting in total intestacy happened. The decedent's will, no matter how valid it may appear extrinsically, is null and void.

FACTS:

Alfonso Juan P. Olondriz, Sr. (the decedent) died on June 9, 2003. Believing that the decedent died intestate, the respondent heirs filed a petition for the partition of the decedent's estate and the appointment of a special administrator. The RTC appointed Alfonso Juan O. Olondriz, Jr. one of the heirs as special administrator.

Iris Morales, however, filed a separate petition with the RTC alleging that the decedent left a will which omitted Francisco Javier Maria Olondriz, an illegitimate son of the decedent. She moved for the suspension the intestate proceedings in order to give way to the probate of the said will. This was opposed by the respondent heirs and moved to dismiss the probate proceedings because Francisco was preterited from the will.

The RTC suspended the intestate proceedings and set the case or probate. It reasoned that probate proceedings take precedence over intestate proceedings.

ISSUES:

- A. Whether there was preterition. (YES)
- B. Whether it was proper for the RTC to pass upon the intrinsic validity of the will during probate proceedings. (YES)

RULING:

(A) Preterition consists in the omission of a compulsory heir from the will, either because he is not named or, although he is named as a father, son, etc., he is neither instituted as an heir nor assigned any part of the estate without expressly being disinherited – tacitly depriving the heir of his legitime. It requires that the omission be total which means that the heir did not also receive any legacy, devise, or advance on his legitime.

Under the Civil Code, the preterition of a compulsory heir in the direct line shall annul the institution of heirs, but the devises and legacies shall remain valid insofar as the legitimes are not impaired. Consequently, if a will does not institute any devisee or legatee, the preterition of a compulsory heir in the direct line will result in total intestacy.

In the case at bar, the decedent's will evidently omitted Francisco Olondriz as an heir, legatee, or devisee when in fact he, being an illegitimate son, is a compulsory heir in the direct line. Unless Morales could show otherwise, Francisco's omission from the will leads to the conclusion of his preterition. No evidence, however, was adduced that would show that donations inter vivos and advances on his legitime were received by Francisco.

Furthermore, considering that subject will does not contain specific legacy or device and that Francisco's preterition annulled the institution of heirs, the total abrogation of the will resulting in total intestacy happened. The decedent's will, no matter how valid it may appear extrinsically, is null and void.

(B) The general rule is that in probate proceedings, the scope of the court's inquiry is limited to questions on the extrinsic validity of the will such that the probate court will only determine the will's formal validity and due execution. This rule, however, is not inflexible and absolute. It is not beyond the probate court's jurisdiction to pass upon the intrinsic validity of the will when so warranted by exceptional circumstances. When practical considerations demand that the intrinsic validity of the will be passed upon even before it is probated, the probate court should meet the issue.

THE INCOMPETENT, CARMEN CAÑIZA, REPRESENTED BY HER LEGAL GUARDIAN, AMPARO EVANGELISTA, *Petitioner*, -versus - COURT OF APPEALS (SPECIAL FIRST DIVISION), PEDRO ESTRADA and HIS WIFE, LEONORA ESTRADA, *Respondents*.

G.R. No. 110427, THIRD DIVISION, February 24, 1997, NARVASA, J.

A will is essentially ambulatory. At any time prior to the testator's death, it may be changed or revoked and until admitted to probate, it has no effect whatever and no right can be claimed thereunder, the law being quite explicit: "No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court". An owner's intention to confer title in the future to persons possessing property by his tolerance is not inconsistent with the former's taking back of possession in the meantime for any reason deemed sufficient. In the case at bar, there was sufficient cause for the owner's resumption of possession. She needed to generate income from the house on account of the physical infirmities afflicting her, arising from her extreme age.

FACTS:

Being then 94 years of age, Carmen Cañiza was declared incompetent by judgment of the RTC in a guardianship proceeding instituted by her niece, Amparo A. Evangelista. The latter was appointed as the legal guardian of her person and estate.

Cañiza was the owner of a house and lot in Quezon City. In relation thereto, she through her Evangelista commenced a suit to eject spouses Pedro and Leonora Estrada from said premises. In the complaint, it was alleged that Cañiza was the absolute owner of the property in question and that out of kindness, she had allowed the Estrada Spouses to temporarily reside in her house, rent-free. In the answer, the respondents declared that in consideration of their faithful service, they had been considered by Cañiza as her own family, and the latter had in fact executed a holographic will where she "bequeathed" to the Estradas the house and lot in question.

The MTC ruled in favor of Cañiza. The RTC, however, reversed this decision. The CA upheld the RTC decision. In so ruling, it said that while said will, unless and until it has passed probate by the proper court, could not be the basis of respondents' claim to the property, it is indicative of intent and desire on the part of Cañiza that respondents are to continue in their occupancy and possession so much so that Cañiza's supervening incompetency cannot be said to have vested in her guardian the right or authority to drive the respondents out. To this, Caniza alleges error on the part of the CA for relying on a xerox copy of an alleged holographic will which is irrelevant to this case.

ISSUE:

Whether the CA erred in taking into consideration the alleged will of Cañiza in deciding the issue.
(YES)

RULING:

The Estradas insist that the devise of the house to them by Cañiza clearly denotes her intention that they remain in possession thereof and legally incapacitated Evangelista from evicting them therefrom since their ouster would be inconsistent with the ward's will. This must fail.

A will is essentially ambulatory. At any time prior to the testator's death, it may be changed or revoked and until admitted to probate, it has no effect whatever. No right can be claimed thereunder, the law being quite explicit: "No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court". An owner's intention to confer title in the future to persons possessing property by his tolerance is not inconsistent with the former's taking back of possession in the meantime for any reason deemed sufficient. In the case at bar, there was sufficient cause for the owner's resumption of possession. She needed to generate income from the house on account of the physical infirmities afflicting her, arising from her extreme age.

IN RE OF DOLORES CORONEL, DECEASED. LORENZO PECSON, *Appellee*, -versus - AGUSTIN CORONEL, ET AL., *Appellants*

G.R. No. L-20374, EN BANC, October 11, 1923, ROMUALDEZ, J.

The liberty to dispose of one's estate by will when there are no forced heirs is rendered sacred by the Civil Code in force in the Philippines since 1889. It is so provided article 763 in the following terms: Any person who has no forced heirs may dispose by will of all his property or any part of it in favor of any persons qualified to acquire it. In the case at bar, the Court finds nothing strange in the preterition made by Dolores of her blood relatives, nor in the designation of Lorenzo Pecson as her sole beneficiary. Furthermore, although the institution of the beneficiary here would not seem the most usual and customary, still this would not be null per se contrary to what the respondents' claim.

FACTS:

The Court of First Instance probated the will of Dolores Coronel who named as her sole heir Lorenzo Pecson, the husband of her niece, in consideration of the good services which the latter has rendered. The relatives of Dolores by consanguinity questioned the genuineness of the will on the following grounds: (a) that the proof does not show that it contains the last will of Dolores, and (b) that the attestation clause is not in accordance with the provisions of section 618 of the Code of Civil Procedure, as amended by Act No. 2645. They argue that it was improbable and exceptional that Dolores should dispose of her estate without considering her blood relatives. Extraneous illegal influence must have been exerted against her as there is no sufficient motive for such exclusion inasmuch as until her death, she maintained very cordial relations with the aforesaid relatives. It appears, however, that Dolores suspects some of her nephews as having been accomplices in a robbery of which she had been a victim.

ISSUE:

Whether the decedent can exclude her blood relatives in the disposition of her estate. (YES)

RULING:

The liberty to dispose of one's estate by will when there are no forced heirs is rendered sacred by the Civil Code in force in the Philippines since 1889. It is so provided in Article 763 in the following terms: "Any person who has no forced heirs may dispose by will of all his property or any part of it in favor of any persons qualified to acquire it." In the case at bar, the Court finds nothing strange in the preterition made by Dolores of her blood relatives, nor in the designation of Lorenzo Pecson as her sole beneficiary. Furthermore, although the institution of the beneficiary here would not seem the most usual and customary, still, this would not be null per se contrary to what the respondents' claim.

It must be noted that in the absence of any statutory restriction, every person possesses absolute dominion over his property and he may bestow it upon whomsoever he pleases without regard to natural or legal claim upon his bounty. If the testator possesses the requisite capacity to make a will, and the disposition of his property is not affected by fraud or undue influence, the will is not rendered invalid by the fact that it is unnatural, unreasonable, or unjust. Nothing can prevent the testator from making a will as eccentric, as injudicious, or as unjust as caprice, frivolity, or revenge can dictate. However, the unreasonableness or injustice of a will may be considered on the question of testamentary capacity. However, the testamentary capacity of Dolores is not disputed in this case. In any case, in the case at bar, the preference given to Lorenzo Pecson is not purely arbitrary. The proof adduced, although contradicted, shows by a preponderance of evidence that services had been rendered to Dolores Coronel.

**CONSTANTINO C. ACAIN, *Petitioner*, -versus - HON. INTERMEDIATE APPELLATE COURT
(THIRD SPECIAL CASES DIVISION), VIRGINIA A. FERNANDEZ and ROSA DIONGSON,
Respondents.**

G.R. No. 72706, EN BANC, October 27, 1987, PARAS, J.

Insofar as Rosa is concerned, Article 854 of the Civil Code may not apply as she does not ascend or descend from the testator although she is a compulsory heir. There is no preterition even if she is omitted from the inheritance for she is not in the direct line. However, the same thing cannot be said of Fernandez whose legal adoption by the testator has not been questioned by petitioner. Adoption gives to the adopted person the same rights and duties as if he were a legitimate child of the adopter and makes the adopted person a legal heir of the adopter. In the subject will, it cannot be denied that Fernandez was totally omitted. She was preterited and were deprived of at least her legitime. Consequently, this resulted to the abrogation the will because the nullification of the institution of heirs without any other testamentary disposition in the will amounts to a declaration that nothing at all was written.

In any case, in order that a person may be allowed to intervene in a probate proceeding, he must have an interest in the estate or in the will or in the property to be affected by it either as executor or as a claimant of the estate. In the case at bar, petitioner is not the appointed executor and neither a devisee nor a legatee. At the outset, he appears to have an interest in the will as an heir. However, intestacy having resulted from the preterition of Fernandez, petitioner is in effect not an heir of the testator. As such, he has no legal standing to petition for the probate of the will left by Nemesio.

FACTS:

Constantino Acain filed a petition for the probate of the will of the late Nemesio Acain and for the issuance of letters testamentary in his favor on the premise that Nemesio died leaving a will in which Constantino and his siblings Antonio, Flores, Jose, Anita, Concepcion, Quirina and Laura were instituted as heirs. The will provides that all the shares which Nemesio may receive shall be given to his brother, Segundo and in case the latter pre-deceased the former, the same shall be given to Segundo's children, namely, Anita, Constantino, Concepcion, Quirina, Laura, Flores, Antonio and Jose.

Segundo pre-deceased Nemesio. As such, it is the children of Segundo who are claiming to be heirs of Nemesio. Opposition was, however, filed by respondents Virginia A. Fernandez, a legally adopted daughter of Nemesio, and Rosa Diongson Vda. de Acain, Nemesio's wife. They filed a motion to dismiss to the petition filed by Constantino on the following grounds: (1) the petitioner has no legal capacity to institute the proceedings; (2) he is merely a universal heir and (3) the widow and the adopted daughter have been preterited. Said motion was denied by the lower court. The Intermediate Appellate Court, however, ordered the trial court to dismiss the petition for the probate of the will.

ISSUE:

- A. Whether the private respondents were preterited. (YES)
- B. Whether Constantino may intervene in the probate proceedings. (NO)
- C. Whether a probate court may upon the intrinsic validity of a will. (YES)

RULING:

(A) Preterition consists in the omission in the testator's will of the forced heirs or anyone of them either because they are not mentioned therein or, though mentioned, they are neither instituted as heirs nor are expressly disinherited.

In the case at bar, insofar as Rosa is concerned, Article 854 of the Civil Code may not apply as she does not ascend or descend from the testator although she is a compulsory heir. There is no preterition even if she is omitted from the inheritance for she is not in the direct line. However, the same thing cannot be said of Fernandez whose legal adoption by the testator has not been questioned by petitioner. It must be remembered that under the Child and Youth Welfare Code, adoption gives to the adopted person the same rights and duties as if he were a legitimate child of the adopter and makes the adopted person a legal heir of the adopter. In the subject will, it cannot be denied that Fernandez was totally omitted. She was preterited and were deprived of at least her legitime.

Preterition annuls the institution of an heir and annulment throws open to intestate succession the entire inheritance. The only provisions which do not result in intestacy are the legacies and devises made in the will for they should stand valid and respected except insofar as the legitimes are concerned. In the case at bar, the universal institution of petitioner together with his brothers and sisters to the entire inheritance of the testator results in totally abrogating the will because the nullification of such institution without any other testamentary disposition in the will amounts to a declaration that nothing at all was written.

(B) In order that a person may be allowed to intervene in a probate proceeding, he must have an interest in the estate or in the will or in the property to be affected by it either as executor or as a claimant of the estate. An interested party is one who would be benefited by the estate such as an heir or one who has a claim against the estate like a creditor. In the case at bar, petitioner is not the

appointed executor and neither a devisee nor a legatee. At the outset, he appears to have an interest in the will as an heir. However, intestacy having resulted from the preterition of Fernandez, petitioner is in effect not an heir of the testator. As such, he has no legal standing to petition for the probate of the will left by Nemesio.

(C) The general rule is that the probate court's authority is limited only to the extrinsic validity of the will, the due execution thereof, the testator's testamentary capacity and the compliance with the requisites or solemnities prescribed by law. The intrinsic validity of the will normally comes only after the Court has declared that the will has been duly authenticated. Such rule, however, is not inflexible and absolute. Under exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the will. Reasons such as protracted litigation, waste of time, effort, expense and added anxiety may be considered. In the case at bar, for the intermediate appellate court to have tolerated the probate of the will when on its face the will appears to be intrinsically void would have been an exercise in futility. It would have meant a waste of time, effort and expense.

**THE ESTATE OF AGRIPINO NERI Y CHAVEZ. ELEUTERIO NERI ET AL., *Petitioners*, -versus -
IGNACIA AKUTIN AND HER CHILDREN, *Respondents*.**
G.R. No. 47799, FIRST DIVISION, May 21, 1943, MORAN, J.

Under Article 814, the testamentary disposition containing the institution of heirs should be not only reduced but annulled in its entirety and all the forced heirs, including the omitted ones, are entitled to inherit in accordance with the law of intestate succession.

*It must be further noted that there is a difference between a case of preterition in which the whole property is left to a mere friend and a case of preterition in which the whole property is left to one or some forced heirs. If the testamentary disposition be annulled totally in the first case, the effect would be a total deprivation of the friend of his share in the inheritance. This is contrary to the manifest intention of the testator. It may fairly be presumed that, under such circumstances, the testator would at leave give his friend the portion of free disposal. In the second case, **the total nullity of the testamentary disposition would have the effect, not of depriving totally the instituted heir of his share in the inheritance, but of placing him and the other forced heirs upon the basis of equality. This is in consonance with the presumptive intention of the testator.** This is especially true in the instant case where the testator omitted the children by his first marriage upon the erroneous belief that he had given them already more shares in his property than those given to the children by his 2nd marriage. It was the thought of the testator that the children by his 1st marriage should not receive less.*

FACTS:

Agripino Neri y Chavez (decedent) had by his 1st marriage 6 children named Eleuterio, Agripino, Agapito, Getulia, Rosario and Celerina (petitioners) and by his 2nd marriage with Ignacia Akutin, 5 children named Gracia, Godofredo, Violeta, Estela Maria, and Emma (respondents). Getulia died 8 years before the death of the decedent and was survived by 7 children named Remedios, Encarnacion, Carmen, Trinidad, Luz, Alberto and Minda.

In the decedent's will, it was stated that his children by the 1st marriage shall no longer participate in his estate, as they had already received their corresponding shares during his lifetime. At the hearing, however, it was found that only Eleuterio received an advance inheritance. As such, the children by the 1st and 2nd marriages were declared intestate heirs without prejudice to 1/2 of the

improvements introduced in the properties during the existence of the last conjugal partnership which should belong to Ignacia. This was affirmed by the CA with the modification that the will was valid with respect to the 2/3 part which the decedent could freely dispose of. The Court, in its previous ruling, annulled the institution of heirs and declared a total intestacy.

As such, the children of the 2nd marriage filed an MR on the ground (1) that there is no preterition as to the children of the 1st marriage who have received their shares in the property left by the decedent, and (2) that, even assuming that there has been a preterition, the effect would not be the annulment of the institution of heirs but simply the reduction of the bequest made to them.

ISSUES:

A. Whether there is preterition. (YES)

B. Whether the institution of heirs should be annulled and intestate succession declared open. (YES)

RULING:

(A) The Court found that none of the children by the 1st marriage received their respective shares from the testator's property. The inventory of the assets of the decedent indicates that his property has remained intact. He left his property by universal title to his children by 2nd marriage and did not expressly disinherit his children by 1st marriage. He did not, however, leave anything for the latter. This fits the case of preterition as provided for in Article 814 which, in part, states:

The preterition of one or all of the forced heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall void the institution of heir; but the legacies and betterments shall be valid, in so far as they are not inofficious.

(B) Article 814 as cited above establishes the rule as to the institution of heirs in a case of preterition. Its other provision regarding the validity of legacies and betterments if not inofficious is a mere reiteration of the general rule contained in other provisions and signifies merely that it also applies in cases of preterition. Under it, the testamentary disposition containing the institution of heirs should be not only reduced but annulled in its entirety and all the forced heirs, including the omitted ones, are entitled to inherit in accordance with the law of intestate succession.

The Court notes the case of *Escuin vs. Escuin* which it declared to be inapplicable in the present case. In the *Escuin* case, the deceased left all his property to his natural father (not a forced heir) and his wife with total preterition of his father and wife. Obviously, the facts of the *Escuin* case are different from the facts in the present case. There is certainly a difference between a case of preterition in which the whole property is left to a mere friend and a case of preterition in which the whole property is left to one or some forced heirs. If the testamentary disposition be annulled totally in the first case, the effect would be a total deprivation of the friend of his share in the inheritance. This is contrary to the manifest intention of the testator. It may fairly be presumed that, under such circumstances, the testator would at leave give his friend the portion of free disposal. In the second case, the total nullity of the testamentary disposition would have the effect, not of depriving totally the instituted heir of his share in the inheritance, but of placing him and the other forced heirs upon the basis of equality. This is in consonance with the presumptive intention of the testator. Preterition, generally speaking, is due merely to mistake or inadvertence without which the testator may be presumed to treat alike all his children. This is especially true in the instant case where the testator omitted the children by his first marriage upon the erroneous belief that he had given them already more shares in his

property than those given to the children by his 2nd marriage. It was the thought of the testator that the children by his 1st marriage should not receive less.

REBECCA VIADO NON, JOSE A. NON and DELIA VIADO, *Petitioners*, -versus - THE HONORABLE COURT OF APPEALS, ALICIA N. VIADO, CHERRI VIADO and FE FIDES VIADO, *Respondents*.

G.R. No. 137287, THIRD DIVISION, February 15, 2000, VITUG, J.

The exclusion of Delia from the deed of extrajudicial settlement verily has the effect of preterition. This kind of preterition, however, in the absence of proof of fraud and bad faith, does not justify a collateral attack on the TCT. The relief instead rests on Article 1104 of the Civil Code to the effect that where the preterition is not attended by bad faith and fraud, the partition shall not be rescinded but the preterited heir shall be paid the value of the share pertaining to her.

FACTS:

During their lifetime, Spouses Julian C. Viado and Virginia P. Viado owned several property, among them a house and lot located in Quezon City. Surviving the spouses were their children — Nilo, Leah, and petitioners Rebecca who is married to Jose Non and Delia. Leah and Nilo are already dead. Nilo left behind as his own heirs respondents Alicia, his wife, and Cherri and Fe Fides, their children.

Initially, the petitioners and respondents shared a common residence at the Quezon City property. However, when Rebecca asked Alicia that the property be equally divided between the two families, tension appeared to have escalated. Respondents claimed absolute ownership over the entire property and demanded that petitioners vacate the portion they occupied. They predicated this claim on 2 documents — a deed of donation executed by Julian covering his 1/2 conjugal share of the property in favor of Nilo and a deed of extrajudicial settlement in which Julian, Leah and Rebecca waived in favor of Nilo their rights and interests over their share of the same property as to the other 1/2. The Transfer Certificate of Title (TCT) covering the property is in the name of Nilo's heirs.

On the other hand, the petitioners, asserting co-ownership over the property, filed a case for partition. In their action for partition, they attacked the validity of the instruments mentioned above, contending that Nilo employed forgery and undue influence to coerce Julian and Rebecca to execute the documents. Moreover, the exclusion of Delia in the extrajudicial settlement resulted in the latter's preterition that should warrant its annulment.

ISSUE:

Whether the partition through the deed of extrajudicial settlement should be rescinded due to the preterition of Delia as an heir. (NO)

RULING:

The exclusion of Delia from the deed of extrajudicial settlement verily has the effect of preterition. This kind of preterition, however, in the absence of proof of fraud and bad faith, does not justify a collateral attack on the TCT. The relief instead rests on Article 1104 of the Civil Code to the effect that where the preterition is not attended by bad faith and fraud, the partition shall not be rescinded but the preterited heir shall be paid the value of the share pertaining to her.

It must be noted that the CA found the evidence submitted by petitioners to be utterly wanting in order to sustain the finding of fraud, forgery and undue influence in procuring the signatures against Nilo. It was not shown clearly how and in what manner those supposed vices occurred. The asseveration of Rebecca that she has signed the deed of extrajudicial settlement on the mistaken belief that the instrument merely pertained to the administration of the property is too tenuous to accept. Moreover, the fact alone that the two deeds were registered 5 years after the date of their execution did not adversely affect their validity nor would such circumstance alone be indicative of fraud.

**CARMEN G. DE PEREZ, trustee of the estate of Ana Maria Alcantara, Petitioners, -versus -
MARIANO GARCHITORENA, and JOSE CASIMIRO, Sheriff of the Court of First Instance of
Manila, Respondents.**

G.R. No. L-31703, EN BANC, February 13, 1930, ROMUALDEZ, J.

The fideicommissary substitution requires three things: 1. A first heir called primarily to the enjoyment of the estate; 2. An obligation clearly imposed upon him to preserve and transmit to a third person the whole or a part of the estate; 3. A second heir. All the requisites of a fideicommissary substitution are present in the case.

FACTS:

The amount of P21,428.58 is on deposit in the plaintiff's name with the association known as La Urbana in Manila, as the final payment of the liquidated credit of Ana Maria Alcantara, deceased, whose heiress is said plaintiff, against Andres Garchitorena, also deceased, represented by his son, the defendant Mariano Garchitorena.

And as said Mariano Garchitorena held a judgment for P7,872.23 against Joaquin Perez Alcantara, husband of the plaintiff, Carmen G. de Perez, the sheriff pursuant to the writ of execution issued in said judgment, levied an attachment on said amount deposited with La Urbana.

The plaintiff, alleging that said deposit belongs to the fideicommissary heirs of the decedent Ana Maria Alcantara, secured a preliminary injunction restraining the execution of said judgment on the sum so attached. The defendants contend that the plaintiff is the decedent's universal heiress, and pray for the dissolution of the injunction.

The court a quo held that said La Urbana deposit belongs to the plaintiff's children as fideicommissary heirs of Ana Maria Alcantara, and granted a final writ of injunction.

The defendants insist in their contentions, and, in their appeal from the decision of the trial court, that: the lower court erred in holding that a trust was created by the will of Doña Ana Maria Alcantara; the lower court erred in concluding and declaring that the amount of P21,428.58 deposited with La Urbana is the property of the children of the plaintiff as herederos fidei-comisarios; and that the lower court erred in making the injunction permanent and condemning defendant to pay the costs.

The question here raised is confined to the scope and meaning of the institution of heirs made in the will of the late Ana Maria Alcantara already admitted to probate, and whose legal force and effect is not in dispute.

ISSUE:

Whether or not fideicommissary substitution is established in the case.

RULING: YES.

On this point the illustrious Manresa, in his Civil Code says:

X X X

the fideicommissary substitution, requires three things:

1. A first heir called primarily to the enjoyment of the estate.
2. An obligation clearly imposed upon him to preserve and transmit to a third person the whole or a part of the estate.
3. A second heir.

All the requisites of a fideicommissary substitution, according to the quotation from Manresa above inserted, are present in the case of substitution now under consideration, to wit:

1. At first heir primarily called to the enjoyment of the estate. In this case the plaintiff was instituted an heiress, called to the enjoyment of the estate, according to clause IX of the will.
2. An obligation clearly imposed upon the heir to preserve and transmit to a third person the whole or a part of the estate. Such an obligation is imposed in clause X which provides that the "whole estate shall pass unimpaired to her (heiress's) surviving children;" thus, instead of leaving the heiress at liberty to dispose of the estate by will, or of leaving the law to take its course in case she dies intestate, said clause not only disposes of the estate in favor of the heiress instituted, but also provides for the disposition thereof in case she should die after the testatrix.
3. A second heir. Such are the children of the heiress instituted, who are referred to as such second heirs both in clause X and in clause XI.

Finally, the requisite added by the decision of November 18, 1918, to wit, that the fideicommissarius or second heir should be entitled to the estate from the time of the testator's death, which in the instant case, is, rather than a requisite, a necessary consequence derived from the nature of the fideicommissary substitution, in which the second heir does not inherit from the heir first instituted, but from the testator.

By virtue of this consequence, the inheritance in question does not belong to the heiress instituted, the plaintiff herein, as her absolute property, but to her children, from the moment of the death of the testatrix, Ana Maria Alcantara.

Therefore, said inheritance, of which the amount referred to at the beginning, which is on deposit with the association known as La Urbana in the plaintiff's name, is a part, does not belong to her nor can it be subject to the execution of the judgment against Joaquin Perez, who is not one of the fideicommissary heirs.

JOHNNY S. RABADILLA, *Petitioner*, -versus - COURT OF APPEALS AND MARIA MARLENA2 COSCOLUELLA Y BELLEZA VILLACARLOS, *Respondents*.

G.R. No. 113725, THIRD DIVISION, June 29, 2000, PURISIMA, J.

Under Article 776 of the NCC, inheritance includes all the property, rights and obligations of a person, not extinguished by his death. Conformably, whatever rights Dr. Jorge Rabadilla had by virtue of subject Codicil were transmitted to his forced heirs, at the time of his death. And since obligations not extinguished by death also form part of the estate of the decedent; corollarily, the obligations imposed by the Codicil on the deceased Dr. Jorge Rabadilla, were likewise transmitted to his compulsory heirs upon his death.

FACTS:

In a Codicil appended to the Last Will and Testament of testatrix Aleja Belleza, Dr. Jorge Rabadilla, predecessor-in-interest of the herein petitioner, Johnny S. Rabadilla, was instituted as a devisee of parcel of land. The Codicil provides that a Lot no. 13292 of the Bacolod Cadastre located in Negros Occidental is bequeathed to Jorge Rabadilla and he shall have the obligation until he dies, every year to give Maria Marlina Coscolluela y Belleza, (75) piculs of Export sugar and (25) piculs of Domestic sugar, until the said Maria Marlina Coscolluela y Belleza dies.

Dr. Jorge Rabadilla died in 1983 and was survived by his wife Rufina and children Johnny (petitioner), Aurora, Ofelia and Zenaida, all surnamed Rabadilla.

On August 21, 1989, Maria Marlina Coscolluela y Belleza Villacarlos brought a complaint against the above-mentioned heirs of Dr. Jorge Rabadilla, to enforce the provisions of subject Codicil. The plaintiff then prayed that judgment be rendered ordering defendant-heirs to reconvey/return-Lot No. 1392 to the surviving heirs of the late Aleja Belleza, the cancellation of TCT No. 44498 in the name of the deceased, Dr. Jorge Rabadilla, and the issuance of a new certificate of title in the names of the surviving heirs of the late Aleja Belleza.

ISSUE:

or not the obligations of Jorge Rabadilla under the Codicil are inherited by his heirs.

HELD: YES.

It is a general rule under the law on succession that successional rights are transmitted from the moment of death of the decedent¹⁰ and compulsory heirs are called to succeed by operation of law. The legitimate children and descendants, in relation to their legitimate parents, and the widow or widower, are compulsory heirs.¹¹ Thus, the petitioner, his mother and sisters, as compulsory heirs of the instituted heir, Dr. Jorge Rabadilla, succeeded the latter by operation of law, without need of further proceedings, and the successional rights were transmitted to them from the moment of death of the decedent, Dr. Jorge Rabadilla.

Under Article 776 of the NCC, inheritance includes all the property, rights and obligations of a person, not extinguished by his death. Conformably, whatever rights Dr. Jorge Rabadilla had by virtue of subject Codicil were transmitted to his forced heirs, at the time of his death. And since obligations

not extinguished by death also form part of the estate of the decedent; corollarily, the obligations imposed by the Codicil on the deceased Dr. Jorge Rabadilla, were likewise transmitted to his compulsory heirs upon his death.

In the said Codicil, testatrix Aleja Belleza devised Lot No. 1392 to Dr. Jorge Rabadilla, subject to the condition that the usufruct thereof would be delivered to the herein private respondent every year. Upon the death of Dr. Jorge Rabadilla, his compulsory heirs succeeded to his rights and title over the said property, and they also assumed his (decedent's) obligation to deliver the fruits of the lot involved to herein private respondent. Such obligation of the instituted heir reciprocally corresponds to the right of private respondent over the usufruct, the fulfillment or performance of which is now being demanded by the latter through the institution of the case at bar. Therefore, private respondent has a cause of action against petitioner and the trial court erred in dismissing the complaint below.

ELENA MORENTE, *Petitioners*, -versus - GUMERSINDO DE LA SANTA, *Respondent*.
G.R. No. L-3891, EN BANC, December 19, 1907, WILLARD, J.

There being no express condition attached to that legacy in reference to the second marriage, we cannot say that any condition can be implied from the context of the will. The Court held that the legacy contained in the will therein mentioned was not conditional. It is true that case arose under article 797 of the Civil Code, which perhaps is not strictly applicable to this case, but we think that it may be argued from what is said in article 797 that, in order to make a testamentary provision conditional, such condition must fairly appear from the language used in the will.

FACTS:

The will of Consuelo Morente contains the following clauses:

1. I hereby order that all real estate which may belong to me shall pass to my husband, Gumersindo de la Santa.
2. That my said husband shall not leave my brothers after my death, and that he shall not marry anyone; should my said husband have children by anyone, he shall not convey any portion of the property left by me, except the one-third part thereof and the two remaining thirds shall be and remain for my brother Vicente or his children should he have any.
3. After my death I direct my husband to dwell in the *camarin* in which the bakery is located, which is one of the properties belonging to me.

Her husband, Gumersindo de la Santa, married again within four months of the death of the testatrix. Elena Morente, a sister of the deceased, filed a petition in the proceeding relating to the probate of the will of Consuelo Morente pending in the Court of First Instance of the Province of Tayabas in which she alleged the second marriage of Gumersindo de la Santa and asked that the legacy to him above-mentioned be annulled. Objection was made in the court below by the husband to the procedure followed by the petitioner. The court below, however, held that the proceeding was proper and from that holding the husband did not appeal. From the judgment of the court below, the petitioner, Elena Morente, appealed.

In its judgment the court denied the petition. It was said, however, in the decision, as we understand it, that the husband having married, he had the right to the use of all the property during his life and

that at his death two-thirds thereof would pass to Vicente, a brother of the testatrix, and one-third thereof could be disposed of by the husband. The construction given to the will by the court below is not accepted by the appellant. She claims that by the mere act of marriage the husband at once lost all rights acquired by the will. It is neither alleged nor proven that any children have been born to the husband since the death of the testatrix.

ISSUE:

Whether or not the legacy of dela Santa may be forfeited.

RULING: NO.

Article 790 of the Civil Code provides that testamentary provisions may be made conditional and Article 793 provides that a prohibition against another marriage may in certain cases be validly imposed upon the widow or widower. It is to be observed that by the second clause she directs that her husband shall not leave her sisters. It is provided in the third clause that he must continue to live in a certain building. It is provided in the second clause that he shall not marry again. To no one of these orders is attached the condition that if he fails to comply with them he shall lose the legacy given to him by the first clause of the will. It is nowhere expressly said that if he does leave the testatrix's sisters, or does not continue to dwell in the building mentioned in the will he shall forfeit the property given him in the first clause; nor is it anywhere expressly said that if he marries again he shall incur such a loss. But it is expressly provided that if one event does happen the disposition of the property contained in the first clause of the will shall be changed. It is said that if he has children by anyone, two-thirds of that property shall pass to Vicente, the brother of the testatrix.

We are bound to construe the will with reference to all the clauses contained therein, and with reference to such surrounding circumstances as duly appear in the case, and after such consideration we cannot say that it was the intention of the testatrix that if her husband married again he should forfeit the legacy above mentioned. In other words, there being no express condition attached to that legacy in reference to the second marriage, we cannot say that any condition can be implied from the context of the will. The Court held that the legacy contained in the will therein mentioned was not conditional. It is true that case arose under article 797 of the Civil Code, which perhaps is not strictly applicable to this case, but we think that it may be argued from what is said in article 797 that, in order to make a testamentary provision conditional, such condition must fairly appear from the language used in the will.



**INTESTATE ESTATE OF PETRA V. ROSALES, IRENEA C. ROSALES, *Petitioners*, -versus -
FORTUNATO ROSALES, MAGNA ROSALES ACEBES, MACIKEQUEROX ROSALES and ANTONIO
ROSALES, *Respondents*.**

G.R. No. L-40789, FIRST DIVISION, February 27, 1987, GANGAYCO, J.

Intestate or legal heirs are classified into two groups, namely, those who inherit by their own right, and those who inherit by the right of representation. There is no provision in the Civil Code which states that a widow (surviving spouse) is an intestate heir of her mother-in-law.

FACTS:

On February 26, 1971, Mrs. Petra V. Rosales, a resident of Cebu City, died intestate. She was survived by her husband Fortunato T. Rosales and their two (2) children Magna Rosales Acebes and Antonio Rosales. Another child, Carterio Rosales, predeceased her, leaving behind a child, Macikequerox Rosales, and his widow Irene C. Rosales, the herein petitioner. The estate of the deceased has an estimated gross value of about Thirty Thousand Pesos (P30,000.00).

On July 10, 1971, Magna Rosales Acebes instituted the proceedings for the settlement of the estate of the deceased in the Court of First Instance of Cebu. The case was docketed as Special Proceedings No. 3204-R. Thereafter, the trial court appointed Magna Rosales Acebes administratrix of the said estate.

In the course of the intestate proceedings, the trial court issued an Order dated June 16, 1972 declaring the following individuals the legal heirs of the deceased and prescribing their respective share of the estate: Fortunata T. Rosales (husband), 1/4; Magna R. Acebes (daughter), 1/4; Macikequerox Rosales, 1/4; and Antonio Rosales son, 1/4.

These Orders notwithstanding, Irene Rosales insisted in getting a share of the estate in her capacity as the surviving spouse of the late Carterio Rosales, son of the deceased, claiming that she is a compulsory heir of her mother-in-law together with her son, Macikequerox Rosales.

Thus, Irene Rosales sought the reconsideration of the aforementioned Orders. The trial court denied her plea. Hence this petition.

ISSUE:

Whether or not Irene is entitled to inherit from her mother-in-law.

RULING: NO.

Under the law, intestate or legal heirs are classified into two groups, namely, those who inherit by their own right, and those who inherit by the right of representation. There is no provision in the Civil Code which states that a widow (surviving spouse) is an intestate heir of her mother-in-law. The law has already meticulously enumerated the intestate heirs of a decedent. The Court held that Irene misinterpreted the provision of Article 887 because the provision refers to the estate of the deceased spouse in which case the surviving spouse is a compulsory heir. It does not apply to the estate of a parent-in-law. Therefore, the surviving spouse is considered a third person as regards the estate of the parent-in-law.

NORA B. CALALANG-PARULAN and ELVIRA B. CALALANG, *Petitioners*, -versus - ROSARIO CALALANG-GARCIA, LEONORA CALALANG-SABILE, and CARLITO S. CALALANG, *Respondents*.
G.R. No. 184148, FIRST DIVISION, June 09, 2014, VILLARAMA, JR. J.

It is hornbook doctrine that successional rights are vested only at the time of death. Article 777 of the New Civil Code provides that "the rights to the succession are transmitted from the moment of the death of the decedent. Thus, in this case, it is only upon the death of Pedro Calalang on December 27, 1989 that his heirs acquired their respective inheritances, entitling them to their pro indiviso shares to his whole estate. At the time of the sale of the disputed property, the rights to the succession were not yet

bestowed upon the heirs of Pedro Calalang. And absent clear and convincing evidence that the sale was fraudulent or not duly supported by valuable consideration (in effect an officious donation inter vivos), the respondents have no right to question the sale of the disputed property on the ground that their father deprived them of their respective shares. Well to remember, fraud must be established by clear and convincing evidence.

FACTS:

Rosario Calalang-Garcia, Leonora Calalang-Sabile, and Carlito S. Calalang (Respondents) asserted their ownership over a certain parcel of land against Nora B. Calalang-Parulan and Elvira B. Calalang (Petitioners). The said lot was allegedly acquired by the respondents from their mother Encarnacion Silverio, through succession as the latter's compulsory heirs.

Respondents alleged that their father, Pedro Calalang (Pedro) contracted two marriages during his lifetime. The first marriage was with their mother Encarnacion Silverio. During the subsistence of this marriage, their parents acquired the above-mentioned parcel of land from their maternal grandmother Francisca Silverio. Despite enjoying continuous possession of the land, however, their parents failed to register the same. The first marriage was dissolved with the death of Encarnacion Silverio.

Pedro entered into a second marriage with Elvira B. Calalang who then gave birth to Nora B. Calalang-Parulan and Rolando Calalang. According to the respondents, it was only during this time that Pedro Calalang filed an application for free patent over the parcel of land with the Bureau of Lands. Pedro Calalang committed fraud in such application by claiming sole and exclusive ownership over the land since 1935 and concealing the fact that he had three children with his first spouse. As a result, the Register of Deeds of Bulacan issued the Original Certificate of Title (OCT) No. P-2871 in favor of Pedro only.

Pedro sold the said parcel of land to Nora B. Calalang-Parulan (Nora). Accordingly, the Register of Deeds of Bulacan cancelled OCT No. P-2871 and issued Transfer Certificate of Title (TCT) No. 283321 in the name of Nora. On December 27, 1989, Pedro Calalang died.

Respondents assailed the validity of TCT No. 283321 on two grounds. First, the respondents argued that the sale of the land was void because Pedro failed to obtain the consent of the respondents who were co-owners of the same. Second, the sale was absolutely simulated as Nora did not have the capacity to pay for the consideration stated in the Deed of Sale.

Petitioners argued that the parcel of land was acquired during the second marriage of Pedro Calalang with Elvira B. Calalang. They stressed that OCT No. P-2871 itself stated that it was issued in the name of "Pedro Calalang, married to Elvira Berba Calalang." Thus, the property belonged to the conjugal partnership of the spouses Pedro and Elvira Calalang. The petitioners likewise denied the allegation that the sale of the land was absolutely simulated as Nora was gainfully employed in Spain at the time of the sale.

RTC rendered a decision in favor of the plaintiffs and against the defendants. The trial court declared that the parcel of land was jointly acquired by the spouses Pedro Calalang and Encarnacion Silverio from the parents of the latter. Thus, it was part of the conjugal property of the first marriage of Pedro Calalang. The trial court then ordered all of Pedro's share to be given to Nora B. Calalang-Parulan on account of the sale.

The CA reversed the factual findings of the trial court and held that Pedro Calalang was the sole and exclusive owner of the subject parcel of land. Firstly, it held that there was insufficient evidence to prove that the disputed property was indeed jointly acquired from the parents of Encarnacion Silverio during the first marriage. Secondly, the CA upheld the indefeasibility of OCT No. P-2871. It held that although the free patent was issued in the name of "Pedro Calalang, married to Elvira Berba Calalang" this phrase was merely descriptive of the civil status of Pedro Calalang at the time of the registration of the disputed property.

ISSUE:

Whether or not CA erred in ruling that Pedro Calalang deprived his heirs of their respective shares over the disputed property when he alienated the same.

RULING: YES.

The CA therefore erred in ruling that Pedro Calalang deprived his heirs of their respective shares over the disputed property when he alienated the same. It is hornbook doctrine that successional rights are vested only at the time of death.

Article 777 of the New Civil Code provides that "the rights to the succession are transmitted from the moment of the death of the decedent. The principle of transmission as of the time of the predecessor's death is basic in our Civil Code, and is supported by other related articles. Thus, the capacity of the heir is determined as of the time the decedent died (Art. 1034); the legitime is to be computed as of the same moment (Art. 908), and so is the in officiousness of the donation inter vivos (Art. 771). Similarly, the legacies of credit and remission are valid only in the amount due and outstanding at the death of the testator (Art. 935), and the fruits accruing after that instant are deemed to pertain to the legatee (Art. 948).

Thus, it is only upon the death of Pedro Calalang on December 27, 1989 that his heirs acquired their respective inheritances, entitling them to their pro indiviso shares to his whole estate. At the time of the sale of the disputed property, the rights to the succession were not yet bestowed upon the heirs of Pedro Calalang. And absent clear and convincing evidence that the sale was fraudulent or not duly supported by valuable consideration (in effect an in officious donation inter vivos), the respondents have no right to question the sale of the disputed property on the ground that their father deprived them of their respective shares. Well to remember, fraud must be established by clear and convincing evidence. Mere preponderance of evidence is not even adequate to prove fraud. The Complaint for Annulment of Sale and Reconveyance of Property must therefore be dismissed.

**REGINA FRANCISCO AND ZENAIDA PASCUAL, *Petitioners*, -versus - AIDA FRANCISCO-
ALFONSO, *Respondent*.**

G.R. No. 138774, FIRST DIVISION, March 08, 2001, PARDO, J.

According to Article 888, Civil Code:

"The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

"The latter may freely dispose of the remaining half subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided."

Gregorio Francisco did not own any other property. If indeed the parcels of land involved were the only property left by their father, the sale in fact would deprive respondent of her share in her father's estate. By law, she is entitled to half of the estate of her father as his only legitimate child.

FACTS:

Respondent Aida Francisco-Alfonso (hereafter Aida) is the only daughter of spouses Gregorio Francisco and Cirila de la Cruz, who are now both deceased.

Petitioners, on the other hand, are daughters of the late Gregorio Francisco with his common law wife Julia Mendoza, with whom he begot seven (7) children.

Gregorio Francisco (hereafter Gregorio) owned two parcels of residential land, situated in Barangay Lolombo, Bocaue, Bulacan, covered by TCT Nos. T-32740 and T-117160. When Gregorio was confined in a hospital in 1990, he confided to his daughter Aida that the certificates of title of his property were in the possession of Regina Francisco and Zenaida Pascual.

After Gregorio died on July 20, 1990, Aida inquired about the certificates of title from her half sisters. They informed her that Gregorio had sold the land to them on August 15, 1983. After verification, Aida learned that there was indeed a deed of absolute sale in favor of Regina Francisco and Zenaida Pascual. Thus, on August 15, 1983, Gregorio executed a "Kasulatan sa Ganap na Bilihan, whereby for P25,000.00, he sold the two parcels of land to Regina Francisco and Zenaida Pascual. By virtue of the sale, the Register of Deeds of Bulacan issued TCT No. T-59.585 to Regina Francisco and TCT T-59.586 to Zenaida Pascual.

On April 1, 1991, Aida filed with the Regional Trial Court, Bulacan a complaint against petitioners for annulment of sale with damages. She alleged that the signature of her late father, Gregorio Francisco, on the Kasulatan sa Ganap na Bilihan dated August 15, 1983, was a forgery.

In their joint answer to the complaint, petitioners denied the alleged forgery or simulation of the deed of sale. After due proceedings, on July 21, 1994, the trial court rendered a decision dismissing the complaint finding that the sale was valid. The Court of Appeals reversed and set aside the decision.

ISSUES:

Whether or not a legitimate daughter may be deprived of her share in the estate of her deceased father by a simulated contract.

RULING: NO.

Even if the "kasulatan" was not simulated, it still violated the Civil Code provisions insofar as the transaction affected respondent's legitime. The sale was executed in 1983, when the applicable law was the Civil Code, not the Family Code.

Obviously, the sale was Gregorio's way to transfer the property to his illegitimate daughters at the expense of his legitimate daughter. The sale was executed to prevent respondent Alfonso from claiming her legitimate and rightful share in said property. Before his death, Gregorio had a change of heart and informed his daughter about the titles to the property.

According to Article 888, Civil Code:

"The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

"The latter may freely dispose of the remaining half subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided."

Gregorio Francisco did not own any other property. If indeed the parcels of land involved were the only property left by their father, the sale in fact would deprive respondent of her share in her father's estate. By law, she is entitled to half of the estate of her father as his only legitimate child.

The legal heirs of the late Gregorio Francisco must be determined in proper testate or intestate proceedings for settlement of the estate. His compulsory heir cannot be deprived of her share in the estate save by disinheritance as prescribed by law. Hence, the petition was denied.

**SEGUNDA MARIA NIEVA with her husband ANGEL ALCALA, Plaintiffs-Appellants, -versus -
MANUELA ALCALA and JOSE DEOCAMPO, Defendants-Appellees.**

G.R. No. L-13386, EN BANC, October 27, 1920, JOHNSON, J.

In Article 811 (Reserva Troncal) the legislator uses the generic terms "ascendant," "descendant," and "relatives," without specifying whether or not they have to be legitimate. Does the legislator, then, refer to legitimate as well as to illegitimate relatives? This question has not been decided before by any court or tribunal. However, eminent commentators on the Spanish Civil Code, who have devoted their lives to the study and solution of the intricate and difficult problems that may arise under the provisions of that Code, have dealt with the very question in this case, and are unanimous in the opinion that the provision of Article 811 of the Civil Code apply only to legitimate relative.

To hold that the appellant is entitled to the property left by her natural brother, Alfeo Deocampo, by operation of law, would be a fragrant violate of the express provision of the foregoing article.

FACTS:

Juliana Nieva, the alleged natural mother of the plaintiff Segunda Maria Nieva, married Francisco Deocampo. Of said marriage Alfeo Deocampo was born.

Julian Nieva died intestate on April 19, 1889, and her said son, Alfeo Deocampo, inherited from her, ab intestate, the parcels of land described in Paragraphs V and X of the complaint.

Alfeo Deocampo died intestate and without issue on July 7, 1890. Thereupon the two parcels of land above-mentioned passed to his father, Francisco Deocampo, by intestate succession. Thereafter Francisco Deocampo married the herein defendant Manuela Alcala, of which marriage was born Jose Deocampo, the other defendant herein.

Francisco Deocampo died on August 15, 1914, whereupon his widow and son, the defendants herein, took possession of the parcels of land in question, under the claim that the said son, the defendant Jose Deocampoo (a minor) had inherited the same, ab intestate, from his deceased father.

On September 30, 1915, the plaintiff herein, claiming to be an acknowledged natural daughter of the said Juliana Nieva, instituted the present action for the purposes of recovering from the defendants the parcels of land in question, particularly described in Paragraphs V and X of the complaint, invoking the provisions of article 811 of the Civil Code.

The lower court held that, even granting, without deciding, that the plaintiff was an acknowledged natural daughter of Juliana Nieva, she was not entitled to the property here in question because, in its opinion, an illegitimate relative has no right to the reserva troncal under the provisions of article 811 of the Civil Code.

ISSUE:

Whether or not an illegitimate relative within the third degree entitled to reserve troncal.

RULING: NO.

In Article 811 (Reserva Troncal) the legislator uses the generic terms “ascendant,” “descendant,” and “relatives,” without specifying whether or not they have to be legitimate. Does the legislator, then, refer to legitimate as well as to illegitimate relatives?

This question has not been decided before by any court or tribunal. However, eminent commentators on the Spanish Civil Code, who have devoted their lives to the study and solution of the intricate and difficult problems that may arise under the provisions of that Code, have dealt with the very question in this case, and are unanimous in the opinion that the provision of Article 811 of the Civil Code apply only to legitimate relative.

Manresa, one of the eminent commentators, in determining the persons in whose favor the reservation is established, says: Persons in whose favor the reservation is established — This is one of the most delicate points in the interpretation of article 811. According to this article, the reservation is established in favor of the parents who are within the third degree and belong to the line from which the properties came.

It treats of blood relationship, which is applicable to questions on succession, according to articles 915 to 920. It could not be otherwise, because relationship by affinity is established between each spouse and the family of the other, by marriage, and to admit it, would be to favor the transmission of the properties of the family of one spouse to that of the other, which is just what the article intends to prevent.

It also treats of legitimate relationship. The person obliged to reserve it is a legitimate ascendant who inherits from a descendant property which proceeds from the same legitimate family, and this being true, there can be no question, because the line from which the properties proceed must be the line of that family and only in favor of that line is the reservation established.

To hold that the appellant is entitled to the property left by her natural brother, Alfeo Deocampo, by operation of law, would be a fragrant violate of the express provision of the foregoing article.

**ENCARNACION FLORENTINO ET AL., PLAINTIFFS AND APPELLANTS, VS. MERCEDES FLORENTINO ET AL., DEFENDANTS AND APPELLEES.
G.R. NO. 14856, NOVEMBER 15, 1919, TORRES, J.:**

Following the order prescribed by law in legitimate succession, when there are relatives of the descendant within the third degree, the right of the nearest relative, called reservatario, over the property which the reservista (person holding it subject to reservation) should return to him, excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a reservatario of the reservable property is not among the relatives within the third degree belong to the line from which such property came, inasmuch as the right granted by the Civil Code in [A]rticle 811 [now Article 891] is in the highest degree personal and for the exclusive benefit of the designated persons who are the relatives, within the third degree, of the person from whom the reservable property came. Therefore, relatives of the fourth and the succeeding degrees can never be considered as reservatarios, since the law does not recognize them as such.

FACTS:

On January 17, 1918, counsel for Encarnacion (together with her husband Simeon Serrano), Gabriel, Magdalena, Ramon, Miguel, Victorino, and Antonio of the surname Florentino; for Miguel Florentino, guardian ad litem of the minor Rosario Florentino; for Eugenio Singson, the father and guardian ad litem of Emilia, Jesus, Lourdes, Caridad, and Dolores of the surname Singson y Florentino; and for Eugenio Singson, guardian of the minors Jose and Asuncion Florentino, filed a complaint in the Court of First Instance of Ilocos Sur, against Mercedes Florentino and her husband, alleging as follows:

Apolonio Isabelo Florentino II died on February 13, 1890; that he was survived by his second wife Severina Faz de Leon and the ten children first above mentioned; that his eleventh son, Apolonio III, was born on the following 4th of March 1890.

That on January 17 and February 13, 1890, Apolonio Isabelo Florentino executed a will before the notary public of Ilocos Sur, instituting as his universal heirs his aforementioned ten children, the posthumos Apolonio III and his widow Severina Faz de Leon; that he declared, in one of the paragraphs of said will, all his property should be divided among all of his children of both marriages.

That Apolonio Florentino III, the posthumos son of the second marriage, died in 1991; that his mother, Severina Faz de Leon, succeeded to all his property described in the complaint; that the widow, Severina Faz de Leon died on November 18, 1908, leaving a will instituting as her universal heiress her only living daughter, Mercedes Florentino ; that, as such heir, said daughter took possession of all the property left at the death of her mother, Severina Faz de Leon; that among same is included the property, described in the complaint, which the said Severina Faz de Leon inherited from her deceased son, the posthumos Apolonio, as reservable property; that, as a reservist, the heir of the said Mercedes Florentino deceased had been gathering for herself alone the fruits of lands described in the complaint; that each and every one of the parties mentioned in said complaint is entitled to one-seventh of the fruits of the reservable property described therein, either by direct participation or by representation, in the manner mentioned in the complaint.

That several times the plaintiffs have, in an amicable manner, asked the defendants to deliver their corresponding part of the reservable property; that without any justifiable motive the defendants have refused and do refuse to deliver said property or to pay for its value;

To the preceding complaint counsel for the defendants demurred, alleging that the cause of action is based on the obligation of the widow Severina Faz de Leon to reserve the property she inherited from her deceased son Apolonio Florentino y Faz de Leon who, in turn, inherited same from his father Apolonio Isabelo Florentino; that, there being no allegation to the contrary, it is to be presumed that the widow Severina Faz de Leon did not remarry after the death of this husband nor have any natural child; that if the property inherited by the widow Severina Faz de Leon from her deceased son Apolonio Florentino y Faz de Leon (property which originated from his father and her husband) has all passed into the hands of the defendant, Mercedes Florentino y Encarnacion, a daughter of the common ancestor's second marriage (said Apolonio Isabelo Florentino with the deceased Severina Faz de Leon) it is evident that the property left at the death of the posthumous son Apolonio Florentino y Faz de Leon did not pass after the death of his mother Severina, his legitimate heirs as an ascendant, into the hands of strangers; that said property having been inherited by Mercedes Florentino y Encarnacion from her mother (Severina), article 811 of the Civil Code is absolutely inapplicable to the present case because, when the defendant Mercedes, by operation of law, entered into and succeeded to, the possession, of the property lawfully inherited from her mother Severina Faz de Leon, said property had, while in the possession of her mother, lost the character of reservable property there being a legitimate daughter of Severina Faz de Leon with the right to succeed her in all her rights, property and actions; that the restraints of the law whereby said property may not passed into the possession of strangers are void, inasmuch as the said widow had no obligation to reserve same, as Mercedes Florentino is a forced heiress of her mother Severina Faz de Leon;

ISSUE:

Whether the property left at the death of Apolonio III, the posthumous son of Apolonio Isabelo II, was or was not invested with the character of reservable property when it was received by his mother, Severina Faz de Leon.

RULING:

The posthumous son, Apolonio Florentino III, acquired the property, now claimed by his brothers, by a lucrative title or by inheritance from his aforementioned legitimate father, Apolonio Isabelo Florentino II. Although said property was inherited by his mother, Severina Faz de Leon, nevertheless, she was in duty bound, according to Article 811 of the Civil Code, to reserve the property thus acquired for the benefit of the relatives, within the third degree, of the line from which such property came.

According to the provisions of law, ascendants do not inherit the reservable property, but its enjoyment, use or trust, merely for the reason that said law imposes the obligation to reserve and preserve same for certain designated persons who, on the death of the said ascendants reservists, (taking into consideration the nature of the line from which such property came) acquire the ownership of said property in fact and by operation of law in the same manner as forced heirs (because they are also stock) said property reverts to said line as long as the aforementioned persons who, from the death of the ascendant reservists, acquire in fact the right of reservatarios (persons for whom property is reserved), and are relatives, within the third degree, of the descendant from whom the reservable property came.

Any ascendant who inherits from his descendant any property, while there are living, within the third degree, relatives of the latter, is nothing but a life usufructuary or a fiduciary of the reservable property received. He is, however, the legitimate owner of his own property which is not reservable

property and which constitutes his legitime, according to article 809 of the Civil Code. But if, afterwards, all of the relatives, within the third degree, of the descendant (from whom came the reservable property) die or disappear, the said property becomes free property, by operation of law, and is thereby converted into the legitime of the ascendant heir who can transmit it at his death to his legitimate successors or testamentary heirs. This property has now lost its nature of reservable property, pertaining thereto at the death of the relatives, called reservatarios, who belonged within the third degree to the line from which such property came.

Following the order prescribed by law in legitimate succession, when there are relatives of the descendant within the third degree, the right of the nearest relative, called reservatario, over the property which the reservista (person holding it subject to reservation) should return-to him, excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a reservatario of the reservable property is not among the relatives within the third degree belonging to the line from which such property came, inasmuch as the right granted by the Civil Code in article 811 is in the highest degree personal and for the exclusive benefit of designated persons who are the relatives, within the third degree, of the person from whom the reservable property came. Therefore, relatives of the fourth and the succeeding degrees can never be considered as reservatarios, since the law does not recognize them as such.

In spite of what has been said relative to the right of representation on the part of one alleging his right as reservatario who is not within the third degree of relationship, nevertheless there is right of representation on the part of reservatarios who are within the third degree mentioned by law, as in the case of nephews of the deceased person from whom the reservable property came. These reservatarios have the right to represent their ascendants (fathers and mothers) who are the brothers of the said deceased person and relatives within the third degree in accordance with article 811 of the Civil Code.

There are then seven "reservatarios" who are entitled to the reservable property left at the death of Apolonio III; the posthumos son of the aforementioned Apolonio Isabelo II, to wit, his three children of his first marriage | Encarnacion, Gabriel, Magdalena; his three children, Jose, Espirita and Pedro who are represented by their own twelve children respectively; and Mercedes Florentino, his daughter by a second marriage. All of the plaintiffs are the relatives of the deceased posthumos son, Apolonio Florentino III, within the third degree (four of whom being his half brothers and the remaining twelve being his nephews as they are the children of his three half-brothers). As the first four are his relatives within the third degree in their own right and the other twelve are such by representation, all of them are indisputably entitled as reservatarios to the property which came from the common ancestor, Apolonio Isabelo, to Apolonio Florentino III by inheritance during his life-time, and in turn by inheritance to his legitimate mother, Severina Faz de Leon, widow of the aforementioned Apolonio Isabelo Florentino II.

Reservable property neither comes, nor falls under, the absolute dominion of the ascendant who inherits and receives same from his descendant, therefore it does not form part of his own property nor become the legitime of his forced heirs. It becomes his own property only in case that all the relatives of his descendant shall have died (reservista), in which case said reservable property losses such character.

With full right Severina Faz de Leon could have disposed in her will of all her own property in favor of her only living daughter, Mercedes Florentino, as forced heiress. But whatever provision there is in her will concerning the reservable property received from her son Apolonio III, or rather, whatever

provision will reduce the rights of the other reservatarios, the half brothers and nephews of her daughter Mercedes, is unlawful, null and void, inasmuch as said property is not her own and she has only the right of usufruct or of fiduciary, with the obligation to preserve and to deliver same to the reservatarios, one of whom is her own daughter, Mercedes Florentino.

It cannot reasonably be affirmed, founded upon an express provision of law, that by operation of law all of the reservable property, received during lifetime by Severina Faz de Leon from her son, Apolonio III, constitutes or forms part of the legitime pertaining to Mercedes Florentino. If said property did not come to be the legitimate and exclusive property of Severina Faz de Leon, her only legitimate and forced heiress, the defendant Mercedes, could not inherit all by operation of law and in accordance with the order of legitimate succession, because the other relatives of the deceased Apolonio III, within the third degree, as well as herself are entitled to such reservable property.

The claim that because of Severina. Faz de Leon's forced heiress, her daughter Mercedes, the property received from the deceased son Apolonio III lost the character, previously held, of reservable property; and that the mother, the said Severina, therefore, had no further obligation to reserve same for the relatives within the third degree of the deceased Apolonio III, is evidently erroneous for the reason that, as has been already stated, the reservable property, left in a will by the aforementioned Severina to her only daughter Mercedes, does not form part of the inheritance left by her death nor of the legitime of the heiress Mercedes. Just because she has a forced heiress, with a right to her inheritance, does not relieve Severina of her obligation to reserve the property which she received from her deceased son, nor did same lose the character of reservable property, held before the reservatarios received same.

It is true that when Mercedes Florentino, the heiress of the reservista Severina, took possession of the property in question, same did not pass into the hands of strangers. But it is likewise true that the said Mercedes is not the only reservataria. And there is no reason founded upon law and upon the principle of justice why the other reservatarios, the other brothers and nephews, relatives within the third degree in accordance with the precept of article 811 of the Civil Code, should be deprived of portions of the property which, as reservable property, pertain to them.

**CELEDONIA SOLIVIO V. COURT OF APPEALS
G.R. NO. 83484, FIRST DIVISION, FEBRUARY 12, 1990, MEDIALDEA, J.:**

The reserva troncal applies to properties inherited by an ascendant from a descendant who inherited it from another ascendant or a brother or sister. It does not apply to property inherited by a descendant from his ascendant, the reverse of the situation covered by Article 891.

FACTS:

On October 11, 1959, Esteban Javellana, Jr.'s mother Salustia died leaving all her property, including a house and lot in La Paz, Iloilo City, to him. Esteban Jr," died a bachelor, without descendants, ascendants, brothers, sisters, nephews or nieces. His only surviving relatives are: (1) his maternal aunt, petitioner Celedonia Solivio, the spinster half-sister of his mother, Salustia Solivio; and (2) the private respondent, Concordia Javellana-Villanueva, sister of his deceased father, Esteban Javellana, Sr.

Pursuant to an agreement between Concordia and Celedonia, the latter would take care of the proceedings leading to the formation of the foundation. Celedonia in good faith and upon the advice

of her counsel, filed for a Special Proceeding for her appointment as special administratrix of the estate of Esteban Javellana, Jr., praying that letters of administration be issued to her; that she be declared sole heir of the deceased; and that after payment of all claims and rendition of inventory and accounting, the estate be adjudicated to her.

Concordia filed a civil case in the RTC of Iloilo for partition, recovery of possession, ownership and damages. Celedonia averred that the estate of Esteban Jr. was subject to reserve troncal and thus it should redound to her as a relative within the 3rd degree on his mother side.

ISSUE:

Whether or not the estate of the deceased was subject to reserve troncal and that it pertains to her as his only relative within the third degree on his mother's side.

RULING:

No. There is no merit in the petitioner's argument that the estate of the deceased was subject to reserve troncal, and that it pertains to her as his only relative within the third degree on his mother's side. The reserve troncal provision of the Civil Code is found in Article 891 which reads as follows:

ART. 891. The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came.

The persons involved in reserva troncal are:

1. The person obliged to reserve is the reservor (reservista)—the ascendant who inherits by operation of law property from his descendants.
2. The persons for whom the property is reserved are the reservees (reservatarios)—relatives within the third degree counted from the descendant (propositus), and belonging to the line from which the property came.
3. The propositus—the descendant who received by gratuitous title and died without issue, making his other ascendant inherit by operation of law.

Clearly, the property of the deceased, Esteban Javellana, Jr., is not reservable property, for Esteban, Jr. was not an ascendant, but the descendant of his mother, Salustia Solivio, from whom he inherited the properties in question. Therefore, he did not hold his inheritance subject to a reservation in favor of his aunt, Celedonia Solivio, who is his relative within the third degree on his mother's side. The reserva troncal applies to properties inherited by an ascendant from a descendant who inherited it from another ascendant or a brother or sister. It does not apply to property inherited by a descendant from his ascendant, the reverse of the situation covered by Article 891.

**MARIQUITA O. SUMAYA AND LAGUNA AGRO-INDUSTRIAL COCONUT COOPERATIVE, INC.,
PETITIONERS, VS. THE HON. INTERMEDIATE APPELLATE COURT, AND AMADEO, SANCHO,
DONATO, LUIS, ERASTO, LUISA, JOSE AND DOLORES, ALL SURNAMED BALANTAKBO,
RESPONDENTS.**

G.R. NOS. 68843-44, FIRST DIVISION, SEPTEMBER 02, 1991, MEDIALDEA, J.:

Consistent with the rule in reserva viudal where the person obliged to reserve (the widowed spouse) had the obligation to annotate in the Registry of Property the reservable character of the property, in reserva troncal, the reservor (the ascendant who inherited from a descendant property which the latter inherited from another ascendant) has the duty to reserve and therefore, the duty to annotate also.

In this case, the affidavit of self-adjudication executed by Consuelo vda. de Balantakbo which contained a statement that the property was inherited from a descendant, Raul, which was likewise inherited by the latter from another ascendant, was registered with the Registry of Property. The failure of the Register of Deeds to annotate the reservable character of the property in the certificate of title cannot be attributed to Consuelo.

FACTS:

Raul Balantakbo inherited from two (2) different ascendants the two (2) sets of properties subject of this case: 1) A one-third (1/3) interest, pro-indiviso in a parcel of land situated in Dita, Lilio (Liliw) Laguna and from his father Jose, Sr., who died on January 28, 1945; and 2) A one-seventh (1/7) interest pro-indiviso in ten (10) parcels of registered lands from his maternal grandmother, Luisa Bautista, who died on November 3, 1950.

On June 13, 1952, Raul died intestate, single, without any issue, and leaving only his mother, Consuelo Joaquin Vda. de Balantakbo, as his sole surviving heir to the real properties above-mentioned. Consuelo adjudicated unto herself the above described properties.

On December 21, 1959, Consuelo Joaquin vda de. Balantakbo sold the property(1) to Mariquita H. Sumaya. The sale was evidenced by a deed attached as to the complaint. The same property was subsequently sold by Mariquita Sumayato Villa Honorio Development Corporation, Inc., on December 30, 1963. On January 23, 1967, Villa Honorio Development Corporation transferred and assigned its rights over the property in favor of Agro-Industrial Coconut Cooperative, Inc. The documents evidencing these transfers were registered in the Registry of Deeds of Laguna and the corresponding certificates of titles were issued. The properties are presently in the name of Agro-Industrial Coconut Cooperative, Inc., 2/3 share and the remaining 1/3 share is in the name of Sancho Balantakbo.

Also on December 30, 1963, Consuelo Joaquin vda. de Balantakbo sold the properties(2) to Villa Honorio Development Corporation, Inc. The latter in turn transferred and assigned all its rights to the properties in favor of Laguna Agro-Industrial Coconut Cooperative, Inc. which properties are presently in its possession.

The parties admit that the certificates of titles covering the above described properties do not contain any annotation of its reservable character.

On June 3, 1968, Consuelo Joaquin vda. de Balantakbo died.

On March 4, 1970, Amadeo, Sancho, Donato, Luis, and Erasto, all surnamed Balantakbo, brothers in full blood of Raul Balantakbo and Luisa, Jose and Dolores, also all surnamed Balantakbo, surviving children of deceased Jose Balantakbo, Jr., another brother of the first named Balantakbos, filed the civil cases to recover the properties described in the respective complaints which they claimed were subject to a reserva troncal in their favor.

ISSUE:

Whether or not there is registration of reserva troncal as it will prejudice the defendants an innocent purchaser for value and in good faith of the properties covered by certificates of title.

RULING:

Upon the death of the propositus, Raul Balantakbo, the reservista, Consuelo vda. de Balantakbo caused the registration of an affidavit of self-adjudication of the estate of Raul, wherein it was clearly stated that the properties were inherited by Raul from his father Jose, Sr., and from his maternal grandmother, Luisa Bautista.

The court a quo further ruled that said affidavit was, in its form, declaration and substance, a recording with the Registry of Deeds of the reservable character of the properties. In Spanish language, the affidavit clearly stated that the affiant, Consuelo, was a lone ascendant and heir to Raul Balantakbo, her son, who died leaving properties previously inherited from other ascendants and which properties were inventoried in the said affidavit.

It was admitted that the certificates of titles covering the properties in question show that they were free from any liens and encumbrances at the time of the sale. The fact remains however, that the affidavit of self-adjudication executed by Consuelo stating the source of the properties thereby showing the reservable nature thereof was registered with the Register of Deeds of Laguna, and this is sufficient notice to the whole world in accordance with Section 52 of the Property Registration.

In this case, the affidavit of self-adjudication executed by Consuelo vda. de Balantakbo which contained a statement that the property was inherited from a descendant, Raul, which was likewise inherited by the latter from another ascendant, was registered with the Registry of Property. The failure of the Register of Deeds to annotate the reservable character of the property in the certificate of title cannot be attributed to Consuelo.

Moreover, there is sufficient proof that the petitioners had actual knowledge of the reservable character of the properties before they bought the same from Consuelo.

Moreover, the court a quo found that the petitioners and private respondents were long time acquaintances; that the Villa Honorio Development Corporation and its successors, the Laguna Agro-Industrial Coconut Cooperative Inc., are family corporations of the Sumayas and that the petitioners knew all along that the properties litigated in this case were inherited by Raul Balantakbo from his father and from his maternal grandmother, and that Consuelo Vda. de Balantakbo inherited these properties from his son Raul.

The obligation to reserve rests upon the reserver, Consuelo Joaquin vda. de Balantakbo.

Consistent with the rule in reserva viudal where the person obliged to reserve (the widowed spouse) had the obligation to annotate in the Registry of Property the reservable character of the property, in reserva troncal, the reserver (the ascendant who inherited from a descendant property which the latter inherited from another ascendant) has the duty to reserve and therefore, the duty to annotate also.

The jurisprudential rule requiring annotation in the Registry of Property of the right reserved in real property subject of reserva viudal insofar as it is applied to reserva troncal stays despite the abolition of reserva viudal in the New Civil Code. This rule is consistent with the rule provided in the second paragraph of Section 51 of P.D. 1529, which provides that: "The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned x x x."

The properties involved in this case are already covered by a Torrens title and unless the registration of the limitation is effected (either actual or constructive), no third persons shall be prejudiced thereby.

Lastly, the cause of action of the reservees did not commence upon the death of the propositus Raul Balantakbo on June 13, 1952 but upon the death of the reservor Consuelo Vda. de Balantakbo on June 3, 1968. Relatives within the third degree in whose favor the right (or property) is reserved have no title of ownership or of fee simple over the reserved property during the lifetime of the reservor. Only when the reservor should die before the reservees will the latter acquire the reserved property, thus creating a fee simple, and only then will they take their place in the succession of the descendant of whom they are relatives within the third degree. The reserva is extinguished upon the death of the reservor, as it then becomes a right of full ownership on the part of the reservatarios, who can bring a reivindicatory suit therefor. Nonetheless, this right if not exercised within the time for recovery may prescribe in ten (10) years under the old Code of Civil Procedure or in thirty years under Article 1141 of the New Civil Code. The actions for recovery of the reserved property was brought by herein private respondents on March 4, 1970 or less than two (2) years from the death of the reservor. Therefore, private respondents' cause of action has not prescribed yet.

**MARIA MENDOZA, IN HER OWN CAPACITY AND AS ATTORNEY-IN-FACT OF DEOGRACIAS, MARCELA, ET. AL., PETITIONERS, VS. JULIA POLICARPIO DELOS SANTOS, SUBSTITUTED BY HER HEIRS, ET. AL., RESPONDENTS.
G.R. NO. 176422, FIRST DIVISION, MARCH 20, 2013, REYES, J.:**

Article 891 simply requires that the property should have been acquired by the descendant or propositus from an ascendant by gratuitous or lucrative title. A transmission is gratuitous or by gratuitous title when the recipient does not give anything in return. At risk of being repetitious, what was clearly established in this case is that the properties in dispute were owned by Exequiel (ascendant). After his death, Gregoria (descendant/prepositus) acquired the properties as inheritance.

This provision also provides that the person obliged to reserve the property should be an ascendant (also known as the reservor/reservista) of the descendant/prepositus. Julia, however, is not Gregoria's ascendant; rather, she is Gregoria's collateral relative.

FACTS:

The properties subject in the instant case are three parcels of land located in Sta. Maria, Bulacan.

Petitioners are grandchildren of Placido Mendoza (Placido) and Dominga Mendoza (Dominga). Placido and Dominga had four children: Antonio, Exequiel, married to Leonor, Apolonio and Valentin. Petitioners Maria, Deogracias, Dionisia, Adoracion, Marcela and Ricardo are the children of Antonio. Petitioners Juliana, Fely, Mercedes, Elvira and Fortunato, on the other hand, are Valentin's children. Petitioners alleged that the properties were part of Placido and Dominga's properties that were subject of an oral partition and subsequently adjudicated to Exequiel. After Exequiel's death, it

passed on to his spouse Leonor and only daughter, Gregoria. After Leonor's death, her share went to Gregoria. In 1992, Gregoria died intestate and without issue. They claimed that after Gregoria's death, respondent, who is Leonor's sister, adjudicated unto herself all these properties as the sole surviving heir of Leonor and Gregoria. Hence, petitioners claim that the properties should have been reserved by respondent in their behalf and must now revert back to them, applying Article 891 of the Civil Code on reserva troncal.

Respondent, however, denies any obligation to reserve the properties as these did not originate from petitioners' familial line and were not originally owned by Placido and Dominga. According to respondent, the properties were bought by Exequiel and Antonio from a certain Alfonso Ramos in 1931. It appears, however, that it was only Exequiel who was in possession of the properties.

ISSUE:

Whether or not the subject properties are not reservable properties, coming as they do from the family line of the petitioners Mendozas.

RULING:

NO. Based on the circumstances of the present case, Article 891 on reserva troncal is not applicable.

There are three (3) lines of transmission in reserva troncal. The first transmission is by gratuitous title, whether by inheritance or donation, from an ascendant/brother/sister to a descendant called the prepositus. The second transmission is by operation of law from the prepositus to the other ascendant or reservor, also called the reservista. The third and last transmission is from the reservista to the reservees or reservatarios who must be relatives within the third degree from which the property came.

The lineal character of the reservable property is reckoned from the ascendant from whom the prepositus received the property by gratuitous title.

It should be pointed out that the ownership of the properties should be reckoned only from Exequiel's as he is the ascendant from where the first transmission occurred, or from whom Gregoria inherited the properties in dispute. The law does not go farther than such ascendant/brother/sister in determining the lineal character of the property. What is pertinent is that Exequiel owned the properties and he is the ascendant from whom the properties in dispute originally came. Gregoria, on the other hand, is the descendant who received the properties from Exequiel by gratuitous title.

Moreover, Article 891 simply requires that the property should have been acquired by the descendant or prepositus from an ascendant by gratuitous or lucrative title. A transmission is gratuitous or by gratuitous title when the recipient does not give anything in return. At risk of being repetitious, what was clearly established in this case is that the properties in dispute were owned by Exequiel (ascendant). After his death, Gregoria (descendant/prepositus) acquired the properties as inheritance.

Article 891 provides that the person obliged to reserve the property should be an ascendant (also known as the reservor/reservista) of the descendant/prepositus. Julia, however, is not Gregoria's ascendant; rather, she is Gregoria's collateral relative.

Gregoria's ascendants are her parents, Exequiel and Leonor, her grandparents, great-grandparents and so on. On the other hand, Gregoria's descendants, if she had one, would be her children, grandchildren and great-grandchildren. Not being Gregoria's ascendants, both petitioners and Julia, therefore, are her collateral relatives.

Moreover, petitioners cannot be considered reservees/reservatarios as they are not relatives within the third degree of Gregoria from whom the properties came. The person from whom the degree should be reckoned is the descendant/prepositus—the one at the end of the line from which the property came and upon whom the property last revolved by descent. It is Gregoria in this case. Petitioners are Gregoria's fourth degree relatives, being her first cousins. First cousins of the prepositus are fourth degree relatives and are not reservees or reservatarios.

They cannot even claim representation of their predecessors Antonio and Valentin as Article 891 grants a personal right of reservation only to the relatives up to the third degree from whom the reservable properties came. The only recognized exemption is in the case of nephews and nieces of the prepositus, who have the right to represent their ascendants (fathers and mothers) who are the brothers/sisters of the prepositus and relatives within the third degree.

The conclusion, therefore, is that while it may appear that the properties are reservable in character, petitioners cannot benefit from reserva troncal. First, because Julia, who now holds the properties in dispute, is not the other ascendant within the purview of Article 891 of the Civil Code and second, because petitioners are not Gregoria's relatives within the third degree.

Before concluding, the Court takes note of a palpable error in the RTC's disposition of the case. In upholding the right of petitioners over the properties, the RTC ordered the reconveyance of the properties to petitioners and the transfer of the titles in their names. What the RTC should have done, assuming for argument's sake that reserva troncal is applicable, is have the reservable nature of the property registered on respondent's titles. In fact, respondent, as reservista, has the duty to reserve and to annotate the reservable character of the property on the title.[24] In reserva troncal, the reservista who inherits from a prepositus, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership. All the attributes of ownership belong to him exclusively.

The reservor has the legal title and dominion to the reservable property but subject to the resolatory condition that such title is extinguished if the reservor predeceased the reservee. The reservor is a usufructuary of the reservable property. He may alienate it subject to the reservation. The transferee gets the revocable and conditional ownership of the reservor. The transferee's rights are revoked upon the survival of the reservees at the time of the death of the reservor but become indefeasible when the reservees predecease the reservor.

It is when the reservation takes place or is extinguished, that a reservatario becomes, by operation of law, the owner of the reservable property. In any event, the foregoing discussion does not detract from the fact that petitioners are not entitled to a reservation of the properties in dispute.

**FRANCISCA TIOCO DE PAPA, MANUEL TIOCO, NICOLAS TIOCO AND JANUARIO PAPA,
PLAINTIFFS-APPELLEES, VS. DALISAY TONGKO CAMACHO, PRIMO TONGKO AND
GODOFREDO CAMACHO, DEFENDANTS-APPELLANTS.
G.R. NO. L-28032, FIRST DIVISION, SEPTEMBER 24, 1986, NARVASA, J.:**

In other words, the reserva troncal merely determines the group of relatives (reservatarios) to whom the property should be returned; but within that group, the individual right to the property should be decided by the applicable rules of ordinary intestate succession, since Art. 891 does not specify otherwise. This conclusion is strengthened by the circumstance that the reserva being an exceptional case, its application should be limited to what is strictly needed to accomplish the purpose of the law.

Reversion of the reservable property being governed by the rules on intestate succession, the plaintiffs-appellees must be held without any right thereto because, as aunt and uncles, respectively, of Faustino Dizon (the praepositus), they are excluded from the succession by his niece, the defendant-appellant, although they are related to him within the same degree as the latter.

The Court, therefore, holds, and so rule, that under our laws of succession, a decedent's uncles and aunts may not succeed ab intestato so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

FACTS:

Defendant Dalisay D. Tongko-Camacho and the plaintiffs, Francisca Tioco de Papa, Manuel Tioco and Nicolas Tioco, are legitimate relatives, plaintiffs being said defendant's grandaunt and granduncles. They stipulate that they have as a common ancestor the late Balbino Tioco (who had a sister by the name of Romana Tioco), father of plaintiffs and great grandfather of defendant.

They stipulate that Romana Tioco during her lifetime gratuitously donated four (4) parcels of land to her niece Toribia Tioco (legitimate sister of plaintiffs), which parcels of land. They stipulate that Toribia Tioco died intestate in 1915, survived by her husband, Eustacio Dizon, and their two legitimate children, Faustino Dizon and Trinidad Dizon (mother of defendant Dalisay D. Tongko-Camacho) and leaving the afore-mentioned four (4) parcels of land as the inheritance of her said two children in equal pro-indiviso shares.

They stipulate that in 1928, Balbino Tioco died intestate, survived by his legitimate children by his wife Marciana Felix (among them plaintiffs) and legitimate grandchildren Faustino Dizon and Trinidad Dizon. In the partition of his estate, three (3) parcels of land were adjudicated as the inheritance of the late Toribia Tioco, but as she had predeceased her father, Balbino Tioco, the said three (3) parcels of land devolved upon her two legitimate children Faustino Dizon and Trinidad Dizon in equal pro-indiviso shares.

They stipulate that in 1937, Faustino Dizon died intestate, single and without issue, leaving his one-half (1/2) pro-indiviso share in the seven (7) parcels of land above-mentioned to his father, Eustacio Dizon, as his sole intestate heir, who received the said property subject to a reserva troncal.

They stipulate that in 1939 Trinidad Dizon-Tongko died intestate, and her rights and interests in the parcels of land above-mentioned were inherited by her only legitimate child, defendant Dalisay D. Tongko-Camacho, subject to the usufructuary right of her surviving husband, defendant Primo Tongko.

They stipulate that on June 14, 1965, Eustacio Dizon died intestate, survived his only legitimate descendant, defendant Dalisay D. Tongko-Camacho.

The parties agree that defendant Dalisay D. Tongko-Camacho now owns one-half ($\frac{1}{2}$) of all the seven (7) parcels of land above-mentioned as her inheritance from her mother, Trinidad Dizon-Tongko.

Defendant Dalisay D. Tongko-Camacho also claims, upon legal advice, the other half of the said seven (7) parcels of land above-mentioned by virtue of the reserva troncal imposed thereon upon the death of Faustino Dizon and under the laws on intestate succession; but the plaintiffs, also upon legal advice, oppose her said claim because they claim three-fourths ($\frac{3}{4}$) of the one-half pro-indiviso interest in said parcel of land, which interest was inherited by Eustacio Dizon from Faustino Dizon, or three-eighths ($\frac{3}{8}$) of the said parcels of land, by virtue of their being also third degree relatives of Faustino Dizon.

ISSUE:

Whether all relatives of the praepositus within the third degree in the appropriate line succeed without distinction to the reservable property upon the death of the reservista.

RULING:

This question has already been answered in *Padura vs. Baldovino*, where the reservatario was survived by eleven nephews and nieces of the praepositus in the line of origin, four of whole blood and seven of half blood, and the claim was also made that all eleven were entitled to the reversionary property in equal shares. The Court, speaking through Mr. Justice J.B.L. Reyes, declared the principles of intestacy to be controlling, and ruled that the nephews and nieces of whole blood were each entitled to a share double that of each of the nephews and nieces of half blood in accordance with Article 1006 of the Civil Code.

The stated purpose of the reserva is accomplished once the property has devolved to the specified relatives of the line of origin. But from this time on, there is no further occasion for its application. In the relations between one reservatario and another of the same degree there is no call for applying Art. 891 any longer; wherefore, the respective share of each in the reversionary property should be governed by the ordinary rules of intestate succession. In this spirit the jurisprudence of this Court and that of Spain has resolved that upon the death of the ascendant reservista, the reservable property should pass, not to all the reservatarios as a class but only to those nearest in degree to the descendant (prepositus) excluding those reservatarios of more remote degree. And within the third degree of relationship from the descendant (prepositus), the right of representation operates in favor of nephews.

"Following the order prescribed by law in legitimate succession, when there are relatives of the descendant within the third degree, the right of the nearest relative, called reservatario, over the property which the reservista (person holding it subject to reservation) should return to him, excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a reservatario of the reservable property is not among the relatives within the third degree belonging to the line from which such property came, inasmuch as the right granted by the Civil Code in Article 811 is in the highest degree personal and for the exclusive benefit of designated persons who are within the third degree of the person from whom the reservable property came. Therefore, relatives of the fourth and the succeeding degrees can never be considered as reservatarios, since the law does not recognize them as such.

Proximity of degree and right of representation are basic principles of ordinary intestate succession; so is the rule that whole blood brothers and nephews are entitled to a share double that of brothers and nephews of half blood. If in determining the rights of the reservatarios inter se, proximity of degree and the right of representation of nephews are made to apply, the rule of double share for immediate collaterals of the whole blood should be likewise operative.

In other words, the reserva troncal merely determines the group of relatives (reservatarios) to whom the property should be returned; but within that group, the individual right to the property should be decided by the applicable rules of ordinary intestate succession, since Art. 891 does not specify otherwise. This conclusion is strengthened by the circumstance that the reserva being an exceptional case, its application should be limited to what is strictly needed to accomplish the purpose of the law.

Reversion of the reservable property being governed by the rules on intestate succession, the plaintiffs-appellees must be held without any right thereto because, as aunt and uncles, respectively, of Faustino Dizon (the praepositus), they are excluded from the succession by his niece, the defendant-appellant, although they are related to him within the same degree as the latter.

The Court, therefore, holds, and so rule, that under our laws of succession, a decedent's uncles and aunts may not succeed ab intestato so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

This conclusion is fortified by the observation, also made in Padura, supra, that as to the reservable property, the reservatarios do not inherit from the reservista, but from the descendant praepositus.

To the same effect is Cano vs. Director of Lands, where it was ruled that intestacy proceedings to determine the right of a reservatario are not necessary where the final decree of the land court ordering issuance of title in the name of the reservista over property subject to reserva troncal identifies the reservatario and there are no other claimants to the latter's rights as such: The contention that an intestacy proceeding is still necessary rests upon the assumption that the reservatario will succeed in, or inherit, the reservable property from the reservista. This is not true. The reservatario is not the reservista's successor mortis causa nor is the reservable property part of the reservista's estate; the reservatario receives the property as a conditional heir of the descendant (prepositus), said property merely reverting to the line of origin from which it had temporarily and accidentally strayed during the reservista's lifetime. The authorities are all agreed that there being reservatarios that survive the reservista, the matter must be deemed to have enjoyed no more than a life interest in the reservable property.

It is a consequence of these principles that upon the death of the reservista, the reservatario nearest to the prepositus (the appellee in this case) becomes, automatically and by operation of law, the owner of the reservable property. As already stated, that property is no part of the estate of the reservista, and does not even answer for the debts of the latter.

Had the reversionary property passed directly from the praepositus, there is no doubt that the plaintiffs-appellees would have been excluded by the defendant-appellant under the rules of intestate succession. There is no reason why a different result should obtain simply because "the transmission of the property was delayed by the interregnum of the reserva"; i.e., the property took a "detour" through an ascendant -- thereby giving rise to the reservation -- before its transmission to the reservatario.

Upon the stipulated facts, and by virtue of the rulings already cited, the defendant-appellant Dalisay Tongko-Camacho is entitled to the entirety of the reversionary property to the exclusion of the plaintiffs-appellees.

**ROSA LLORENTE, PLAINTIFF AND APPELLANT, VS. CEFERINO RODRIGUEZ ET AL.,
DEFENDANTS AND APPELLEES.
G.R. No. 3339, March 26, 1908, ARELLANO, C.J.**

From the fact that a natural son has the right to inherit from the father or mother who acknowledged him, conjointly with the other legitimate children of either of them, it does not follow that he has the right to represent either of them in the succession to their legitimate ascendants; his right is direct and immediate in relation to the father or mother who acknowledged him, but it cannot be indirect by representing them in the succession to their ascendants to whom he is not related in any manner, because he does not appear among the legitimate family of which said ascendants are the head.

FACTS:

Martina Avalle, widow of Llorente, had during her marriage four legitimate children named Jacinta, Julio, Martin, and Francisco, all with the surname of Llorente y Avalle. In the will executed by her on the 31st of December, 1900, she instituted as her sole and general heirs her three first-named children, Jacinta, Julio, and Martin, and the children of the late Francisco, named Soledad and Adela Llorente.

Jacinta died prior to the testatrix, on the 11th of August, 1901, leaving several legitimate children with the surname of Rodriguez y Llorente, and besides them, a natural daughter named Rosa Llorente.

The said Rosa Llorente, the natural daughter of Jacinta Llorente, wanted to become a party in the proceedings for the probate of the will of Martina Avalle, but the legitimate children of the said Jacinta Llorente objected thereto on the ground that they were the sole and exclusive heirs of their mother, the late Jacinta Llorente, and that the plaintiff, Rosa Llorente, absolutely cannot be a party thereto.

ISSUE:

Whether the hereditary portion which Martina Avalle left in her will to her legitimate daughter Jacinta Llorente, and which the latter had not been able to possess because of her death before that of the testatrix, should also pass to her natural daughter, Rosa Llorente,

RULING:

It can be deduced that Jacinta Llorente was appointed as the devisee or legatee of Martina Avalle; Jacinta Llorente died before the said Martina Avalle. Therefore, her descendant, Rosa Llorente, shall be the devisee or legatee to whom Martina Avalle leaves what she intended to leave or bequeath to Jacinta Llorente.

But Jacinta Llorente had not been named by her mother, Martina Avalle, as the legatee of any determined kind of property; she is therefore neither a devisee nor a legatee, within the meaning of section 758, nor a legatee under the Civil Code, but a general heir like her other legitimate children, and, following the principles of the Civil Code, there is an essential difference between instituting a

legatee and instituting an heir, because the latter succeeds by general right and the former by special right.

From the fact that a natural son has the right to inherit from the father or mother who acknowledged him, conjointly with the other legitimate children of either of them, it does not follow that he has the right to represent either of them in the succession to their legitimate ascendants; his right is direct and immediate in relation to the father or mother who acknowledged him, but it cannot be indirect by representing them in the succession to their ascendants to whom he is not related in any manner, because he does not appear among the legitimate family of which said ascendants are the head.

If Jacinta Llorente had survived her mother, Martina Aralle, she would have inherited from her, and in what she inherited from her mother, her natural daughter, Rosa Llorente, would have participated, in conjunction with her legitimate children, from the day in which the succession became operative, because she would then appear by virtue of her own right to inherit from her mother the legal quota that pertained to her; but, not because she has said right, would she also be entitled to that of representation, inasmuch as there is no legal provision establishing such a doctrine; that Rosa Llorente might and should inherit from her natural mother is one thing, and that she should have the right to inherit from her who would be called her natural grandmother, representing her natural mother", is quite another thing. The latter right is not recognized by the law in force.

**RAMON S. CHING AND PO WING PROPERTIES, INC., PETITIONERS, VS. HON. JANSEN R. RODRIGUEZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 6, JOSEPH CHENG, JAIME CHENG, MERCEDES IGNE AND LUCINA SANTOS, SUBSTITUTED BY HER SON, EDUARDO S. BALAJADIA, RESPONDENTS.
G.R. NO. 192828, SECOND DIVISION, NOVEMBER 28, 2011, REYES, J.**

Under Article 916 of the NCC, disinheritance can be effected only through a will wherein the legal cause therefor shall be specified. The Court agrees that while the respondents in their Complaint and Amended Complaint sought the disinheritance of Ramon, no will or any instrument supposedly effecting the disposition of Antonio's estate was ever mentioned. Hence, despite the prayer for Ramon's disinheritance, it does not partake of the nature of a special proceeding and does not call for the probate court's exercise of its limited jurisdiction.

FACTS:

Joseph Cheng, et. al. filed a Complaint against Ramon Ching, et. al. for "Disinheritance, Declaration of Nullity of Agreement and Waiver, Affidavit of Extra-Judicial Settlement, Deed of Absolute Sale, Transfer Certificates of Title with Prayer for the Issuance of a TRO and a Writ of Preliminary Injunction".

Joseph, et. al. are the heirs of Antonio Ching/Cheng and they averred that Ramon misrepresented himself as Antonio's and Lucina's son when in truth and in fact, he was adopted and his birth certificate was merely simulated. Antonio died of a stab wound. Police investigators identified Ramon as the prime suspect and he now stands as the lone accused in a criminal case for murder filed against him. From the foregoing circumstances and upon the authority of Art. 919 the Civil Code, they concluded that Ramon can be legally disinherited, hence, prohibited from receiving any share from the estate of Antonio who died intestate.

On January 18, 2007, the petitioners filed a Motion to Dismiss the respondents' Amended Complaint on the alleged ground of the RTC's lack of jurisdiction over the subject matter of the Complaint. The petitioners argued that since the Amended Complaint sought the release of the CPPA to the respondents, the latter's declaration as heirs of Antonio, and the propriety of Ramon's disinheritance, the suit partakes of the nature of a special proceeding and not an ordinary action for declaration of nullity. Hence, jurisdiction pertains to a probate or intestate court and not to the RTC acting as an ordinary court.

ISSUE:

Whether or not there can be disinheritance in intestate succession.

RULING:

No. Disinheritance can be effected only through a will wherein the legal cause therefor shall be specified.

An action for reconveyance and annulment of title with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding, which concomitantly requires the application of specific rules as provided for in the Rules of Court. A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. It is distinguished from an ordinary civil action where a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. To initiate a special proceeding, a petition and not a complaint should be filed.

Under Article 916 of the NCC, disinheritance can be effected only through a will wherein the legal cause therefor shall be specified. The Court agrees that while the respondents in their Complaint and Amended Complaint sought the disinheritance of Ramon, no will or any instrument supposedly effecting the disposition of Antonio's estate was ever mentioned. Hence, despite the prayer for Ramon's disinheritance, it does not partake of the nature of a special proceeding and does not call for the probate court's exercise of its limited jurisdiction.

It bears stressing that what the respondents prayed for was that they be declared as the rightful owners of the CPPA which was in Mercedes' possession prior to the execution of the Agreement and Waiver. The respondents also prayed for the alternative relief of securing the issuance by the RTC of a hold order relative to the CPPA to preserve Antonio's deposits with Metrobank during the pendency of the case. It can thus be said that the respondents' prayer relative to the CPPA was premised on Mercedes' prior possession of and their alleged collective ownership of the same, and not on the declaration of their status as Antonio's heirs. Further, it also has to be emphasized that the respondents were parties to the execution of the Agreement and Waiver prayed to be nullified. Hence, even without the necessity of being declared as heirs of Antonio, the respondents have the standing to seek for the nullification of the instruments in the light of their claims that there was no consideration for their execution, and that Ramon exercised undue influence and committed fraud against them. Consequently, the respondents then claimed that the Affidavit of Extra-Judicial Settlement of Antonio's estate executed by Ramon, and the TCTs issued upon the authority of the said affidavit, are null and void as well. Ramon's averment that a resolution of the issues raised shall first require a declaration of the respondents' status as heirs is a mere defense which is not determinative of which court shall properly exercise jurisdiction.

In *Marjorie Cadimas v. Marites Carrion and Gemma Hugo*, the Court declared: It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the matters to be consulted.

**FILOMENA PECSON, as administratrix of the last will and testament of Florencio Pecson, et al.,
plaintiffs-appellants, vs. ROSARIO MEDIAVILLO, defendant-appellee.
G.R. No. 7890. September 29, 1914. EN BANC. JOHNSON, J.**

The Civil Code (art. 848) provides that disinheritance shall only take place for one of the causes expressly fixed by law. . If it is true that heirs can be disinherited only by will, and for causes mentioned in the Civil Code, it would seem to follow that the courts might properly inquire whether the disinheritance has been made properly and for the causes provided for by law. The right of the courts to inquire into the causes and whether there was sufficient cause for the disinheritance or not, seems to be supported by express provisions of the Civil Code. Article 850 provides that "the proof of the truthfulness of the reason for disinheritance shall be established by the heirs of the testator, should the disinherited person deny it."

FACTS

Sometime prior September 17, 1910, the last will and testament of Florencio Pecson was presented to the CFI of the Province of Albay for probate. Mr. Tomas Lorayes, an attorney at law, opposed the legislation of the will on the ground that it had not been authorized nor signed by the deceased, in accordance with the provisions of the Code of Civil Procedure. The Hon. Moir, judge, found that the will had been signed and executed in accordance with the provisions of law, and denied the opposition.

Lorayes, representing Basiliso Mediavillo and Rosario Mediavillo, presented a motion alleging that;

1. That Rosario Mediavillo is and Joaquin Mediavillo was a legitimate child of the deceased Teresa Pecson, who also was a daughter of the testator, Florencio Pecson, and therefore the first mentioned is and the second was a grandchild of the latter.
2. That the said granddaughter, Rosario Mediavillo y Pecson, was disinherited by her grandfather, the testator Florencio Pecson, according to clause 3 of the will, because she failed to show him due respect and on a certain occasion raised her hand against him.
3. That the interested party did not commit such an act, and if perhaps she did, it was due to the derangement of her mental faculties which occurred a long time ago and from which she now suffers in periodical attacks.

Paragraph 3 of the will disinherited his granddaughter Rosario Mediavillo from his deceased daughter, Teresa, because Rosario was grossly disrespectful to him and because on one occasion, she raised her hand against him.

During the lifetime of Florencio Pecson he had been married to Nicolasa Manjares, with whom he had eight children, named Filomena, Asuncion, Zoila, Emerenciano, Emiliano, Perfecto, Rufino and Teresa Pecson; that before the death of Florencio Pecson he executed and delivered the will in question. The will made no provision for the said Rufino Pecson, neither was there any provision in the will for the said Teresa. All of the other children were named as heirs in said will. It appears that Teresa had been married with one Basiliso Mediavillo, and that some time before the making of the will in question she died, leaving her husband and two children, Joaquin Mediavillo and Rosario Mediavillo, as her heirs. It also appears from the record that Joaquin Mediavillo died without heirs, leaving as the only heirs of the said Teresa Pecson, her husband, Basilio Mediavillo and the said Rosario Mediavillo. The said Joaquin Mediavillo died before his grandfather, Florencio Pecson, and probably before the will in question was made.

The lower court found out that the evidence shows that Rosariobecame insane in 1895, when she went to Nueva Caceres to study in college, and it has been proved that it was previous to this date that she disobeyed her grandfather and raised her hand against him. But since she was 14 years old, and shortly afterwards became insane, she was not responsible for her acts and should not have been disinherited by her grandfather. The lower court therefore decrees that the part of the will is contrary to law and sets it aside as being of no force or value whatever.

ISSUE

1. Whether or not the courts, when a parent disinherits his children, may inquire into the cause of the disinheritance and decide that there was or was not ground for such disinheritance. (YES)
2. Whether or not the courts erred by decreeing that Basaliso Mediavillo, the father of Joaquin Mediavillo, is the heir by representation of the one-half of the one seventh of this estate pertaining to Joaquin Mediavillo. (YES)

RULING

The Civil Code (art. 848) provides that disinheritance shall *only* take place for one of the causes expressly fixed by law. In accordance with the provisions of that article (848) we find that articles 756 and 853 provide the cases or causes for disinheritance; or, in other words, the cases or causes in which the ancestors may by will disinherit their heirs. Article 849 of the Civil Code provides that the disinheritance can *only* be effected by the testament, in which shall be mentioned the legal grounds or causes for such disinheritance. If it is true that heirs can be disinherited *only* by will, and for causes mentioned in the Civil Code, it would seem to follow that the courts might properly inquire whether the disinheritance has been made properly and for the causes provided for by law. The right of the courts to inquire into the causes and whether there was sufficient cause for the disinheritance or not, seems to be supported by express provisions of the Civil Code. Article 850 provides that "the proof of the truthfulness of the reason for disinheritance shall be established by the heirs of the testator, should the disinherited person deny it." It would appear then that if the person disinherited should deny the truthfulness of the cause of disinheritance, he might be permitted to support his allegation by proof. The right of the court to inquire whether or not the disinheritance was made for just cause is also sustained by the provisions of article 851, which in part provides that:

Disinheritance made without statement of the reason, or for a cause the truth of which, if contradicted, should not be proven . . . shall annul the designation of heirship, in so far as it prejudices the person disinherited.

It seems clear from the above-quoted provisions, that the courts may inquire into the justice of a disinheritance such as was attempted in the present case, and if they find that the disinheritance was without cause, that part of the testament or will may be pronounced null and void. It remains, however, to be seen whether the evidence adduced during the trial of the present cause was sufficient to show that the disinheritance made in paragraph 3 of the will was made for just cause. It appears from the record that when Rosario Mediavillo was about 14 years of age, she had received some attentions from a young man — that she had received a letter from him — and that her grandfather, Florencio Pecson, took occasion to talk to her about the relations between her and the said young man; that it was upon that occasion when, it is alleged, the disobedience and disrespect were shown to her grandfather, and that was the cause for her disinheritance by her grandfather. The record shows that very soon after said event she lost the use of her mental powers and that she has never regained them, except for very brief periods, up to the present time. The lower court, taking into consideration her tender years, and the fact that she very soon thereafter lost the use of her mental faculties, reached the conclusion that she was probably not responsible for the disrespect and disobedience shown to her grandfather in the year 1894 or 1895.

As for the second assignment of error, it will be remembered that Teresa Pecson, the mother of Rosario Mediavillo, at the time of her death left two children, Rosario and Joaquin, and her husband Basiliso Mediavillo, and that said Joaquin Mediavillo died without heirs. The lower court gave one-half of the inheritance of the said Teresa Pecson to Rosario Mediavillo and the share that would have gone to Joaquin Mediavillo, and the share that would have gone to Joaquin Mediavillo, to his father Basiliso Mediavillo. In that conclusion of the lower court we think error was committed. The appellant relies upon the provisions of article 925 of the Civil Code, in his contention that the lower court committed an error. Article 925 provides that:

The right of representation shall always take place in the direct descending line, but never in the ascending. In collateral lines, it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood.

The appellee, in support of the conclusions of the lower court, cites articles 935 and 936 of the Civil Code. Article 935 provides that:

In the absence of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collaterals.

Article 936 provides that:

The father and mother, if living shall inherit share and share alike. If one of them only survive, he or she shall succeed to the son's entire estate.

It will be remembered that the whole argument of the appellants with reference to the first assignment of error was that Rosario Mediavillo had been disinherited and the court evidently believed that there were no "legitimate children, descendants of the deceased, surviving," and that therefore the father or mother of said legitimate children would inherit as ascendants. Inasmuch, however, as there was a descendant in the direct line, surviving, the inheritance could not ascend, and for the reason the lower court committed an error in declaring that Basiliso Mediavillo was entitled to inherit that share of the estate that would have belonged to Joaquin Mediavillo, had he been living.

**LOURDES L. DOROTHEO, petitioner, vs. COURT OF APPEALS, NILDA D. QUINTANA, for Herself and as Attorney-in-Fact of VICENTE DOROTHEO and JOSE DOROTHEO, respondents.
G.R. No. 108581 December 8, 1999 FIRST DIVISION YNARES-SANTIAGO, J.**

The intrinsic validity is another matter and questions regarding the same may still be raised even after the will has been authenticated. 12 Thus, it does not necessarily follow that an extrinsically valid last will and testament is always intrinsically valid. Even if the will was validly executed, if the testator provides for dispositions that deprives or impairs the lawful heirs of their legitime or rightful inheritance according to the laws on succession, 13 the unlawful provisions/dispositions thereof cannot be given effect. This is specially so when the courts had already determined in a final and executory decision that the will is intrinsically void. Such determination having attained that character of finality is binding on this Court which will no longer be disturbed. Not that this Court finds the will to be intrinsically valid, but that a final and executory decision of which the party had the opportunity to challenge before the higher tribunals must stand and should no longer be reevaluated. Failure to avail of the remedies provided by law constitutes waiver

FACTS

Private respondents were the legitimate children of Alejandro Dorotheo and Aniceta Reyes. The latter died in 1969 without her estate being settled. Alejandro died thereafter. Sometime in 1977, after Alejandro's death, petitioner, who claims to have taken care of Alejandro before he died, filed a special proceeding for the probate of the latter's last will and testament. In 1981, the court issued an order admitting Alejandro's will to probate. Private respondents did not appeal from said order. In 1983, they filed a "Motion To Declare The Will Intrinsically Void." The trial court granted the motion and issued an order. Petitioner moved for reconsideration arguing that she is entitled to some compensation since she took care of Alejandro prior to his death although she admitted that they were not married to each other. Upon denial of her motion for reconsideration, petitioner appealed to the Court of Appeals, but the same was dismissed. This dismissal became final and executory on February 3, 1989 and a corresponding entry of judgment was forthwith issued by the Court of Appeals on May 16, 1989. A writ of execution was issued by the lower court to implement the final and executory Order. Consequently, private respondents filed several motions including a motion to compel petitioner to surrender to them the Transfer Certificates of Titles (TCT) covering the properties of the late Alejandro. When petitioner refused to surrender the TCT's, private respondents filed a motion for cancellation of said titles and for issuance of new titles in their names. Petitioner opposed the motion.

ISSUE

May a last will and testament admitted to probate but declared intrinsically void in an order that has become final and executory still be given effect? (NO)

RULING

A final and executory decision or order can no longer be disturbed or reopened no matter how erroneous it may be. In setting aside the January 30, 1986 Order that has attained finality, the trial court in effect nullified the entry of judgment made by the Court of Appeals. It is well settled that a lower court cannot reverse or set aside decisions or orders of a superior court, for to do so would be to negate the hierarchy of courts and nullify the essence of review. It has been ruled that a final judgment on probated will, albeit erroneous, is binding on the whole world.

It has been consistently held that if no appeal is taken in due time from a judgment or order of the trial court, the same attains finality by mere lapse of time. Thus, the order allowing the will became final and the question determined by the court in such order can no longer be raised anew, either in the same proceedings or in a different motion. The matters of due execution of the will and the capacity of the testator acquired the character of *res judicata* and cannot again be brought into question, all juridical questions in connection therewith being for once and forever closed.⁵ Such final order makes the will conclusive against the whole world as to its extrinsic validity and due execution.

It should be noted that probate proceedings deals generally with the extrinsic validity of the will sought to be probated, particularly on three aspects:

1. whether the will submitted is indeed, the decedent's last will and testament;
2. compliance with the prescribed formalities for the execution of wills;
3. the testamentary capacity of the testator;
4. and the due execution of the last will and testament.

Under the Civil Code, due execution includes a determination of whether the testator was of sound and disposing mind at the time of its execution, that he had freely executed the will and was not acting under duress, fraud, menace or undue influence and that the will is genuine and not a forgery, 10 that he was of the proper testamentary age and that he is a person not expressly prohibited by law from making a will.

The intrinsic validity is another matter and questions regarding the same may still be raised even after the will has been authenticated. 12 Thus, it does not necessarily follow that an extrinsically valid last will and testament is always intrinsically valid. Even if the will was validly executed, if the testator provides for dispositions that deprives or impairs the lawful heirs of their legitime or rightful inheritance according to the laws on succession, 13 the unlawful provisions/dispositions thereof cannot be given effect. This is specially so when the courts had already determined in a final and executory decision that the will is intrinsically void. Such determination having attained that character of finality is binding on this Court which will no longer be disturbed. Not that this Court finds the will to be intrinsically valid, but that a final and executory decision of which the party had the opportunity to challenge before the higher tribunals must stand and should no longer be reevaluated. Failure to avail of the remedies provided by law constitutes waiver. And if the party does not avail of other remedies despite its belief that it was aggrieved by a decision or court action, then it is deemed to have fully agreed and is satisfied with the decision or order. As early as 1918, it has been declared that public policy and sound practice demand that, at the risk of occasional errors, judgments of courts must at some point of time fixed by law 14 become final otherwise there will be no end to litigation. *Interes rei publicae ut finis sit litium* — the very object of which the courts were constituted was to put an end to controversies. 15 To fulfill this purpose and to do so speedily, certain time limits, more or less arbitrary, have to be set up to spur on the slothful. 16 The only instance where a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence, 17 which circumstances do not concur herein.

Petitioner was privy to the suit calling for the declaration of the intrinsic invalidity of the will, as she precisely appealed from an unfavorable order therefrom. Although the final and executory Order of January 30, 1986 wherein private respondents were declared as the only heirs do not bind those who

are not parties thereto such as the alleged illegitimate son of the testator, the same constitutes *res judicata* with respect to those who were parties to the probate proceedings. Petitioner cannot again raise those matters anew for relitigation otherwise that would amount to forum-shopping. It should be remembered that forum shopping also occurs when the same issue had already been resolved adversely by some other court. It is clear from the executory order that the estates of Alejandro and his spouse should be distributed according to the laws of intestate succession.

It can be clearly inferred from Article 960 of the Civil Code, on the law of successional rights that testacy is preferred to intestacy. But before there could be testate distribution, the will must pass the scrutinizing test and safeguards provided by law considering that the deceased testator is no longer available to prove the voluntariness of his actions, aside from the fact that the transfer of the estate is usually onerous in nature and that no one is presumed to give — *Nemo praesumitur donare*. No intestate distribution of the estate can be done until and unless the will had failed to pass both its extrinsic and intrinsic validity. If the will is extrinsically void, the rules of intestacy apply regardless of the intrinsic validity thereof. If it is extrinsically valid, the next test is to determine its intrinsic validity — that is whether the provisions of the will are valid according to the laws of succession. In this case, the court had ruled that the will of Alejandro was extrinsically valid but the intrinsic provisions thereof were void. Thus, the rules of intestacy apply as correctly held by the trial court.

Furthermore, Alejandro's disposition in his will of the alleged share in the conjugal properties of his late spouse, whom he described as his "only beloved wife", is not a valid reason to reverse a final and executory order. Testamentary dispositions of properties not belonging exclusively to the testator or properties which are part of the conjugal regime cannot be given effect. Matters with respect to who owns the properties that were disposed of by Alejandro in the void will may still be properly ventilated and determined in the intestate proceedings for the settlement of his and that of his late spouse's estate.

**VICENTE URIARTE, petitioner, vs. THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL (12th Judicial District) THE COURT OF FIRST INSTANCE OF MANILA, BRANCH IV, JUAN URIARTE ZAMACONA and HIGINIO URIARTE, respondents.
G.R. Nos. L-21938-39 May 29, 1970 EN BANC DIZON, J.**

Under the Rules on the settlement of estate of the deceased person, testate proceedings enjoy priority over intestate proceedings. Therefore, in case intestate settlement was filed prior to the finding of the will of the deceased, then the intestate proceedings shall be dismissed to give priority to the testate proceeding.

FACTS

Juan Uriarte y Goite died in Spain and he left reasonable properties in the Philippines. Vicente Uriarte, who is claiming to be the son and sole heir of the deceased, filed a petition for the intestate settlement of the estate of the deceased in the Court of First Instance of Negros Occidental. However, said petition was opposed by the nephews (Higinio Uriarte) of Juan stating that there is a valid will left by the deceased in Spain, a copy of which is being requested. Then, the nephews filed a settlement of the estate in the court of Manila, on the basis of the alleged will of the deceased.

On August 28, 1962, Juan Uriarte Zamacona, the other private respondent, commenced Special Proceeding in the Manila Court for the probate of a document alleged to be the last will of the deceased Juan Uriarte y Goite, and on the same date he filed in Special Proceeding No. 6344 of the

Negros Court a motion to dismiss the same on the following grounds: (1) that, as the deceased Juan Uriarte y Goite had left a last will, there was no legal basis to proceed with said intestate proceedings, and (2) that petitioner Vicente Uriarte had no legal personality and interest to initiate said intestate proceedings, he not being an acknowledged natural son of the decedent.

Petitioner opposed the aforesaid motion to dismiss contending that, as the Negros Court was first to take cognizance of the settlement of the estate of the deceased Juan Uriarte y Goite, it had acquired exclusive jurisdiction over the same pursuant to Rule 75, Section 1 of the Rules of Court. The Negros Court sustained Juan Uriarte Zamacona's motion to dismiss.

It is admitted that, as alleged in the basic petition filed in Special Proceeding No. 6344 of the Negros Court, Vicente Uriarte filed in the same court, during the life time of Juan Uriarte y Goite, Civil Case No. 6142 to obtain judgment for his compulsory acknowledgment as his natural child. Clearly inferrable from this is that at the time he filed the action, as well as when he commenced the aforesaid special proceeding, he had not yet been acknowledged as natural son of Juan Uriarte y Goite. Up to this time, no final judgment to that effect appears to have been rendered.

Hence, Vicente filed a petition for certiorari questioning the dismissal of the intestate settlement in the CFI of Negros.

ISSUE

Whether or not the intestate settlement should be dismissed?

RULING

The Supreme Court held that the dismissal of the intestate proceeding is proper. Under the Rules on the settlement of estate of the deceased person, testate proceedings enjoy priority over intestate proceedings. Therefore, in case intestate settlement was filed prior to the finding of the will of the deceased, then the intestate proceedings shall be dismissed to give priority to the testate proceeding. The following considerations and the facts of record would seem to support the view that he should have submitted said will for probate to the Negros Court, either in a separate special proceeding or in an appropriate motion for said purpose filed in the already pending Special Proceeding No. 6344. In the first place, it is not in accord with public policy and the orderly and inexpensive administration of justice to unnecessarily multiply litigation, especially if several courts would be involved. This, in effect, was the result of the submission of the will aforesaid to the Manila Court. In the second place, when respondent Higinio Uriarte filed an opposition to Vicente Uriarte's petition for the issuance of letters of administration, he had already informed the Negros Court that the deceased Juan Uriarte y Goite had left a will in Spain, of which a copy had been requested for submission to said court; and when the other respondent, Juan Uriarte Zamacona, filed his motion to dismiss Special Proceeding No. 6344, he had submitted to the Negros Court a copy of the alleged will of the decedent, from which fact it may be inferred that, like Higinio Uriarte, he knew before filing the petition for probate with the Manila Court that there was already a special proceeding pending in the Negros Court for the settlement of the estate of the same deceased person. As far as Higinio Uriarte is concerned, it seems quite clear that in his opposition to petitioner's petition in Special Proceeding No. 6344, he had expressly promised to submit said will for probate to the Negros Court.

But the fact is that instead of the aforesaid will being presented for probate to the Negros Court, Juan Uriarte Zamacona filed the petition for the purpose with the Manila Court. It is well settled in this jurisdiction that wrong venue is merely a waiveable procedural defect, and, in the light of the

circumstances obtaining in the instant case, we are of the opinion, and so hold, that petitioner has waived the right to raise such objection or is precluded from doing so by laches. It is enough to consider in this connection that petitioner knew of the existence of a will executed by Juan Uriarte y Goite since December 19, 1961 when Higinio Uriarte filed his opposition to the initial petition filed in Special Proceeding No. 6344; that petitioner likewise was served with notice of the existence (presence) of the alleged last will in the Philippines and of the filing of the petition for its probate with the Manila Court since August 28, 1962 when Juan Uriarte Zamacona filed a motion for the dismissal of Special Proceeding No. 6344. All these notwithstanding, it was only on April 15, 1963 that he filed with the Manila Court in Special Proceeding No. 51396 an Omnibus motion asking for leave to intervene and for the dismissal and annulment of all the proceedings had therein up to that date; thus enabling the Manila Court not only to appoint an administrator with the will annexed but also to admit said will to probate more than five months earlier, or more specifically, on October 31, 1962. To allow him now to assail the exercise of jurisdiction over the probate of the will by the Manila Court and the validity of all the proceedings had in Special Proceeding No. 51396 would put a premium on his negligence.

If the petitioner is to be consistent with the authorities cited by him in support of his contention, the proper thing for him to do would be to intervene in the certain estate proceedings entitled Special Proceedings No. 51396 in the Court of First Instance of Manila instead of maintaining an independent action, for indeed his supposed interest in the estate of the decedent is of his doubtful character pending the final decision of the action for compulsory acknowledgment".

We believe in connection with the above matter that petitioner is entitled to prosecute Civil Case No. 6142 until it is finally determined, or intervene in Special Proceeding No. 51396 of the Manila Court, if it is still open, or to ask for its reopening if it has already been closed, so as to be able to submit for determination the question of his acknowledgment as a natural child of the deceased testator, said court having, in its capacity as a probate court, jurisdiction to declare who are the heirs of the deceased testator and whether or not a particular party is or should be declared his acknowledged natural child.

ANDY ANG, Petitioner, vs. SEVERINO PACUNIO, TERESITA P. TORRALBA, SUSANA LOBERANES, CHRISTOPHER N. PACUNIO, and PEDRITO P. AZARCON, represented by their attorney-in-fact, GALILEO P. TORRALBA, Respondents.
G.R. No. 208928, July 8, 2015 FIRST DIVISION, PERLAS-BERNABE, J.:

The rule on real parties in interest has two (2) requirements, namely: (a) to institute an action, the plaintiff must be the real party in interest; and (b) the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.

FACTS

Respondents filed a complaint for Declaration for nullity of Sale, Reconveyance and damages before the RTC involving the subject land originally owned by Udiaan. Respondents alleged that they are grandchildren and successor-in-interest of Udiaan. However, an imposter falsely representing herself as Udiaan sold the subject land to petitioner.

Petitioner entered the subject land and used the same in his livestock business. Respondents then informed petitioner that he did not validly acquire the subject land, and thereafter, demanded its return, but to no avail. Hence, they filed the aforesaid complaint, contending the Udiaan cannot sold the subject considering that she was already dead for more than 20 years when the sale occurred.

Petitioner denied respondents' allegations and countered that: (a) at first, he bought the subject land from a person representing herself as Udiaan who showed a community tax certificate as proof of identity, has in her possession OCT No. T-3593, knew the location of the subject land, and was not afraid to face the notary public when they executed the Questioned Deed of Absolute Sale; (b) he was initially prevented from entering the subject land since it was being occupied by the Heirs of Alfredo Gaccion; (c) in order to buy peace, he had to "buy" the subject land anew from the Heirs of Gaccion; (d) he was a buyer in good faith, for value, and was without any knowledge or participation in the alleged defects of the title thereof; and (e) respondents were never in possession of the subject land and they never paid real property taxes over the same. Ultimately, petitioner claimed that he was duped and swindled into buying the subject land twice.

RTC ruled in favour of the petitioner. CA modified RTC's decision as follows: (a) 3,502 sq. m. to petitioner; (b) 6,398 sq. m. to the Heirs of Gaccion; and (c) the remainder of the subject land to Udiaan's children.

Petitioner MR but was denied, hence, this petition.

ISSUE

Whether or not the CA correctly declared the nullity of the Questioned Deed of Absolute Sale and distributed portions of the subject land to different parties, among others, despite ruling that respondents are not real parties in interest to the instant case?

RULING

The rule on real parties in interest has two (2) requirements, namely: (a) to institute an action, the plaintiff must be the real party in interest; and (b) the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action. In *Spouses Oco v. Limbaring*, the Court expounded on the purpose of this rule, to wit: Necessarily, the purposes of this provision are 1) to prevent the prosecution of actions by persons without any right, title or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid multiplicity of suits; and 4) discourage litigation and keep it within certain bounds, pursuant to public policy.

In the instant case, respondents claim to be the successors-in-interest of the subject land just because they are Udiaan's grandchildren. *1âwphi1* Under the law, however, respondents will only be deemed to have a material interest over the subject land - and the rest of Udiaan's estate for that matter - if the right of representation provided under Article 970, in relation to Article 982, of the Civil Code is available to them. In this situation, representatives will be called to the succession by the law and not by the person represented; and the representative does not succeed the person represented but the one whom the person represented would have succeeded.

For such right to be available to respondents, they would have to show first that their mother: (a) predeceased Udiaan; (b) is incapacitated to inherit; or (c) was disinherited, if Udiaan died testate. However, as correctly pointed out by the CA, nothing in the records would show that the right of representation is available to respondents. Hence, the RTC and the CA correctly found that respondents are not real parties in interest to the instant case. It is well-settled that factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by the Court and are deemed final and conclusive when supported by the evidence on record, as in this case.

Having established that respondents are not the real parties in interest to the instant suit, the proper course of action was for the CA to merely affirm the RTC's dismissal of their complaint. It therefore erred in proceeding to resolve the other substantive issues of the case and granting one of the principal reliefs sought by respondents, which is the declaration of the nullity of the Questioned Deed of Absolute Sale. In the same vein, the CA erred in awarding portions of the subject land to various non-parties to the case, such as the Heirs of Gaccion and Udiaan's children. Basic is the rule that no relief can be extended in a judgment to a stranger or one who is not a party to a case.

In sum, the CA transgressed prevailing law and jurisprudence in resolving the substantive issues of the instant case despite the fact that respondents are not real parties in interest to the same. Necessarily, a reinstatement of the R TC ruling is in order.

MAURICIO SAYSON, ROSARIO SAYSON-MALONDA, BASILISA SAYSON-LIRIO, REMEDIOS SAYSON-REYES and JUANA C. BAUTISTA, petitioners, vs. THE HONORABLE COURT OF APPEALS, DELIA SAYSON, assisted by her husband, CIRILO CEDO, JR., EDMUNDO SAYSON AND DORIBEL SAYSON, respondents. G.R. Nos. 89224-25 January 23, 1992 FIRST DIVISION CRUZ, J.:

While it is true that the adopted child shall be deemed to be a legitimate child and have the same rights as the latter, these rights do not include the right of representation.

FACTS

Eleno and Rafaela Sayson begot five children, namely, Mauricio, Rosario, Basilisa, Remedios and Teodoro. Eleno died on Nov. 10, 1952, and Rafaela on May 15, 1976. **Teodoro**, who had married **Isabel** Bautista, died on Mar. 23, 1972. His wife died nine years later, on Mar. 26, 1981. Their properties were left in the possession of **Delia**, **Edmundo** and **Doribel**, all surnamed Sayson, who claim to be their children.

On Apr. 25, 1983, Mauricio, Rosario, Basilisa and Remedios, together with Juana (Isabel's mother), filed a complaint for partition of the intestate estate of Teodoro and Isabel. Delia, Edmundo (both legally adopted) and Doribel (the legitimate daughter), who alleged successional rights to the estate as the decedents' lawful descendants, resisted said complaint and filed their own complaint for the partition of the intestate estate of Eleno and Rafaela **claiming that they are entitled to inherit Teodoro's share in his parents' estate by right of representation.**

The trial court declared them entitled to inherit by right of representation.

On appeal, the CA modified the decision disqualifying Delia and Edmundo from inheriting from the estate of the deceased spouses Eleno and Rafaela. Hence, this petition.

ISSUE

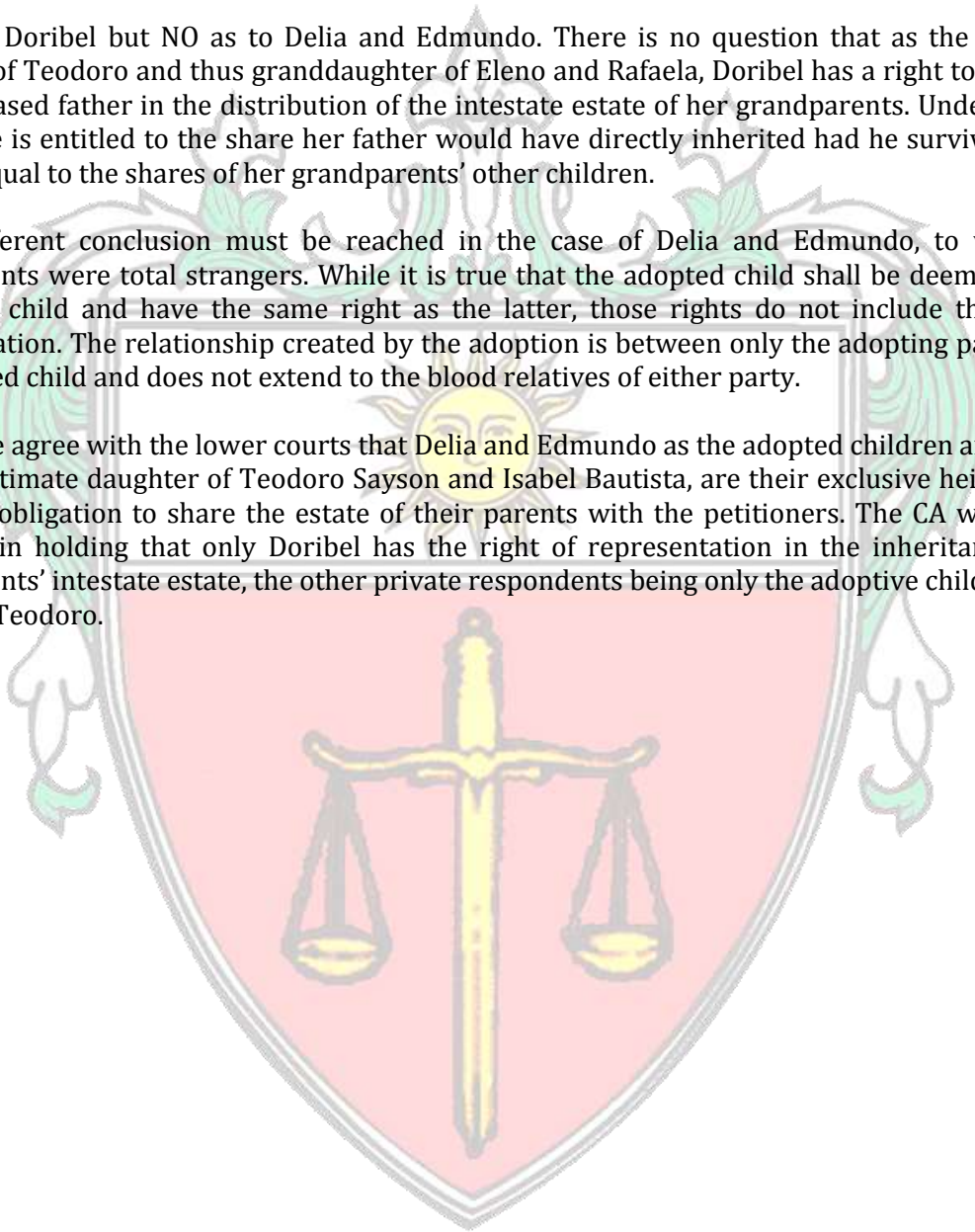
Whether Delia, Edmundo and Doribel are entitled to inherit their father's share in the estate of his (Teodoro) parents' estate by right of representation.

RULING

YES as to Doribel but NO as to Delia and Edmundo. There is no question that as the legitimate daughter of Teodoro and thus granddaughter of Eleno and Rafaela, Doribel has a right to represent here deceased father in the distribution of the intestate estate of her grandparents. Under Art. 981 (NCC), she is entitled to the share her father would have directly inherited had he survived, which shall be equal to the shares of her grandparents' other children.

But a different conclusion must be reached in the case of Delia and Edmundo, to whom the grandparents were total strangers. While it is true that the adopted child shall be deemed to be a legitimate child and have the same right as the latter, those rights do not include the right of representation. The relationship created by the adoption is between only the adopting parents and the adopted child and does not extend to the blood relatives of either party.

In sum, we agree with the lower courts that Delia and Edmundo as the adopted children and Doribel as the legitimate daughter of Teodoro Sayson and Isabel Bautista, are their exclusive heirs and are under no obligation to share the estate of their parents with the petitioners. The CA was correct however, in holding that only Doribel has the right of representation in the inheritance of her grandparents' intestate estate, the other private respondents being only the adoptive children of the deceased Teodoro.



OFELIA HERNANDO BAGUNU, *Petitioner*, vs PASTORA PIEDAD, *Respondent*.
G.R. No. 140975. December 8, 2000 THIRD DIVISION VITUG, J.

In fine, a maternal aunt can inherit alongside a paternal uncle, and a first cousin of the full blood can inherit equally with a first cousin of the half blood, but an uncle or an aunt, being a third-degree relative, excludes the cousins of the decedent, being in the fourth-degree of relationship; the latter, in turn, would have priority in succession to a fifth-degree relative.

FACTS

Augusto H. Piedad died without any direct descendants or ascendants. Respondent is the maternal aunt of the decedent [a third-degree relative], while petitioner is the daughter of a first cousin of the deceased [a fifth degree relative]. In the intestate proceeding of his estate in RTC Pasay, petitioner moved to intervene, seeking to inherit from the estate, to assail the finality of the RTC order awarding the entire estate to respondent contending that the proceedings were tainted with procedural infirmities.

The RTC denied the motion. Upon appeal, the CA dismissed the appeal ruling that appeal by *certiorari* should raise only questions of law. Hence, the instant petition for review on *certiorari*.

ISSUE

Whether or not petitioner, a collateral relative of the fifth civil degree, can inherit alongside respondent who is a collateral relative of the third civil degree. Elsewise stated, whether or not the rule of proximity in intestate succession applies among collateral relatives. **[NO]**

RULING

The various provisions of the Civil Code on succession embody an almost complete set of law to govern, either by will or by operation of law, the transmission of property, rights and obligations of a person upon his death. Each article is construed in congruity with, rather than in isolation of, the system set out by the Code.

The rule on proximity is a concept that favors the relatives nearest in degree to the decedent and excludes the more distant ones, except when and to the extent that the right of representation can apply. Thus, Article 962 of the Civil Code provides:

"ARTICLE 26. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place.

"Relatives in the same degree shall inherit in equal shares, subject to the provisions of article 1006 with respect to relatives of the full and half blood, and of article 987, paragraph 2, concerning division between the paternal and maternal lines.

By right of representation, a more distant blood relative of a decedent is, by operation of law, "raised to the same place and degree" of relationship as that of a closer blood relative of the same decedent. The representative thereby steps into the shoes of the person he represents and succeeds, not from the latter, but from the person to whose estate the person represented would have succeeded.

"ARTICLE 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited."

"ARTICLE 971. The representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded."

In the direct line, right of representation is proper only in the descending, never in the ascending, line. In the collateral line, the right of representation may only take place in favor of the children of brothers or sisters of the decedent when such children survive with their uncles or aunts.

"ARTICLE 972. The right of representation takes place in the direct descending line, but never in the ascending.

"In the collateral line, it takes place only in favor of the children of brothers or sister, whether they be of the full or half blood."

"ARTICLE 974. Whenever there is succession by representation, the division of the estate shall be made per stirpes, in such manner that the representative or representatives shall not inherit more than what the person they represent would inherit, if he were living or could inherit."

"ARTICLE 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions."

The right of representation does not apply to "other collateral relatives within the fifth civil degree" (to which group both petitioner and respondent belong) who are sixth in order of preference following, firstly, the legitimate children and descendants, secondly, the legitimate parents and ascendants, thirdly, the illegitimate children and descendants, fourthly, the surviving spouse, and fifthly, the brothers and sisters/nephews and nieces, of the decedent. Among collateral relatives, except only in the case of nephews and nieces of the decedent concurring with their uncles or aunts, the rule of proximity, expressed in Article 962, aforequoted, of the Code, is an absolute rule. In determining the degree of relationship of the collateral relatives to the decedent, Article 966 of the Civil Code gives direction.

"ARTICLE 966. . . .

"In the collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin and so forth."

Accordingly —

Respondent, being a relative within the third civil degree, of the late Augusto H. Piedad excludes petitioner, a relative of the fifth degree, from succeeding ab intestato the estate of the decedent.

The provisions of Article 1009 and Article 1010 of the Civil Code —

"ARTICLE 1009. Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

"The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood."

Article 1010. The right to inherit *ab intestato* shall not extend beyond the fifth degree of relationship in the collateral line."

invoked by petitioner do not at all support her cause. The law means only that among the other collateral relatives (the sixth in the line of succession), no preference or distinction shall be observed "by reason of relationship by the whole blood." In fine, a maternal aunt can inherit alongside a paternal uncle, and a first cousin of the full blood can inherit equally with a first cousin of the half blood, but an uncle or an aunt, being a third-degree relative, excludes the cousins of the decedent, being in the fourth-degree of relationship; the latter, in turn, would have priority in succession to a fifth-degree relative.

ANSELMA DIAZ, guardian of VICTOR, RODRIGO, ANSELMINA and MIGUEL, all surnamed SANTERO, and FELIXBERTA PACURSA, guardian of FEDERICO SANTERO, et al., petitioners, vs. INTERMEDIATE APPELLATE COURT and FELISA PAMUTI JARDIN, respondents.
G.R. No. L-66574 February 21, 1990 EN BANC PARAS, J.

Article 992 of the New Civil Code provides a barrier or iron curtain in that it prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother of said illegitimate child. They may have a natural tie of blood, but this is not recognized by law for the purpose of Article 992. Between the legitimate family and the illegitimate family there is presumed to be an intervening antagonism and incompatibility. The illegitimate child is disgracefully looked down upon by the legitimate family; and the family is in turn, hated by the illegitimate child; the latter considers the privileged condition of the former, and the resources of which it is thereby deprived; the former, in turn, sees in the illegitimate child nothing but the product of sin, palpable evidence of a blemish broken in life; the law does no more than recognize this truth, by avoiding further ground of resentment.

FACTS

Felisa Pamuti Jardin is a niece of Simona Pamuti Vda. de Santero who together with Felisa's mother Juliana were the only legitimate children of the spouses Felipe Pamuti and Petronila Asuncion; that Juliana married Simon Jardin and out of their union were born Felisa Pamuti and another child who died during infancy; that Simona Pamuti Vda. de Santero is the widow of Pascual Santero and the mother of Pablo Santero; that Pablo Santero was the only legitimate son of his parents Pascual Santero and Simona Pamuti Vda. de Santero; that Pascual Santero died in 1970; Pablo Santero in 1973 and Simona Santero in 1976; that Pablo Santero, at the time of his death was survived by his mother Simona Santero and his six minor natural children to wit: four minor children with Anselma Diaz and two minor children with Felixberta Pacursa.

ISSUE

Who are the legal heirs of Simona Pamuti Vda. De Santero — her niece Felisa Pamuti-Jardin or her grandchildren (the natural children of Pablo Santero)?

RULING

Petitioners claim that the amendment of Articles 941 and 943 of the old Civil Code (Civil Code of Spain) by Articles 990 and 992 of the new Civil Code (Civil Code of the Philippines) constitute a substantial and not merely a formal change, which grants illegitimate children certain successional rights. A careful evaluation of the New Civil Code provisions, especially Articles 902, 982, 989, and 990, claimed by petitioners to have conferred illegitimate children the right to represent their parents in the inheritance of their legitimate grandparents, would in point of fact reveal that such right to this time does not exist.

Article 982 is inapplicable to instant case because Article 992 prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother. It may not be amiss to state that Article 982 is the general rule and Article 992 the exception. Articles 902, 989, and 990 clearly speak of successional rights of *illegitimate* children, which rights are transmitted to their descendants upon their death. The descendants (of these illegitimate children) who may inherit by virtue of the right of representation may be legitimate or illegitimate. In whatever manner, one should not overlook the fact that the persons to be represented are themselves *illegitimate*.

Article 992 of the New Civil Code provides a barrier or iron curtain in that it prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother of said illegitimate child. They may have a natural tie of blood, but this is not recognized by law for the purpose of Article 992. Between the legitimate family and the illegitimate family there is presumed to be an intervening antagonism and incompatibility. The illegitimate child is disgracefully looked down upon by the legitimate family; and the family is in turn, hated by the illegitimate child; the latter considers the privileged condition of the former, and the resources of which it is thereby deprived; the former, in turn, sees in the illegitimate child nothing but the product of sin, palpable evidence of a blemish broken in life; the law does no more than recognize this truth, by avoiding further ground of resentment.

It is therefore clear from Article 992 of the New Civil Code that the phrase "legitimate children and relatives of his father or mother" includes Simona Pamuti Vda. de Santero as the word "relative" is broad enough to comprehend all the kindred of the person spoken of. (Comment, p. 139 Rollo citing p. 2862 Bouvier's Law Dictionary vol. 11, Third Revision, Eight Edition) The record reveals that from the commencement of this case the only parties who claimed to be the legitimate heirs of the late Simona Pamuti Vda. de Santero are Felisa Pamuti Jardin and the six minor natural or illegitimate children of Pablo Santero. Since petitioners herein are barred by the provisions of Article 992, the respondent Intermediate Appellate Court did not commit any error in holding Felisa Pamuti Jardin to be the sole legitimate heir to the intestate estate of the late Simona Pamuti Vda. de Santero.

The word "relatives" is a general term and when used in a statute it embraces not only collateral relatives but also all the kindred of the person spoken of, unless the context indicates that it was used in a more restrictive or limited sense — which as already discussed earlier, is not so in the case at bar.

In the light of the foregoing, We conclude that until Article 992 is suppressed or at least amended to clarify the term "relatives" there is no other alternative but to apply the law literally. Thus, We hereby reiterate the decision of June 17, 1987 and declare Felisa Pamuti-Jardin to be the sole heir to the intestate estate of Simona Pamuti Vda. de Santero, to the exclusion of petitioners.

OLIVIA S. PASCUAL and HERMES S. PASCUAL, *Petitioners*, -versus- ESPERANZA C. PASCUAL-BAUTISTA, et. al., *Respondents*.

G.R. No. 84240, March 25, 1992, SECOND DIVISION, Paras, J.

Article 992 of the Civil Code provides a barrier or iron curtain in that it prohibits absolutely a succession ab intestato between the illegitimate child and the legitimate children and relatives of the father or mother of said legitimate child.

Eligio Pascual is a legitimate child but petitioners are his illegitimate children. Applying the above doctrine to the case at bar, petitioners herein cannot represent their father Eligio Pascual in the succession of the latter to the intestate estate of the decedent Andres Pascual, full blood brother of their father.

FACTS:

Don Andres Pascual died intestate on October 12, 1973 without any issue, legitimate, acknowledged natural, adopted or spurious children. Adela Soldevilla de Pascual, the surviving spouse of the late Don Andres Pascual, filed with a Special Proceeding for administration of the intestate estate of her late husband. Later on, she filed a Supplemental Petition to the Petition for letters of Administration, where she **expressly stated that Olivia Pascual and Hermes Pascual, are among the heirs of Don Andres Pascual.**

On February 27, 1974, again Adela Soldevilla de Pascual executed an affidavit, to the effect that of her own knowledge, **Eligio Pascual is the younger full blood brother of her late husband Don Andres Pascual.**

On October 16, 1985, all the other heirs entered into a COMPROMISE AGREEMENT, over the vehement objections of the herein petitioners Olivia S. Pascual and Hermes S. Pascual. The said Compromise Agreement had been entered into despite the Manifestation/Motion of the petitioners Olivia Pascual and Hermes Pascual, manifesting their hereditary rights in the intestate estate of Don Andres Pascual, their uncle. Petitioners thereafter filed their Motion to Reiterate Hereditary Rights which was ultimately denied by the CA. Thus, this petition.

ISSUE:

Whether or not Article 992 of the Civil Code of the Philippines, can be interpreted to exclude **recognized natural children** from the inheritance of the deceased.

RULING:

NO. Article 992 of the civil Code, provides:

An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

The issue in the case at bar, had already been laid to rest in *Diaz v. IAC, supra*, where this Court ruled that:

Article 992 of the Civil Code provides a barrier or iron curtain in that **it prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother of said legitimate child.** They may have a natural tie of blood, but this is not recognized by law for the purposes of Article 992. Between the legitimate family and illegitimate family there is presumed to be an intervening antagonism and incompatibility.

Eligio Pascual is a legitimate child but petitioners are his illegitimate children.

Applying the above doctrine to the case at bar, respondent IAC did not err in holding that petitioners herein cannot represent their father Eligio Pascual in the succession of the latter to the intestate estate of the decedent Andres Pascual, full blood brother of their father.

In their memorandum, petitioners insisted that Article 992 in the light of Articles 902 and 989 of the Civil Code allows them (Olivia and Hermes) to represent Eligio Pascual in the intestate estate of Don Andres Pascual.

On motion for reconsideration of the decision in *Diaz v. IAC*, this Court further elucidated the successional rights of illegitimate children. The Court held:

Article 902, 989, and 990 clearly speaks of successional rights of illegitimate children, which rights are transmitted to their descendants upon their death. The descendants (of these illegitimate children) who may inherit by virtue of the right of representation may be legitimate or illegitimate. **In whatever manner, one should not overlook the fact that the persons to be represented are themselves illegitimate. The three named provisions are very clear on this matter. The right of representation is not available to illegitimate descendants of legitimate children in the inheritance of a legitimate grandparent.** It may be argued, as done by petitioners, that the illegitimate descendant of a legitimate child is entitled to represent by virtue of the provisions of Article 982, which provides that "the grandchildren and other descendants shall inherit by right of representation." Such a conclusion is erroneous. It would allow intestate succession by an illegitimate child to the legitimate parent of his father or mother, a situation which would set at naught the provisions of Article 992. **Article 982 is inapplicable to the instant case because Article 992 prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother. It may not be amiss to state Article 982 is the general rule and Article 992 the exception.**

The rules laid down in Article 982 that "grandchildren and other descendants shall inherit by right of representation" and in Article 902 that the rights of illegitimate children . . . are transmitted upon their death to their descendants, whether legitimate or illegitimate are *subject to the limitation* prescribed by Article 992 to the end that an illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother.

Clearly the term "illegitimate" refers to both natural and spurious. Finally, under Article 176 of the Family Code, all illegitimate children are generally placed under one category, which undoubtedly settles the issue as to whether or not acknowledged natural children should be treated differently, in the negative.

**BENIGNO MANUEL, et. al., Petitioners, -versus- HON. NICODEMO T. FERRER, Presiding Judge,
Regional Trial Court, Branch 37, Lingayen, Pangasinan, MODESTA BALTAZAR and
ESTANISLAOA MANUEL, Respondents.**

G.R. No. 117246, August 21, 1995, THIRD DIVISION, VITUG, J.

It must be noted that under Art. 992 of the Code, there is a barrier dividing members of the illegitimate family from members of the legitimate family. It is clear that by virtue of this barrier, the legitimate brothers and sisters as well as the children, whether legitimate or illegitimate, of such brothers and sisters, cannot inherit from the illegitimate child. Consequently, when the law speaks of "brothers and sisters, nephews and nieces" as legal heirs of an illegitimate child, it refers to illegitimate brothers and sisters as well as to the children, whether legitimate or illegitimate, of such brothers and sisters.

FACTS:

Petitioners, the legitimate children of spouses **Antonio Manuel and Beatriz Guiling**, initiated this suit. During his marriage with Beatriz, **Antonio had an extra-marital affair with one Ursula Bautista**. From this relationship, **Juan Manuel was born**. Several years passed before Antonio Manuel, his wife Beatriz, and his mistress Ursula finally crossed the bar on, respectively, 06 August 1960, 05 February 1981 and 04 November 1976.

Juan Manuel, the illegitimate son of Antonio, married Esperanza Gamba. In consideration of the marriage, a donation *propter nuptias* over a parcel of land, was executed in favor of Juan Manuel by Laurenciana Manuel. Two other parcels of land were later bought by Juan and registered in his name. The couple were not blessed with a child of their own. Their desire to have one impelled the spouses to take private respondent **Modesta Manuel-Baltazar into their fold and so raised her as their own "daughter"**.

On 03 June 1980, Juan Manuel executed in favor of **Estanislaoa Manuel** a Deed of Sale *Con Pacto de Retro* over a one-half (1/2) portion of his land. Juan Manuel died intestate on 21 February 1990. Two years later, or on 04 February 1992, Esperanza Gamba also passed away.

On 05 March 1992, a month after the death of Esperanza, Modesta executed an Affidavit of Self-Adjudication claiming for herself the three parcels of land and the three titles in the name of Juan Manuel were canceled and new titles were issued in the name of Modesta Manuel-Baltazar.

On 19 October 1992, Modesta executed in favor of her co-respondent Estanislaoa Manuel a Deed of Renunciation and Quitclaim over the unredeemed one-half (1/2) portion of the land that was sold to the latter by Juan Manuel under the 1980 Deed of Sale *Con Pacto de Retro*. These acts of Modesta apparently did not sit well with petitioners. In a complaint filed before the Regional Trial Court of Lingayen, Pangasinan, the petitioners sought the declaration of nullity of the aforesaid instruments but was dismissed, the petitioners not being the real party in interest.

ISSUE:

Whether or not the petitioners are real party in interest?

RULING:

NO. Petitioners argue that they are the legal heirs over one-half of Juan's intestate estate (while the other half would pertain to Juan's surviving spouse) under the provision of the last paragraph of Article 994 of the Civil Code, providing thusly:

Art. 994. In default of the father or mother, an illegitimate child shall be succeeded by his or her surviving spouse, who shall be entitled to the entire estate.

If the widow or widower should survive with brothers and sisters, nephews and nieces, she or he shall inherit one-half of the estate, and *the latter the other half.*

Respondents, in turn, submit that Article 994 should be read in conjunction with Article 992 of the Civil Code, which reads:

Art. 992. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relative inherit in the same manner from the illegitimate child.

Article 992, a basic postulate, enunciates what is so commonly referred to in the rules on succession as the "principle of absolute separation between the legitimate family and the illegitimate family." The doctrine rejects succession *ab intestato* in the *collateral line* between legitimate relatives, on the one hand, and illegitimate relatives, on other hand, although it does not totally disavow such succession in the direct line. Since the rule is predicated on the presumed will of the decedent, it has no application, however, on testamentary dispositions.

This "barrier" between the members of the legitimate and illegitimate family in intestacy is explained by a noted civilist. His thesis:

What is meant by the law when it speaks of brothers and sisters, nephews and nieces, as legal or intestate heirs of an illegitimate child? It must be noted that under Art. 992 of the Code, there is a barrier dividing members of the illegitimate family from members of the legitimate family. It is clear that by virtue of this barrier, the legitimate brothers and sisters as well as the children, whether legitimate or illegitimate, of such brothers and sisters, cannot inherit from the illegitimate child. *Consequently, when the law speaks of "brothers and sisters, nephews and nieces" as legal heirs of an illegitimate child, it refers to illegitimate brothers and sisters as well as to the children, whether legitimate or illegitimate, of such brothers and sisters.*

In her answer to the complaint, Modesta candidly admitted that she herself is not an intestate heir of Juan Manuel. She is right. A ward (*ampon*), without the benefit of formal (judicial) adoption, is neither a compulsory nor a legal heir.

We must hold, nevertheless, that the complaint of petitioners seeking the nullity of the Affidavit of Self-Adjudication executed by Modesta, the three (3) TCT's issued to her favor, as well as the Deed of Renunciation and Quitclaim in favor of Estanislao Manuel, was properly dismissed by the trial court. Petitioners, not being the real "parties-in-interest" in the case, had neither the standing nor the cause of action to initiate the complaint.

CORAZON DEZOLLER TISON and RENE R. DEZOLLER, *Petitioners*, -VERSUS- COURT OF APPEALS AND TEODORA DOMINGO, *Respondents*.

G.R. No. 121027, July 31, 1997, SECOND DIVISION, Regallado, J.

*Upon the death of Teodora Dezoller Guerrero, one-half of the subject property was automatically reserved to the surviving spouse, Martin Guerrero, as his share in the conjugal partnership. Applying the aforequoted statutory provisions, **the remaining half shall be equally divided between the widower and herein petitioners who are entitled to jointly inherit in their own right. Hence, Martin Guerrero could only validly alienate his total undivided three-fourths (3/4) share in the entire property to herein private respondent. Resultantly, petitioners and private respondent are deemed co-owners of the property in the proportion of an undivided one-fourth (1/4) and three-fourths (3/4) share thereof, respectively.***

FACTS:

The case involves an action for reconveyance filed by herein petitioners against herein private respondent over a parcel of land with a house and apartment thereon located at San Francisco del Monte, Quezon City and which was **originally owned by the spouses Martin Guerrero and Teodora Dezoller Guerrero.**

It appears that **petitioners Corazon Tison and Rene Dezoller are the niece and nephew, respectively, of the deceased Teodora Dezoller Guerrero who is the sister of petitioner's father, Hermogenes Dezoller.**

Teodora Dezoller Guerrero died without any ascendant or descendant, and was survived only by her husband, Martin Guerrero, and herein petitioners. Petitioners' father, Hermogenes, died, hence they seek to inherit from Teodora Dezoller Guerrero by right of representation.

The records reveal that upon the death of Teodora Dezoller Guerrero, her surviving spouse, Martin, executed an Affidavit of Extrajudicial Settlement adjudicating unto himself, allegedly as sole heir, the land in dispute. Martin Guerrero thereafter sold the lot to herein private respondent Teodora Domingo.

Martin Guerrero died. Subsequently, herein petitioners filed an action for reconveyance claiming that they are entitled to inherit one-half of the property in question by right of representation.

ISSUE:

Whether or not the plaintiffs are entitled to inherit by right of representation from the estate of the late Teodora Dezoller.

RULING:

YES. The following provisions of the Civil Code provide for the manner by which the estate of the decedent shall be divided in this case, to wit:

Art. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions.

Art. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under Article 1001.

Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

Upon the death of Teodora Dezoller Guerrero, one-half of the subject property was automatically reserved to the surviving spouse, Martin Guerrero, as his share in the conjugal partnership. Applying the aforementioned statutory provisions, **the remaining half shall be equally divided between the widower and herein petitioners who are entitled to jointly inherit in their own right. Hence, Martin Guerrero could only validly alienate his total undivided three-fourths (3/4) share in the entire property to herein private respondent. Resultantly, petitioners and private respondent are deemed co-owners of the property** in the proportion of an undivided one-fourth (1/4) and three-fourths (3/4) share thereof, respectively.

ZOSIMA VERDAD, *Petitioner*, -versus- THE HON. COURT OF APPEALS, SOCORRO C. ROSALES, AURORA ROSALES, NAPOLEON ROSALES, ANTONIO ROSALES, FLORENDA ROSALES, ELENA ROSALES AND VIRGINIA ROSALES, *Respondents*.

G.R. No. 109972, April 29, 1996, FIRST DIVISION, Vitug, J.

It is true that Socorro, a daughter-in-law (or, for that matter, a mere relative by affinity), is not an intestate heir of her parents-in-law; however, Socorro's right to the property is not because she rightfully can claim heirship in Macaria's estate but that she is a legal heir of her husband, David Rosales, part of whose estate is a share in his mother's inheritance.

FACTS:

During her lifetime, **Macaria** contracted two marriages: the first with Angel Burdeos and the second, following the latter's death, with Canuto Rosales. At the time of her own death, Macaria was survived by her son **Ramon A. Burdeos** and her grandchild (by her daughter Felicidad A. Burdeos) Estela Lozada of the first marriage and her children of the second marriage, namely, **David Rosales**, Justo Rosales, Romulo Rosales, and Aurora Rosales. **Socorro Rosales is the widow of David Rosales who himself, some time after Macaria's death, died intestate without an issue.**

In an instrument, dated 14 June 1982, the heirs of Ramon Burdeos, namely, his widow Manuela Legaspi Burdeos and children Felicidad and Ramon, Jr., sold to petitioner Zosima Verdad their interest on the disputed lot supposedly for the price of P55,460.00.

Socorro discovered the sale on 30 March 1987 while she was at the City Treasurer's Office. She sought the intervention of the Lupong Tagapayapa of Barangay 9, for the redemption of the property. She tendered the sum of P23,000.00 to Zosima. The latter refused to accept the amount for being much less than the lot's current value of P80,000.00. No settlement having been reached before the Lupong

Tagapayapa, private respondents initiated against petitioner an action for "Legal Redemption with Preliminary Injunction" before the Regional Trial Court of Butuan City.

ISSUE:

Whether or not Socorro C. Rosales is entitled to redeem the property.

RULING:

YES. It is true that Socorro, a daughter-in-law (or, for that matter, a mere relative by affinity), is not an intestate heir of her parents-in-law; however, Socorro's right to the property is not because she rightfully can claim heirship in Macaria's estate but that she is a legal heir of her husband, David Rosales, part of whose estate is a share in his mother's inheritance.

David Rosales, incontrovertibly, survived his mother's death. When Macaria died, her estate passed on to her surviving children, among them David Rosales, who thereupon became co-owners of the property. When David Rosales himself later died, his own estate, which included his *undivided* interest over the property inherited from Macaria, passed on to his widow Socorro and her co-heirs pursuant to the law on succession.

Art. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under article 1001.

xxx xxx xxx

Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

Socorro and herein private respondents, along with the co-heirs of David Rosales, thereupon became *co-owners* of the property that originally descended from Macaria. When their interest in the property was sold by the Burdeos heirs to petitioner, a right of redemption arose in favor of private respondents; thus:

Art. 1619. Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or dation in payment, or by any other transaction whereby ownership is transmitted by onerous title.

Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

**WENCESLA CACHO, *Petitioner-appellee*, -versus- JOHN G. UDAN, and RUSTICO G. UDAN,
Oppositors-appellants.**

G.R. No. L-19996, April 30, 1965, EN BANC, Reyes, J.

These legal provisions decree that collateral relatives of one who died intestate inherit only in the absence of descendants, ascendants, and illegitimate children. Albeit the brothers and sisters can concur with the widow or widower under Article 1101, they do, not concur, but are excluded by the surviving children, legitimate or illegitimate (Art. 1003).

FACTS:

On 13 December 1959 one Silvina G. Udan, single, and a resident of San Marcelino, Zambales, died leaving a purported will naming her son, **Francisco G. Udan, and one Wencesla Cacho**, as her sole heirs, share and share alike. Wencesla Cacho, filed a petition to probate said Will wherein Rustico G. Udan, legitimate brother of the testatrix, filed an opposition to the probate.

On 9 June 1960 Francisco G. Udan, through counsel, also filed his opposition to the probate of this will. On 15 September 1960 oppositor Rustico G. Udan, through counsel, verbally moved to withdraw his opposition, due to the appearance of Francisco G. Udan, the named heir in the will and said opposition was ordered withdrawn. After one witness, the Notary Public who made and notarize the will, had testified in court, oppositor Francisco G. Udan died on June 1961 in San Marcelino, Zambales, Philippines.

After the death of Francisco G. Udan, John G. Udan and Rustico G. Udan, both legitimate brothers of the testatrix Silvina G. Udan, filed their respective oppositions on the ground that the will was not attested and executed as required by law, that the testatrix was incapacitated to execute it; and that it was procured by fraud or undue influence. However, the Honorable Court of First Instance of Zambales issued an Order disallowing these **two oppositions for lack of interest in the estate and directing the Fiscal to study the advisability of filing escheat proceedings**.

ISSUE:

Whether or not the oppositor brothers, John and Rustico Udan, may claim to be heirs intestate of their legitimate sister, the late Silvina Udan.

RULING:

NO. We find that the court below correctly held that they were not, for at the time of her death Silvina's illegitimate son, Francisco Udan, was her heir intestate, to the exclusion of her brothers. This is clear from Articles 988 and 1003 of the governing Civil Code of the Philippines, in force at the time of the death of the testatrix:

ART. 988. In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.

ART. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

These legal provisions decree that collateral relatives of one who died intestate inherit only in the absence of descendants, ascendants, and illegitimate children. Albeit the brothers and sisters can concur with the widow or widower under Article 1101, they do, not concur, but are excluded by the surviving children, legitimate or illegitimate (Art. 1003).

That Francisco Udan was the illegitimate son of the late Silvina is not denied by the oppositor; and he is so acknowledged to be in the testament, where said Francisco is termed "son" by the testatrix. As the latter was admittedly single, the son must be necessarily illegitimate (presumptively natural).

The trial court, therefore, committed no error in holding that John and Rustico Udan had no standing to oppose the probate of the will. For if the will is ultimately probated John and Rustico are excluded by its terms from participation in the estate; and if probate be denied, both oppositors-appellants will be excluded by the illegitimate son, Francisco Udan, as sole intestate heir, by operation of law.

The death of Francisco two years after his mother's demise does not improve the situation of appellants. The rights acquired by the former are only transmitted by his death to his own heirs at law not to the appellants, who are legitimate brothers of his mother, for the reason that, as correctly decided by the court below, the legitimate relatives of the mother cannot succeed her illegitimate child. This is clear from Article 992 of the Civil Code.

ART. 992. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

For the oppositors-appellants it is argued that while Francisco Udan did survive his mother, and acquired the rights to the succession from the moment of her death (Art. 777, Civ. Code), still he did not acquire the inheritance until he accepted it. This argument fails to take into account that the Code presumes acceptance of an inheritance if the latter is not repudiated in due time (Civ. Code, Art. 1057, par. 2), and that repudiation, to be valid, must appear in a public or authentic instrument, or petition to the court. There is no document or pleading in the records showing repudiation of the inheritance by Francisco Udan. The latter's own opposition to the probate of the alleged will is perfectly compatible with the intention to exclude the proponent Cacho as testamentary coheir, and to claim the entire inheritance as heir *ab intestato*.

Finally, it is urged that as probate is only concerned with the due execution of a testament, any ruling on the successional rights of oppositors-appellants is at present premature. Inquiry into the hereditary rights of the appellants is not premature, if the purpose is to determine whether their opposition should be excluded in order to simplify and accelerate the proceedings. If, as already shown, appellants cannot gain any hereditary interest in the estate whether the will is probated or not, their intervention would merely result in unnecessary complication.

It may not be amiss to note, however, that the hearing on the probate must still proceed to ascertain the rights of the proponent Cacho as testamentary heir.

MANUEL SARITA ET AL., Plaintiffs-Appellants, -versus- ANDRES CANDIA, Defendant-Appellee.
G.R. No. 7768, November 14, 1912, FIRST DIVISION, Arellano, C.J.

Manuel Sarita, the principal plaintiff, has absolutely no such right, because he cannot represent his grandfather Domingo, since, as aforesaid, in the collateral line the right of representation can only

take place in favor of the children of brother or sisters, but not in favor of the grandson of a brother, such as is the said Manuel Sarita, the son of Sofia Cedenó who, in turn, was the daughter of Domingo Cedenó.

FACTS:

The spouses **Apolinario Cedenó and Roberta Montesa** acquired during their marriage a piece of land, apparently of an area of 2 cavanés of corn upon which they had planted fruit trees. Apolinario Cedenó died in 1895 and Roberta Montesa in 1909. It is alleged that during the lifetime of these spouses, from 1886 to April, 1909, on which latter date Roberta Montesa died, **Andrés Candia was holding and cultivating the said land, but that, as stated in the complaint, he did so merely under a lease and paid the said spouses one hundred pesos semiannually**; that, from May, 1909, he refused to pay the emphyteutic rent for the cultivation of the land, appropriated the land and claimed ownership thereof; and that he also took possession of four mares, twelve carabaos, and several pieces of furniture which were in the house erected on the said land — a house worth 50 pesos — which he also seized and claimed as his property.

Apolinario Cedenó had three brothers and one sister, Macario, Domingo, Leon, and Cristeta, of whom only the last mentioned is living. Macario left five children, among them Tomas Cedenó; Domingo, the same number, among them a daughter named Sofia, who died leaving a son, Manuel Sarita; and Leon, four, among them, Gregorio Cedenó. All of these except Gregorio Cedenó and his brothers sue for the ownership of the land and the other personal property of ownership of the land and the other personal property of Andrés Candia which, together with the fruits thereof, **they requested the Court of First Instance of Cebu to sentence the latter to return to them and, further, that he indemnify them in the amount of P800, and pay the costs.**

ISSUE:

Whether or not petitioner Sarita has a right to represent his grandfather Domingo.

RULING:

NO. Manuel Sarita, the principal plaintiff, has absolutely no such right, because he cannot represent his grandfather Domingo, since, as aforesaid, in the collateral line the right of representation can only take place in favor of the children of brother or sisters, but not in favor of the grandson of a brother, such as is the said Manuel Sarita, the son of Sofia Cedenó who, in turn, was the daughter of Domingo Cedenó.

Second. That, on the hypothesis that such hereditary right derived from the intestate succession of Apolinario Cedenó, does exist, it could only be exercised by Cristeta Cedenó, the children of Macario Cedenó, and those of Domingo Cedenó, but not by Manuel Sarita, because in inheritances the nearer relative excludes the more remote, excepting the right of representation in proper cases (Civil Code, art. 921); from which it is inferred that, in pushing forward Cristeta Cedenó, the children of Macario Cedenó and those of Domingo Cedenó, to exercise such a hereditary right, it should have been noticed that the personality of these parties as the nearest relatives excluded that of Manuel Sarita, the son of Sofia Cedenó, of a more remote degree.

On the same hypothesis, in the eyes of the law no meaning whatever could be given to the document, Exhibit H of the plaintiffs, wherein it is made to appear that the widow of Apolinario Cedenó, Roberta Montesa, implored of the heirs of her deceased husband that she be allowed to continue in the

possession of the land and the house of the family; inasmuch as, as coowner of such property, she was entitled to one-half of the other half of the same, pursuant to the provisions of articles 837 and 953 of the Civil Code, and until she was satisfied for her part of usufruct, this held of the other half remained liable for the payment of such part of usufruct. (Civil Code, art. 838.)

Fourth. The hypothesis disappears from the moment that it is proved that at the death of such alleged predecessor in interest in the inheritance, the land in question was not owned by him, it having been transferred in 1881, according to a conclusion established by the trial judge. Therefore, the action for the recovery of possession, derived from such alleged inheritance, cannot exist.

This transfer of the land affected by Isidario or Apolinario Cedeno was originally the title alleged by the defendant — a title which must not be presumed in the present case, but proved. It is true that the possessor, in the capacity of owner, has in his favor the legal presumption that he holds under lawful title and cannot be compelled to exhibit it. (Civil Code, art. 446); but it also true that when the defendant agrees with the plaintiffs that the thing demanded belonged to a determinate person during his lifetime from whom these latter claim to derive their right, the existence is thereby admitted of a right of ownership opposed to title of the present possessor, and hence logically the necessity for the latter to prove his title and exhibit it, in order to destroy the contrary presumption in favor of that prior ownership.

SPOUSES CHARLITO COJA and ANNIE MESA COJA, *Petitioners*, -versus- HON. COURT OF APPEALS and HEIRS OF FELICIANO AQUILLO, SR., *Respondents*.
G.R. No. 151153, December 10, 2007, FIRST DIVISION, Azcuna, J.

Upon the death of Lorenza, the conjugal partnership was terminated. As a result, one half of the property was automatically reserved in favor of the surviving spouse, Feliciano Sr. as his share in the conjugal partnership. The other half, which is the share of Lorenza, was transmitted to Lorenza's heirs, Feliciano Jr., Luz, and her husband Feliciano Sr., who is entitled to the same share as that of a legitimate child

FACTS:

Luz Aquillo Victor and Feliciano Aquillo, Jr., both deceased, were the legitimate children of the late spouses **Feliciano Aquillo, Sr. and Lorenza Mangarin Aquillo**. During their marriage, Feliciano Sr. and Lorenza acquired a 120-square meter lot located at Poblacion, Mandaon, Masbate, upon which they built their conjugal home. After the death of Lorenza, **Feliciano Sr. cohabited with Paz Lachica** and lived at the aforesaid house. However, after Lorenza's death, her heirs failed to partition their hereditary shares in their inheritance.

On February 27, 1960, while **Lorenza was cohabiting with Feliciano Sr., Paz Lachica purchased a 192-square meter lot. She later sold 40.10 square meters of the property leaving her with only 151.9 square meters.**

On December 18, 1986, Paz Lachica and herein petitioners, Spouses Charlito Coja and Annie Mesa Coja, executed a Deed of Absolute Sale wherein the former sold the 336-square meter parcel of land.

Sometime in 1987, Charlito Coja filed an application for the issuance of title with the Regional Trial Court. Luz, being one of the heirs of Feliciano Sr., opposed the application for registration. Likewise, the Office of the Solicitor General (OSG) opposed the application. The OSG alleged, among other things, that the applicant or his predecessors-in- interest had not been in open, continuous, exclusive,

and notorious possession of the subject land within the period required by law; and that the documents attached to or alleged in the application do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land or of an open, continuous, exclusive, and notorious possession and occupation thereof in the concept of an owner.

On November 3, 1989, respondents filed an action for recovery of possession and ownership with damages against the petitioners and Paz Lachica. Respondents claimed that they are the true and lawful heirs of the Spouses Feliciano Sr. and Lorenza; that Paz Lachica refused to deliver the property to its rightful owners despite repeated demands; that Paz Lachica appropriated the subject property to herself and had the tax declaration transferred to her name; that Paz Lachica sold the property to the Spouses Coja; and that the Spouses Coja failed to deliver the subject property to the rightful heirs despite repeated demands.

ISSUE:

Whether or not the petitioners are the true and lawful owners of the lot.

RULING:

NO. The property subject matter of the contract of sale between the Spouses Coja and Paz Lachica, is a 336-square meter parcel of land. This includes the property bought by Paz Lachica from the heirs of Juan Rivas, some other parcels of land, and the 120-square meter lot purchased by Feliciano Sr. and Lorenza during their marriage.

Article 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

All properties acquired during the marriage are thus disputably presumed to belong to the conjugal partnership. As a condition for the operation of above article, in favor of the conjugal partnership, the party who invokes the presumption must first prove that the property was acquired during the marriage. The presumption may be rebutted only with strong, clear, categorical and convincing evidence. There must be strict proof of the exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it.

Petitioners insist that the property subject of the sale was exclusively owned by Paz Lachica having been purchased prior to her marriage with Feliciano Sr. The argument is not supported by evidence. **Upon the death of Lorenza, the conjugal partnership was terminated. As a result, one half of the property was automatically reserved in favor of the surviving spouse, Feliciano Sr. as his share in the conjugal partnership. The other half, which is the share of Lorenza, was transmitted to Lorenza's heirs, Feliciano Jr., Luz, and her husband Feliciano Sr., who is entitled to the same share as that of a legitimate child**

Considering that Paz Lachica owns only 26.6666 square meters of the 120-square meter property and the remaining 93.3333-square meter portion thereof is owned by the respondents, the former could only validly sell the portion which rightfully belonged to her. However, considering that Paz Lachica, the predecessor-in-interest of the Spouses Coja, was a co-owner of the subject 120-square meter property; and considering further that partition of the property is wanting, this Court is precluded from directing the Spouses Coja to return specific portions of the property to respondents.

IN RE SUMMARY SETTLEMENT OF THE ESTATE OF MELODIA FERRARIS.
FILOMENA ABELLANA DE BACAYO, Petitioner, -versus- GAUDENCIA FERRARIS DE BORROMELO,
CATALINA FERARIS DE VILLEGAS, JUANITO FERRARIS and CONCHITA FERRARIS , Respondent.
G.R. No. L-19382, EN BANC, August 31, 1965, REYES, J.B.L., J.

A decedent's uncles and aunts may not succeed ab intestato so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

The absence of brothers, sisters, nephews and nieces of the decedent is a precondition to the other collaterals (uncles, cousins, etc.) being called to the succession. (Art. 1009, Civil Code)

An aunt of the deceased is as far distant as the nephews from the decedent (three degrees) since in the collateral line to which both kinds of relatives belong, degrees are counted by first ascending to the common ancestor and then descending to the heir (Civil Code, Art. 966).

Nephews and nieces alone do not inherit by right of representation (i.e., per stirpes) unless concurring with brothers or sisters of the deceased.

FACTS:

This is a pauper's appeal, directly brought to this Court on points of law, from a resolution, dated September 20, 1961, excluding petitioner-appellant herein, Filomena Abellana de Bacayo, as heir in the summary settlement of the estate of Melodia Ferraris, Special Proceeding No. 2177-R of the Court of First Instance of Cebu, Third Branch, as well as from the order, dated October 16, 1961, denying a motion to reconsider said resolution.

Melodia Ferraris was a resident of Cebu City until 1937 when she transferred to Intramuros, Manila. She was known to have resided there continuously until 1944. Thereafter, up to the filing on December 22, 1960 of the petition for the summary settlement of her estate, she has not been heard of and her whereabouts are still unknown. More than ten (10) years having elapsed since the last time she was known to be alive, she was declared presumptively dead for purposes of opening her succession and distributing her estate among her heirs.

Melodia Ferraris left properties in Cebu City, consisting of one-third (1/3) share in the estate of her aunt, Rosa Ferraris, valued at P6,000.00, more or less, and which was adjudicated to her in Special Proceeding No. 13-V of the same court.

The deceased Melodia Ferraris left no surviving direct descendant, ascendant, or spouse, but was survived only by collateral relatives, namely, Filomena Abellana de Bacayo, an aunt and half-sister of decedent's father, Anacleto Ferraris; and by Gaudencia, Catalina, Conchita, and Juanito, all surnamed Ferraris, her nieces and nephew, who were the children of Melodia's only brother of full blood, Arturo Ferraris, who pre-deceased her (the decedent). These two classes of heirs claim to be the nearest intestate heirs and seek to participate in the estate of said Melodia Ferraris.

ISSUE:

Whether or not a decedent's uncles and aunts may succeed *ab intestate* notwithstanding if there are nephews and nieces surviving and qualified to succeed? (NO)

RULING:

We agree with appellants that as an aunt of the deceased she is as far distant as the nephews from the decedent (three degrees) since in the collateral line to which both kinds of relatives belong degrees are counted by first ascending to the common ancestor and then descending to the heir (Civil Code, Art. 966). Appellant is likewise right in her contention that nephews and nieces alone do not inherit by right of representation (i.e., *per stripes*) unless concurring with brothers or sisters of the deceased, as provided expressly by Article 975:

ART. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions.

Nevertheless, the trial court was correct when it held that, in case of intestacy, nephews and nieces of the *de cuius* exclude all other collaterals (aunts and uncles, first cousins, etc.) from the succession. This is readily apparent from articles 1001, 1004, 1005, and 1009 of the Civil Code of the Philippines, that provided as follows:

ART. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

ART. 1004. Should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares.

ART. 1005. Should brothers and sisters survive together with nephews and nieces, who are the children of the decedent's brothers and sisters of the full blood, the former shall inherit *per capita*, and the latter *per stripes*.

ART. 1009. Should there be neither brothers nor sister nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.
The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood.

Under the last article (1009), the absence of brothers, sisters, nephews and nieces of the decedent is a precondition to the other collaterals (uncles, cousins, etc.) being called to the succession. This was also and more clearly the case under the Spanish Civil Code of 1889, that immediately preceded the Civil Code now in force (R.A. 386). Thus, Articles 952 and 954 of the Code of 1889 prescribed as follows:

ART. 952. In the absence of brother, or sisters and of nephews or nieces, children of the former, whether of the whole blood or not, the surviving spouse, if not separated by a final decree of divorce, shall succeed to the entire estate of the deceased.

ART. 954. Should there be neither brothers or sisters, nor children of brothers or sisters, nor a surviving spouse, the other collateral relatives shall succeed to the estate of deceased.
The latter shall succeed without distinction of lines or preference among them by reason of the whole blood.

It will be seen that under the preceding articles, brothers and sisters and nephews and nieces inherited *ab intestato ahead* of the surviving spouse, while other collaterals succeeded only *after* the widower or widow. The present Civil Code of the Philippines merely placed the spouse on a par with the nephews and nieces and brothers and sisters of the deceased, but without altering the preferred position of the latter *vis-a-vis* the other collaterals.

Appellants quote paragraph 2 of Tolentino's commentaries to Article 1009 of the present Civil Code as declaring that Article 1009 does not establish a rule of preference. Which is true as to "other collaterals," since preference among them is according to their proximity to the decedent, as established by Article 962, paragraph 1.

ART. 962. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place.

But Tolentino does not state that nephews and nieces concur with other collaterals of equal degree. On the contrary, in the first paragraph of his commentaries to Article 1009 (Vol II, p. 439) (which counsel for appellants had unethically omitted to quote), Tolentino expressly states:

Other collaterals. — The last of the relatives of the decedent to succeed in intestate succession are the collaterals *other than brothers or sisters or children of brothers or sisters*. They are, however, limited to relatives within the fifth degree. Beyond this, we can safely say there is hardly any affection to merit the succession of collaterals. Under the law, therefore, relatives beyond the fifth degree are no longer considered as relatives, for successional purposes. Article 1009 does not state any order of preference. However, this article should be understood in connection with the general rule that the nearest relatives exclude the farther. Collaterals of the same degree inherit in equal parts, there being no right of representation. They succeed without distinction of lines or preference among them on account of the whole blood relationship. (Emphasis supplied)

We, therefore, hold, and so rule, that under our laws of succession, a decedent's uncles and aunts may not succeed *ab intestato* so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

GAUDENCIO BICOMONG, ET AL., *Petitioner*, -versus- **GERONIMO ALMANZA, et al. AND FLORENTINO CARTENA,** *Respondent*.

G.R. No. L-37365, FIRST DIVISION, November 29, 1977, GUERRERO, J.

In the absence of descendants, ascendants, illegitimate children, or a surviving spouse, Article 1003 of the New Civil Code provides that collateral relatives shall succeed to the entire estate of the deceased. It appearing that the decedent died intestate without an issue, and her husband and all her ascendants had died ahead of her, she is succeeded by the surviving collateral relatives, namely the daughter of her sister of full blood and the ten (10) children of her brother and two (2) sisters of half blood, in accordance with the provision of Art. 975 of the New Civil Code. By virtue of said provision, the aforementioned nephews and nieces are entitled to inherit in their own right. In Abellana-Bacayo vs. Ferraris-Borromeo, L-19382, August 31, 1965, 14 SCRA 986 this Court held that "nephews and nieces alone do not inherit by right of representation (that is per stirpes) unless concurring with brothers or sisters of the deceased."

FACTS:

Simeon Bagsic was married to Sisenanda Barcenas on June 8, 1859. Of this marriage there were born three children namely: Perpetua Bagsic, Igmedia Bagsic, and Ignacio Bagsic. Sisenanda Barcenas died ahead of her husband Simeon Bagsic.

On June 3, 1885, Simeon Bagsic remarried Silvestra Glorioso. Of this second marriage were born two children, Felipa Bagsic and Maura Bagsic. Simeon Bagsic died sometime in 1901. Silvestra Glorioso also died.

Ignacio Bagsic died on April 18, 1939 leaving the plaintiff Francisca Bagsic as his only heir. Igmedia Bagsic also died on August 19, 1944 survived by the plaintiffs Dionisio Tolentino, Maria Tolentino and Petra Tolentino.

Perpetua Bagsic died on July 1, 1945. Surviving her are her heirs, the plaintiffs Gaudencio Bicomong, Felicidad Bicomong, Salome Bicomong, and Gervacio Bicomong.

Of the children of the second marriage, Maura Bagsic died also on April 14, 1952 leaving no heir as her husband died ahead of her. Felipa Bagsic, the other daughter of the second Geronimo Almanza and her daughter Cristeta Almanza. But five (5) months before the present suit was filed or on July 23, 1959, Cristeta Almanza died leaving behind her husband, the defendant herein Engracio Manese and her father Geronimo Almanza.

The subject matter of the complaint in Civil Case No. SP-265 concerns the one-half undivided share of Maura Bagsic in the following described five (5) parcels of land which she inherited from her deceased mother, Silvestra Glorioso

Three sets of plaintiffs filed the complaint on December 1, 1959, namely: (a) the Bicomongs, children of Perpetua Bagsic; (b) the Tolentinos, children of Igmedia Bagsic; and (c) Francisco Bagsic, daughter of Ignacio Bagsic, in the Court of First Instance of Laguna and San Pablo City against the defendants Geronimo Almanza and Engracio Menese for the recovery of their lawful shares in the properties left by Maura Bagsic.

After the death of Maura Bagsic, the above-described properties passed on to Cristela Almanza who took charge of the administration of the same. Thereupon, the plaintiffs approached her and requested for the partition of their aunt's properties. However, they were prevailed upon by Cristeta Almanza not to divide the properties yet as the expenses for the last illness and burial of Maura Bagsic had not yet been paid. Having agreed to defer the partition of the same, the plaintiffs brought out the subject again sometime in 1959 only. This time Cristeta Almanza acceded to the request as the debts, accordingly, had already been paid. Unfortunately, she died without the division of the properties having been effected, thereby leaving the possession and administration of the same to the defendants.

ISSUE:

Whether or not the nephews and nieces are entitled to inherit in their own right? (YES)

RULING:

We hold that the provisions of Art. 975, 1006 and 1008 of the New Civil Code are applicable to the admitted facts of the case at bar. These Articles provide:

Art. 975. When children of one or more brothers or sisters of tile deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions."

Art. 1006. Should brothers and sisters of the full blood survive together with brothers and sisters of the half blood, the former shall be entitled to a share double that of the latter.

Art. 1008. Children of brothers and sisters of the half blood shall succeed per capita or per stirpes, in accordance with the rules laid down for brothers and sisters of the full blood.

In the absence of defendants, ascendants, illegitimate children, or a surviving spouse, Article 1003 of the New Civil Code provides that collateral relatives shall succeed to the entire estate of the deceased. It appearing that Maura Bagsic died intestate without an issue, and her husband and all her ascendants had died ahead of her, she is succeeded by the surviving collateral relatives, namely the daughter of her sister of full blood and the ten (10) children of her brother and two (2) sisters of half blood in accordance with the provision of Art. 975 of the New Civil Code.

By virtue of said provision, the aforementioned nephews and nieces are entitled to inherit in their own right. In *Abellana-Bacayo vs. Ferraris-Borromeo*, L-19382, August 31, 1965, 14 SCRA 986, this Court held that "nephews and nieces alone do not inherit by right of representation (that is per stirpes) unless concurring with brothers or sisters of the deceased."

Under the same provision, Art. 975, which makes no qualification as to whether the nephews or nieces are on the maternal or paternal line and without preference as to whether their relationship to the deceased is by whole or half blood, the sole niece of whole blood of the deceased does not exclude the ten nephews and n of half blood. The only difference in their right of succession is provided in Art. 1008, NCC in relation to Article 1006 of the New Civil Code (supra), which provisions, in effect, entitle the sole niece of full blood to a share double that of the nephews and nieces of half blood. Such distinction between whole and half blood relationships with the deceased has been recognized in *Dionisia Padura, et al. vs. Melanie Baldovino, et al.*, No. L-11960, December 27, 1958, 104 Phil. 1065 (unreported) and in *Alviar vs. Alviar*, No. L-22402, June 30, 1969, 28 SCRA 610).

The contention of the appellant that Maura Bagsic should be succeeded by Felipa Bagsic, her sister of full blood, to the exclusion of the nephews and nieces of half blood citing Art. 1004, NCC is unmeritorious and erroneous for it is based on an erroneous factual assumption, that is, that Felipa Bagsic died in 1955, which as indicated here before, is not true as she died on May 9, 1945, thus she predeceased her sister Maura Bagsic.

**THE CITY OF MANILA, *Petitioner*, -versus- THE ROMAN CATHOLIC ARCHBISHOP OF MANILA
and THE ADMINISTRATOR FOR THE ESTATE OF MARIA CONCEPCION
SARMIENTO, *Respondent*.**

G.R. No. L-10033, EN BANC, August 30, 1917, JOHNSON, J.

Under the provisions of section 750 of Act No. 190 property may be declared escheated when a person dies intestate, seized of real or personal property, leaving no heir or person by law entitled to the same. In the present case the deceased disposed of her property by a will and left heirs entitled to inherit the same. The will clearly, definitely and unequivocally designated what disposition should be made of the property in question. The property in question is still being administered in accordance with the terms of the will for the benefit of the real beneficiary as was intended by the original owner.

FACTS:

This action was commenced in the Court of First Instance of the city of Manila on the 15th day of February, 1913. Its purpose was to have declared escheated to the city of Manila certain property situated in and around said city; that said property consists of five parcels of land located in the districts of Malate and Paco of the city of Manila, as shown in a plan, in the office of the Department of Engineering and Public Works of said city of Manila, No. B-10-27. The theory of the plaintiff is that one Ana Sarmiento was the owner of said property and died in the year 1668 without leaving "her or person entitled to the same."

After hearing the evidence, the Honorable A. S. Crossfield, in a carefully prepared opinion, reached the conclusion that the prayer of the plaintiff should be denied without any finding as to costs. From that conclusion the plaintiff appealed to this court and made a number of assignments of error.

After an examination of the evidence adduced during the trial of the cause, we find that the following facts were proved by a large preponderance of the evidence: That Ana Sarmiento resided, with her husband, in the city of Manila sometime prior to the 17th day of November, 1668; that on said date she made a will; that on the 23d day of November, 1668, she added a codicil to said will, that on the 19th day of May, 1669, she made another will making a part thereof the said codicil of November 23d, 1668; that said will contained provisions for the establishment of a "*Capellania de Misas*;" that the first chaplain of said *capellania* should be her nephew Pedro del Castillo; that said will contained a provision for the administration of said property in relation with the said "*Capellania de Misas*" succeeding administration should continue *perpetually*; that said Ana Sarmiento died about the year 1672; that for more than two hundred years the intervener, the Roman Catholic Archbishop of Manila, through his various agencies, has administered said property; that the Roman Catholic Archbishop of Manila has rightfully and legally succeeded in accordance with the terms and provisions of the will of Ana Sarmiento.

ISSUES:

Whether or not the property in question can be declared escheated as of the property of Ana Sarmiento (NO)

RULING:

Section 750 of Act No. 190 provides when property may be declared escheated. It provides, "when a person dies intestate, seized of real or personal property . . . leaving no heir or person by law entitled

to the same," that then and in that case such property under the procedure provided for by sections 751 and 752, may be declared escheated.

The proof shows that Ana Sarmiento did not die intestate. She left a will. The will provides for the administration of said property by her nephew as well as for the subsequent administration of the same. She did not die without an heir nor without persons entitled to administer her estate. It further shows that she did not die without leaving a person by law entitled to inherit her property. In view of the facts, therefore, the property in question cannot be declared escheated as of the property of Ana Sarmiento. If by any chance the property may be declared escheated, it must be based upon the fact that persons subsequent to Ana Sarmiento died intestate without leaving heir or person by law entitled to the same.

The will clearly, definitely and unequivocally defines and designates what disposition shall be made of the property in question. The heir mentioned in said will evidently accepted its terms and permitted the property to be administered in accordance therewith. And, so far as the record shows, it is still being administered in accordance with the terms of said will for the benefit of the real beneficiary as was intended by the original owner.

**IN THE MATTER OF THE ESTATE OF TOMAS RODRIGUEZ, DECEASED. MANUEL TORRES,
SPECIAL ADMINISTRATOR, AND LUZ LOPEZ DE BUENO, Petitioner, -versus- MARGARITA
LOPEZ, Respondent.**

G.R. No. L-25966, EN BANC, November 1, 1926, STREET, J.

When one of two joint heirs called by will to an inheritance without special designation of shares dies before the testator, the part pertaining to such heir will, upon the subsequent death of the testator, go by accretion to the coheir; and the additional circumstance that the predeceasing heir was, at the time of the making of the will, disqualified to take, by reason of his being then the legal guardian of the testator with accounts unsettled, does not make a case for intestate succession as to his part of the estate.

FACTS:

On January 3, 1924, Tomas Rodriguez executed his last will and testament, in the second clause of which he declared:

I institute as the only and universal heirs to all my property, my cousin Vicente F. Lopez and his daughter Luz Lopez de Bueno.

Prior to the time of the execution of this will the testator, Tomas Rodriguez, had been judicially declared incapable of taking care of himself and had been placed under the care of his cousin Vicente F. Lopez, as guardian. On January 7, 1924, or only four days after the will above-mentioned was made, Vicente F. Lopez died; and the testator, Tomas Rodriguez, died on February 25, 1924, thereafter. At the time the will was made Vicente F. Lopez had not presented his final accounts as guardian, and no such accounts had been presented by him at the time of his death. Margariat Lopez was a cousin and nearest relative of the decedent. The will referred to, and after having been contested, has been admitted to probate by judicial determination.

ISSUES:

Whether or not Tomas Rodriguez has testamentary capacity to consider the will valid? (YES)

RULING:

Our discussion of the legal problem presented should begin with article 753 of the Civil Code which in effect declares that, with certain exceptions in favor of near relatives, no testamentary provision shall be valid when made by a ward in favor of his guardian before the final accounts of the latter have been approved. This provision is of undoubted application to the situation before us; and the provision made in the will of Tomas Rodriguez in favor of Vicente F. Lopez was not any general incapacity on his part, but a special incapacity due to the accidental relation of guardian and ward existing between the parties.

We now pass to article 982 of the Civil Code, defining the right of accretion. It is there declared, in effect, that accretion take place in a testamentary succession, first when the two or more persons are called to the same inheritance or the same portion thereof without special designation of shares; and secondly, when one of the persons so called dies before the testator or renounces the inheritance or is disqualifying to receive it. In the case before us we have a will calling Vicente F. Lopez and his daughter, Luz Lopez de Bueno, to the same inheritance without special designation of shares. In addition to this, one of the persons named as heir has predeceased the testator, this person being also disqualified to receive the estate even if he had been alive at the time of the testator's death. This article (982) is therefore also of exact application to the case in hand; and its effect is to give to the survivor, Luz Lopez de Bueno, not only the undivided half which she would have received in conjunction with her father if he had been alive and qualified to take, but also the half which pertained to him. There was no error whatever, therefore, in the order of the trial court declaring Luz Lopez de Bueno entitled to the whole estate.

The argument in favor of the appellant supposes that there has supervened a partial intestacy with respect to the half of the estate which was intended for Vicente F. Lopez and that this half has descended to the appellant, Margarita Lopez, as next of kin and sole heir at law of the decedent. In this connection attention is directed to article 764 of the Civil Code wherein it is declared, among other things, that a will may be valid even though the person instituted as heir is disqualified to inherit. Our attention is next invited to article 912 wherein it is declared, among other things, that legal succession takes place if the heir dies before the testator and also when the heir instituted is disqualified to succeed. Upon these provisions an argument is planted conducting to the conclusion that the will of Tomas Rodriguez was valid, notwithstanding the fact that one of the individuals named as heirs in the will was disqualified to take, and that as a consequence Margarita Lopez is entitled to inherit the share of said disqualified heir.

We are the opinion that this contention is untenable and that the appellee clearly has the better right. In playing the provisions of the Code it is the duty of the court to harmonize its provisions as far as possible, giving due effect to all; and in case of conflict between two provisions the more general is to be considered as being limited by the more specific. As between articles 912 and 983, it is obvious that the former is the more general of the two, dealing, as it does, with the general topic of intestate succession while the latter is more specific, defining the particular conditions under which accretion takes place. In case of conflict, therefore, the provisions of the former article must be considered limited by the latter. Indeed, in subsection 3 of article 912 the provision with respect to intestate succession is expressly subordinated to article 983 by the expression "and (if) there is no right of accretion." It is true that the same express qualification is not found in subsection 4 of article 912, yet it must be so understood, in view of the rule of interpretation above referred to, by which the more specific is held to control the general. Besides, this interpretation supplies the only possible means of harmonizing the two provisions. In addition to this, article 986 of the Civil Code affords

independent proof that intestate succession to a vacant portion can only occur when accretion is impossible.

The attorneys for the appellant direct attention to the fact that, under paragraph 4 of article 912, intestate succession occurs when the heir instituted is disqualified to succeed (*incapaz de suceder*), while, under the last provision in paragraph 2 of article 982, accretion occurs when one of the persons called to inherit under the will is disqualified to receive the inheritance (*incapaz de recibirla*). A distinction is then drawn between incapacity to succeed and incapacity to take, and it is contended that the disability of Vicente F. Lopez was such as to bring the case under article 912 rather than 982. We are of the opinion that the case cannot be made to turn upon so refined an interpretation of the language of the Code, and at any rate the disability to which Vicente F. Lopez was subject was not a general disability to succeed but an accidental incapacity to receive the legacy, a consideration which makes a case for accretion rather than for intestate succession.

The opinions of the commentators, so far as they have expressed themselves on the subject, tend to the conclusion that the right of accretion with regard to portions of an inheritance left vacant by the death or disqualification of one of the heirs or his renunciation of the inheritance is governed by article 912, without being limited, to the extent supposed in appellant's brief, by provisions of the Code relative to intestate succession (Manresa, *Comentarios al Código Civil Español*, 4th ed., vol. VII, pp. 310, 311; *id.*, 34; 13 Mucius Scaevola, pp. 372, 373, 285-287; 16 Mucius Scaevola, 186). Says Escriche: "It is to be understood that one of the coheirs or colegatees fails if nonexistent at the time of the making of the will, or he renounces the inheritance or legacy, if he dies before the testator, if the condition be not fulfilled, or if he becomes otherwise incapacitated. . . . (*Diccionario de Legislacion y Jurisprudencia*, vol. I, p. 225.)*lawphil.net*

In conclusion it may be worth observing that there has always existed both in the civil and in the common law a certain legal intendment, amounting to a mild presumption, against partial intestacy. In Roman law, as is well known, partial testacy systems a presumption against it, — a presumption which has its basis in the supposed intention of the testator.

SOFIA J. NEPOMUCENO, Petitioner, -versus- THE HONORABLE COURT OF APPEALS, RUFINA GOMEZ, OSCAR JUGO ANG, CARMELITA JUGO, Respondent.

G.R. No. L-62952, FIRST DIVISION, October 9, 1985, GUTIERREZ, JR., J.

In Nuguid v. Nuguid cited by the trial court, the testator instituted the petitioner as universal heir and completely preterited her surviving forced heirs. A will of this nature, no matter how valid it may appear extrinsically, would be null and void. Separate or latter proceedings to determine the intrinsic validity of the testamentary provisions would be superfluous.

FACTS:

Martin Jugo died on July 16, 1974 in Malabon, Rizal. He left a last Will and Testament duly signed by him at the end of the Will on page three and on the left margin of pages 1, 2 and 4 thereof in the presence of Celestina Alejandro, Myrna C. Cortez, and Leandro Leano, who in turn, affixed their signatures below the attestation clause and on the left margin of pages 1, 2 and 4 of the Will in the presence of the testator and of each other and the Notary Public. The Will was acknowledged before the Notary Public Romeo Escareal by the testator and his three attesting witnesses.

In the said Will, the testator named and appointed herein petitioner Sofia J. Nepomuceno as his sole and only executor of his estate. It is clearly stated in the Will that the testator was legally married to a certain Rufina Gomez by whom he had two legitimate children, Oscar and Carmelita, but since 1952, he had been estranged from his lawfully wedded wife and had been living with petitioner as husband and wife. In fact, on December 5, 1952, the testator Martin Jugo and the petitioner herein, Sofia J. Nepomuceno were married in Victoria, Tarlac before the Justice of the Peace. The testator devised to his forced heirs, namely, his legal wife Rufina Gomez and his children Oscar and Carmelita his entire estate and the free portion thereof to herein petitioner. The Will reads in part:

Art. III. That I have the following legal heirs, namely: my aforementioned legal wife, Rufina Gomez, and our son, Oscar, and daughter Carmelita, both surnamed Jugo, whom I declare and admit to be legally and properly entitled to inherit from me; that while I have been estranged from my above-named wife for so many years, I cannot deny that I was legally married to her or that we have been separated up to the present for reasons and justifications known fully well by them:

Art. IV. That since 1952, I have been living, as *man and wife* with one Sofia J. Nepomuceno, whom I declare and avow to be entitled to my love and affection, for all the things which she has done for me, now and in the past; that while Sofia J. Nepomuceno has with my full knowledge and consent, did comport and represent myself as her own husband, in truth and in fact, as well as in the eyes of the law, I could not bind her to me in the holy bonds of matrimony because of my aforementioned previous marriage;

On August 21, 1974, the petitioner filed a petition for the probate of the last Will and Testament of the deceased Martin Jugo in the Court of First Instance of Rizal, Branch XXXIV, Caloocan City and asked for the issuance to her of letters testamentary.

On May 13, 1975, the legal wife of the testator, Rufina Gomez and her children filed an opposition alleging inter alia that the execution of the Will was procured by undue and improper influence on the part of the petitioner; that at the time of the execution of the Will, the testator was already very sick and that petitioner having admitted her living in concubinage with the testator, she is wanting in integrity and thus, letters testamentary should not be issued to her.

On January 6, 1976, the lower court denied the probate of the Will on the ground that as the testator admitted in his Will to cohabiting with the petitioner from December 1952 until his death on July 16, 1974, the Will's admission to probate will be an Idle exercise because on the face of the Will, the invalidity of its intrinsic provisions is evident.

The petitioner appealed to the respondent-appellate court.

On June 2, 1982, the respondent court set aside the decision of the Court of First Instance of Rizal denying the probate of the will. The respondent court declared the Will to be valid except that the devise in favor of the petitioner is null and void pursuant to Article 739 in relation with Article 1028 of the Civil Code of the Philippines.

ISSUES:

Whether or not the respondent court acted in excess of its jurisdiction when after declaring the last Will and Testament of the deceased Martin Jugo validly drawn, it went on to pass upon the intrinsic validity of the testamentary provision in favor of herein petitioner?(NO)

RULING:

The respondent court acted within its jurisdiction when after declaring the Will to be validly drawn, it went on to pass upon the intrinsic validity of the Will and declared the devise in favor of the petitioner null and void.

The general rule is that in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the Will. The rule is expressed thus:

... It is elementary that a probate decree finally and definitively settles all questions concerning capacity of the testator and the proper execution and witnessing of his last Will and testament, irrespective of whether its provisions are valid and enforceable or otherwise.

The petition below being for the probate of a Will, the court's area of inquiry is limited to the extrinsic validity thereof. The testator's testamentary capacity and the compliance with the formal requisites or solemnities prescribed by law are the only questions presented for the resolution of the court. Any inquiry into the *intrinsic* validity or efficacy of the provisions of the will or the legality of any devise or legacy is premature.

True or not, the alleged sale is no ground for the dismissal of the petition for probate. Probate is one thing; the validity of the testamentary provisions is another. The first decides the execution of the document and the testamentary capacity of the testator; the second relates to descent and distribution

To establish conclusively as against everyone, and once for all, the facts that a will was executed with the formalities required by law and that the testator was in a condition to make a will, is the only purpose of the proceedings under the new code for the probate of a will. (Sec. 625). The judgment in such proceedings determines and can determine nothing more. In them the court has no power to pass upon the validity of any provisions made in the will. It can not decide, for example, that a certain legacy is void and another one valid. ...

The rule, however, is not inflexible and absolute. Given exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the Will.

In *Nuguid v. Nuguid* cited by the trial court, the testator instituted the petitioner as universal heir and completely preterited her surviving forced heirs. A will of this nature, no matter how valid it may appear extrinsically, would be null and void. Separate or latter proceedings to determine the intrinsic validity of the testamentary provisions would be superfluous.

Even before establishing the formal validity of the will, the Court in *Balanay Jr. v. Martinez* passed upon the validity of its intrinsic provisions.

Invoking "practical considerations", we stated:

The basic issue is whether the probate court erred in passing upon the intrinsic validity of the will, before ruling on its allowance or formal validity, and in declaring it void.

We are of the opinion that in view of certain unusual provisions of the will, which are of dubious legality, and because of the motion to withdraw the petition for probate (which the lower court assumed to have been filed with the petitioner's authorization) the trial court acted correctly in passing upon the will's intrinsic validity even before its formal validity had been established. The probate of a will might become an idle ceremony if on its face it appears to be intrinsically void. Where practical considerations demand that the intrinsic validity of the will be passed upon, even before it is probated, the court should meet the issue

There appears to be no more dispute at this time over the extrinsic validity of the Will. Both parties are agreed that the Will of Martin Jugo was executed with all the formalities required by law and that the testator had the mental capacity to execute his Will. The petitioner states that she completely agrees with the respondent court when in resolving the question of whether or not the probate court correctly denied the probate of Martin Jugo's last Will and Testament, it ruled:

This being so, the will is declared validly drawn. (Page 4, Decision, Annex A of Petition.)

On the other hand the respondents pray for the affirmance of the Court of Appeals' decision *in toto*. The only issue, therefore, is the jurisdiction of the respondent court to declare the testamentary provision in favor of the petitioner as null and void.

We sustain the respondent court's jurisdiction. As stated in *Nuguid v. Nuguid*, (*supra*):

We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result, waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. (Section 2, Rule 1, Rules of Court. *Case, et al. v. Jugo, et al.*, 77 Phil. 517, 522). After all, there exists a justiciable controversy crying for solution.

We see no useful purpose that would be served if we remand the nullified provision to the proper court in a separate action for that purpose simply because, in the probate of a will, the court does not ordinarily look into the intrinsic validity of its provisions.

Article 739 of the Civil Code provides:

The following donations shall be void:

- (1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
 - (2) Those made between persons found guilty of the same criminal offense, in consideration thereof;
 - (3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.
- In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.

Article 1028 of the Civil Code provides:

The prohibitions mentioned in Article 739, concerning donations *inter vivos* shall apply to testamentary provisions.

In Article III of the disputed Will, executed on August 15, 1968, or almost six years before the testator's death on July 16, 1974, Martin Jugo stated that respondent Rufina Gomez was his legal wife from whom he had been estranged "for so many years." He also declared that respondents Carmelita Jugo and Oscar Jugo were his legitimate children. In Article IV, he stated that he had been living as man and wife with the petitioner since 1952. Testator Jugo declared that the petitioner was entitled to his love and affection. He stated that Nepomuceno represented Jugo as her own husband but "in truth and in fact, as well as in the eyes of the law, I could not bind her to me in the holy bonds of matrimony because of my aforementioned previous marriage.

There is no question from the records about the fact of a prior existing marriage when Martin Jugo executed his Will. There is also no dispute that the petitioner and Mr. Jugo lived together in an ostensible marital relationship for 22 years until his death.

It is also a fact that on December 2, 1952, Martin Jugo and Sofia J. Nepomuceno contracted a marriage before the Justice of the Peace of Victoria, Tarlac. The man was then 51 years old while the woman was. Nepomuceno now contends that she acted in good faith for 22 years in the belief that she was legally married to the testator.

The records do not sustain a finding of innocence or good faith. As argued by the private respondents:

First. The last will and testament itself expressly admits indubitably on its face the meretricious relationship between the testator and petitioner, the devisee.

Second. Petitioner herself initiated the presentation of evidence on her alleged ignorance of the true civil status of the testator, which led private respondents to present contrary evidence.

In short, the parties themselves dueled on the intrinsic validity of the legacy given in the will to petitioner by the deceased testator at the start of the proceedings.

Whether or not petitioner knew that testator Martin Jugo, the man he had lived with as man and wife, as already married, was an important and specific issue brought by the parties before the trial court, and passed upon by the Court of Appeals.

Instead of limiting herself to proving the extrinsic validity of the will, it was petitioner who opted to present evidence on her alleged good faith in marrying the testator. (Testimony of Petitioner, TSN of August 1, 1982, pp. 56-57 and pp. 62-64).

Private respondents, naturally, presented evidence that would refute the testimony of petitioner on the point.

Sebastian Jugo, younger brother of the deceased testator, testified at length on the meretricious relationship of his brother and petitioner.

Clearly, the good faith of petitioner was by option of the parties made a decisive issue right at the inception of the case.

Confronted by the situation, the trial court had to make a ruling on the question. When the court *a quo* held that the testator Martin Jugo and petitioner 'were deemed guilty of adultery or concubinage', it was a finding that petitioner was not the innocent woman she pretended to be.

3. If a review of the evidence must be made nonetheless, then private respondents respectfully offer the following analysis:

FIRST: The secrecy of the marriage of petitioner with the deceased testator in a town in Tarlac where neither she nor the testator ever resided. If there was nothing to hide from, why the concealment? Of course, it maybe argued that the marriage of the deceased with private respondent Rufina Gomez was likewise done in secrecy. But it should be remembered that Rufina Gomez was already in the family way at that time and it would seem that the parents of Martin Jugo were not in favor of the marriage so much so that an action in court was brought concerning the marriage.

SECOND: Petitioner was a sweetheart of the deceased testator when they were still both single. That would be in 1922 as Martin Jugo married respondent Rufina Gomez on November 29, 1923 (Exh. 3). Petitioner married the testator only on December 5, 1952. There was a space of about 30 years in between. During those 30 years, could it be believed that she did not even wonder why Martin Jugo did not marry her nor contact her anymore after November, 1923 - facts that should impel her to ask her groom before she married him in secrecy, especially so when she was already about 50 years old at the time of marriage.

THIRD: The fact that petitioner broke off from Martin Jugo in 1923 is by itself conclusive demonstration that she knew that the man she had openly lived for 22 years as man and wife was a married man with already two children.

FOURTH: Having admitted that she knew the children of respondent Rufina Gomez, is it possible that she would not have asked Martin Jugo whether or not they were his illegitimate or legitimate children and by whom? That is un-Filipino.

FIFTH: Having often gone to Pasig to the residence of the parents of the deceased testator, is it possible that she would not have known that the mother of private respondent Oscar Jugo and Carmelita Jugo was respondent Rufina Gomez, considering that the houses of the parents of Martin Jugo (where he had lived for many years) and that of respondent Rufina Gomez were just a few meters away?

Such pretensions of petitioner Sofia Nepomuceno are unbelievable. They are, to say the least, inherently improbable, for they are against the experience in common life and the ordinary instincts and promptings of human nature that a woman would not bother at all to ask the man she was going to marry whether or not he was already married to another, knowing that her groom had children. It would be a story that would strain human credulity to the limit if petitioner did not know that Martin Jugo was already a married man in view of the irrefutable fact that it was precisely his marriage to respondent Rufina Gomez that led petitioner to break off with the deceased during their younger years.

Moreover, the prohibition in Article 739 of the Civil Code is against the making of a donation between persons who are living in adultery or concubinage. It is the *donation* which becomes void. The giver cannot give even assuming that the recipient may receive. The very wordings of the Will invalidate the legacy because the testator admitted he was disposing the properties to a person with whom he had been living in concubinage

LILIA SANCHEZ, Petitioner, -versus- COURT OF APPEALS, HON. VICTORINO S. ALVARO as Presiding Judge, RTC-Br. 120, Caloocan City, and VIRGINIA TERIA, Respondent.
G.R. No. L- 152766, EN BANC, June 20, 2003, BELOSILLO, J.

Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.

FACTS:

Lilia Sanchez, Petitioner, constructed a house on a 76-square meter lot owned by her parents-in-law. The lot was registered under TCT No. 263624 with the following co-owners: Eliseo Sanchez married to Celia Sanchez, Marilyn Sanchez married to Nicanor Montalban, Lilian Sanchez, widow, Nenita Sanchez, single, Susana Sanchez married to Fernando Ramos, and Felipe Sanchez. On 20 February 1995, the lot was registered under TCT No. 289216 in the name of private respondent Virginia Teria by virtue of a Deed of Absolute Sale supposed to have been executed on 23 June 1995 by all six (6) co-owners in her favor. Petitioner claimed that she did not affix her signature on the document and subsequently refused to vacate the lot, thus prompting private respondent Virginia Teria to file an action for recovery of possession of the aforesaid lot with the Metropolitan Trial Court (MeTC) of Caloocan City sometime in September 1995, subsequently raffled to Br. 49 of that court.

On 12 February 1998, the MeTC-Br. 49 of Caloocan City ruled in favor of private respondent declaring that the sale was valid only to the extent of 5/6 of the lot and the other 1/6 remaining as the property of petitioner, on account of her signature in the *Deed of Absolute Sale* having been established as a forgery.

Petitioner then elevated her appeal to the Regional Trial Court of Caloocan City, subsequently assigned to Br. 120, which ordered the parties to file their respective memoranda of appeal. Counsel for petitioner did not comply with this order, nor even inform her of the developments in her case. Petitioner not having filed any pleading with the RTC of Caloocan City, the trial court affirmed the 27 July 1998 decision of the MeTC.

On 4 November 1998, the MeTC issued an order for the issuance of a writ of execution in favor of private respondent Virginia Teria, buyer of the property. On 4 November 1999 or a year later, a *Notice to Vacate* was served by the sheriff upon petitioner who however refused to heed the *Notice*. On 28 April 1999 private respondent started demolishing petitioners house without any special permit of demolition from the court.

Due to the demolition of her house which continued until 24 May 1999 petitioner was forced to inhabit the portion of the premises that used to serve as the houses toilet and laundry area.

On 29 October 1999 petitioner filed her *Petition for Relief from Judgment* with the RTC on the ground that she was not bound by the inaction of her counsel who failed to submit petitioners appeal memorandum. However the RTC denied the Petition and the subsequent Motion for Reconsideration. On 14 June 2000 petitioner filed her Petition for *Certiorari* with the Court of Appeals alleging grave abuse of discretion on the part of the court *a quo*.

On 23 May 2001 the appellate court dismissed the petition for lack of merit. On 18 June 2001 petitioner filed a *Motion for Reconsideration* but the Court of Appeals denied the motion in its Resolution of 8 January 2002.

ISSUES:

Whether or not the Court of Appeals committed grave abuse of discretion in dismissing the challenged case before it? (NO)

RULING:

Where the issuance of the extraordinary writ is also within the competence of the Court of Appeals or the Regional Trial Court, it is either of these courts that the specific action for the procurement of the writ must be presented. However, this Court must be convinced thoroughly that two (2) grounds exist before it gives due course to a *certiorari* petition under Rule 65: (a) The tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction; and (b) There is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

The rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just and inexpensive determination of the cases before them. Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice. Litigations should, as much as possible, be decided on their merits and not on mere technicalities.

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.

Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.

NATIVIDAD P. NAZARENO, MAXIMINO P. NAZARENO, JR., *Petitioner*, -versus- COURT OF APPEALS, ESTATE OF MAXIMINO A. NAZARENO, SR., ROMEO P. NAZARENO and ELIZA NAZARENO, *Respondent*.

G.R. No. 138842, SECOND DIVISION, October 18, 2000, MENDOZA, J.

An obligation is indivisible when it cannot be validly performed in parts, whatever may be the nature of the thing which is the object thereof. The indivisibility refers to the prestation and not to the object thereof. In the present case, the Deed of Sale of January 29, 1970 supposedly, conveyed the six lots to Natividad. The obligation is clearly indivisible because the performance of the contract cannot be done in parts, otherwise the value of what is transferred is diminished. Petitioners are therefore mistaken in basing the indivisibility of a contract on the number of obligors.

FACTS:

Maximino Nazareno, Sr. and Aurea Poblete were husband and wife. Aurea died on April 15, 1970, while Maximino, Sr. died on December 18, 1980. They had five children, namely, Natividad, Romeo, Jose, Pacifico, and Maximino, Jr. Natividad and Maximino, Jr. are petitioners in this case, while the estate of Maximino, Sr., Romeo, and his wife Eliza Nazareno are the respondents. After the death of Maximino, Sr., Romeo filed an intestate case and was appointed administrator of his father's estate.

In the course of the intestate proceedings, Romeo discovered that his parents had executed several deeds of sale conveying a number of real properties in favor of his sister, Natividad.

One of the deeds involved six lots in Quezon City which were allegedly sold by Maximino, Sr., with the consent of Aurea, to Natividad on January 29, 1970. By virtue of these deeds, TCTs were issued to Natividad for lots 3-B, 3, 10, 11, 13 & 14

Unknown to Romeo, Natividad sold Lot 3-B, w/c had been occupied by Romeo, his wife, & Maximino, Jr. to Maximino, Jr.

Romeo filed the present case for annulment of sale with damages against Natividad & Maximino Jr. on the ground that both sales were void for lack of consideration

Romeo presented the Deed of Partition & Distribution executed by Maximino Sr. & Aurea in 1962 & duly signed by all of their children, except Jose, who was then abroad. However, this deed was not carried out. In 1969, their parents instead offered to sell to them the lots

He testified that, although the deeds of sale executed by his parents in their favor stated that the sale was for a consideration, they never really paid any amount for the supposed sale. The transfer was made in this manner in order to avoid the payment of inheritance taxes.

Allegedly, it was only Natividad who bought the lots in question because she was the only one financially able to do so-The trial court rendered a decision declaring the nullity of the Deed of Sale dated January 29, 1970,except as to Lots 3, 3-B, 13 and 14 which had passed on to third persons.

On appeal to the Court of Appeals, the decision of the trial court was modified in the sense that titles to Lot 3 (in the name of Romeo Nazareno) and Lot 3-B(in the name of Maximino Nazareno, Jr.), as well as to Lots 10 and 11 were cancelled and ordered restored to the estate of Maximino Nazareno, Sr.

ISSUES:

Whether the restoration of the titles to the lots in question to the estate of Maximino Sr. was proper? (YES)

RULING:

The estate of a deceased person is a juridical entity that has a personality of its own. Though Romeo represented at one time the estate of Maximino, Sr., the latter has a separate and distinct personality from the former. Hence, the judgment in CA-GR CV No. 12932 regarding the ownership of Maximino, Jr. over Lot 3-B binds Romeo and Eliza only, and not the estate of Maximino, Sr., which also has a right to recover properties which were wrongfully disposed.

An obligation is indivisible when it cannot be validly performed in parts, whatever may be the nature of the thing which is the object thereof. The indivisibility refers to the prestation and not to the object thereof. In the present case, the Deed of Sale of January 29, 1970 supposedly, conveyed the six lots to Natividad. The obligation is clearly indivisible because the performance of the contract cannot be done in parts, otherwise the value of what is transferred is diminished. Petitioners are therefore mistaken in basing the indivisibility of a contract on the number of obligors.

In any case, if petitioners' only point is that the estate of Maximino, Sr. alone cannot contest the validity of the Deed of Sale because the estate of Aurea has not yet been settled, the argument would nonetheless be without merit. The validity of the contract can be questioned by anyone affected by it. A void contract is inexistent from the beginning. Hence, even if the estate of Maximino, Sr. alone contests the validity of the sale, the outcome of the suit will bind the estate of Aurea as if no sale took place at all.

It cannot be denied that Maximino, Sr. intended to give the six Quezon City lots to Natividad. As Romeo testified, their parents executed the Deed of Sale in favor of Natividad because the latter was the only "female and the only unmarried member of the family." She was thus entrusted with the real properties in behalf of her siblings. As she herself admitted, she intended to convey Lots 10 and 11 to Jose in the event the latter returned from abroad. There was thus an implied trust constituted in her favor. Art. 1449 of the Civil Code states: There, is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof. There being an implied trust, the lots in question are therefore subject to collation in accordance with Art. 1061 which states: Every

compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition.

As held by the trial court, the sale of Lots 13 and 14 to RosAlva Marketing, Corp. on April 20, 1979 will have to be upheld for RosAlva Marketing is an innocent purchaser for value which relied on the title of Natividad. The rule is settled that “every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.”

SPOUSES FLORENTINO ZARAGOZA and ERLINDA ENRIQUEZ-ZARAGOZA, petitioners, vs.
THE HONORABLE COURT OF APPEALS, ALBERTA ZARAGOZA MORGAN, respondents.
G.R. No. 106401, SECOND DIVISION, September 29, 2000, QUISUMBING, J.

It is basic in the law of succession that a partition inter vivos may be done for as long as legitimes are not prejudiced. Art. 1080 of the Civil Code is clear on this. Should a person make a partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.

FACTS:

On December 9, 1964, Flavio Zaragoza Cano died without a will and was survived by his four children: Gloria, Zacariaz, Florentino and Alberta, all surnamed Zaragoza.

On December 28, 1981, private respondent Alberta Zaragoza-Morgan filed a complaint with CFI against Spouses Florentino and Erlinda, herein petitioners, for delivery of her inheritance share, consisting of Lots 943 and 871, and for payment of damages.

She alleged that her father, in his lifetime, partitioned the aforesaid properties among his four children. The shares of her brothers and sister were given to them in advance by way of deed of sale, but without valid consideration, while her share, which consists of lots no. 871 and 943, was not conveyed by way of deed of sale then.

She averred that because of her marriage, she became an American citizen and was prohibited to acquire lands in the Philippines except by hereditary succession. For this reason, no formal deed of conveyance was executed in her favor covering these lots during her father's lifetime

ISSUE:

Whether or not the partition inter vivos by Flavio Zaragoza Cano of his properties, which include Lots 871 and 943, is valid.

RULING:

YES. The Court held that it is basic in the law of succession that a partition inter vivos may be done for as long as legitimes are not prejudiced. Art. 1080 of the Civil Code is clear on this. Should a person make a partition of his estate by an act *inter vivos*, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.

Thus, the court ruled that that during the lifetime of Flavio, he already partitioned and distributed his properties among his three children, excepting private respondent, through deeds of sale. A deed of sale was not executed in favor of private respondent because she had become an American citizen and the Constitution prohibited a sale in her favor. Petitioner admitted Lots 871 and 943 were inheritance shares of the private respondent.

As to the alleged prejudice on legitimes, the Court stated that the legitime of compulsory heirs is determined after collation, as provided for in Article 1061: Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition.

Unfortunately, collation cannot be done in this case where the original petition for delivery of inheritance share only impleaded one of the other compulsory heirs. The petition must therefore be dismissed without prejudice to the institution of a new proceeding where all the indispensable parties are present for the rightful determination of their respective legitime and if the legitimes were prejudiced by the partitioning inter vivos.

BERNARDO MENDOZA I, BERNARDO MENDOZA II, GUADALUPE M. MANGALE, JULIANA M. SAMONTE, PACITA M. SAMONTE, RICARDO MENDOZA, FRANCISCO MENDOZA, PATRICIA MENDOZA, OLYMPIA M. DIZON, ROMEO MENDOZA, REYNALDO MENDOZA, REMEDIOS M. BERNABE and TRINIDAD MANUEL MENDOZA, petitioners, -versus- HON. COURT OF APPEALS, RENATO SAMONTE and LUCIA DELA CRUZ SAMONTE, respondents.

G.R. No. L-44664, FIRST DIVISION, July 31, 1991, MEDIALDEA, J.

Article 1620 of the Civil Code applies only if the co-ownership still exists. If the property has been partitioned or an identified share has been sold, there is no longer any right of legal redemption.

FACTS:

Spouses Arcadio Mendoza and Trinidad Manuel-Mendoza owned Lot 3. However, Arcadio died. Thereafter, Lot 3 was subsequently subdivided into two (2) lots, namely: Lot 3-A and Lot 3-B. Trinidad Manuel Mendoza sold Lot 3-A to Renato Samonte and Lucia de la Cruz as evidenced by a “Dokumento ng Bilihan” which was written in Tagalog.

In 1969, the heirs of Arcadio instituted an action for reconveyance of real property against the Spouses Samonte. The heirs alleged that the sale of the disputed property was null and void because as a mere co-owner of the undivided estate, Trinidad had no right to divide the estate into parts and then convey a part thereof by metes and bounds to a third person.

They wanted to exercise their right of legal redemption as co-owners of said property pursuant to Article 1620 of the Civil Code which states that,

“A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.”

ISSUE:

1. Whether or not the heirs may still reconvey the land from the Spouses Samonte.
2. Whether or not there is co-ownership.

RULING:

In this case, the source of co-ownership among the heirs was intestate succession. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs (Article 1078 of the Civil Code). Petitioners' co-ownership over Lot 3 was extinguished when it was subdivided into Lot 3-A and Lot 3-B, which portions were concretely determined and technically described (see *de la Cruz v. Cruz*, G.R. No. L-27759, April 17, 1970, 32 SCRA 307). Against the impetuous denial of petitioners that Lot 3 has been partitioned (pp. 19, 96, 121, *Rollo*) is Exhibit A which is the Subdivision Plan of Lot 3, (LRC) PSD-17370, dated September 7, 1961, duly approved by the Commissioner of Land Registration.

We resolve the second issue based on the previous discussion that the co-ownership has been extinguished. Article 1620 of the Civil Code applies only if the co-ownership still exists. If the property has been partitioned or an identified share has been sold, there is no longer any right of legal redemption.

AZNAR BROTHERS REALTY COMPANY -versus- COURT OF APPEALS, LUIS AYING, DEMETRIO SIDA, FELOMINO AUGUSTO, FEDERICO ABING, AND ROMEO AUGUSTO

G.R. No. 128102, FIRST DIVISION, March 7, 2000, DAVIDE, JR., CJ

A partition made with preterition of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the persons interested; a partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person

FACTS:

Aznar Brothers Realty Co. (Aznar) acquired a lot from the heirs of Crisanta Maloloy-on (heirs of Crisanta) by virtue of an Extrajudicial Partition of Real Estate with Deed of Absolute Sale. Herein private respondents were allegedly allowed to occupy portions of the land by tolerance of Aznar provided that they leave in the event that Aznar needed land for their private purposes. Later, Aznar entered into a joint venture with Sta. Lucia Realty Development Corporation for the development of the subject lot into a multi-million peso housing subdivision and beach resort. As a result, it requested the private respondents to leave the premises. However, private respondents contended that they are the successors and descendants of the heirs of the late Crisanta Maloloy-on, whose names appear as the registered owners in the Original Certificate of Title. They claimed that the Extrajudicial Partition with Deed of Absolute Sale is null and void because not all known heirs participated in the extrajudicial agreement of partition, and the two parties who participated in the deed are not heirs.

ISSUE:

Whether or not the Extrajudicial Partition with Deed of Absolute Sale is null and void

RULING:

No, the Extrajudicial Partition with Deed of Absolute Sale is valid. Under Art. 1104 of the Civil Code, a partition made with preterition of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the persons interested; but the latter shall be proportionately obliged to pay to the person omitted the share which belongs to him. In the present case, no evidence of bad faith or fraud is extant from the records. As to the two parties to the deed who were allegedly not heirs, Article 1105 is in point; it provides: A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person. In other words, the participation of non-heirs does not render the partition void in its entirety but only to the extent corresponding to them. The Extrajudicial Partition with Deed of Absolute Sale is a notarized document. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution.

PABLO RALLA, petitioner, *-versus-* **HON. ROMULO P. UNTALAN, HON. DOMINGO CORONEL REYES, AND LEONIE RALLA, PETER RALLA AND MARINELLA RALLA**, respondents.
G.R. Nos. L-63253-54, SECOND DIVISION, April 27, 1989, SARMIENTO, J.

Where a partition had not only been approved and thus become a judgment of the court, but distribution of the estate in pursuance of such partition had fully been carried out, and the heirs had received the property assigned to them, they are precluded from subsequently attacking its validity or any part of it. Likewise: Where a piece of land has been included in a partition, and there is no allegation that the inclusion was effected through improper means or without the petitioners' knowledge, the partition barred any further litigation on said title and operated to bring the property under the control and jurisdiction of the court for proper disposition according to the tenor of the partition. They cannot attack the partition collaterally, as they are trying to do in this case.

FACTS:

On January 27, 1959, when Rosendo Ralla filed a petition for the probate of his own will in CFI of Albay docketed as SP No. 564. In his will he left his entire estate to his son, Pablo leaving nothing to his other son, Pedro.

In the same year, Pedro filed an action for the partition of the estate of their mother, Paz Escarella; docketed Civil Case No. 2023.

In the course of the hearing of the probate case (Special Proceedings No. 564), Pablo Ralla filed a motion to dismiss the petition for probate on the ground that he was no longer interested in the allowance of the will of his late father, Rosendo Ralla, for its probate would no longer be beneficial and advantageous to him. This motion was denied, and the denial was denied by the Court of Appeals. *(The latter court agreed with the lower court's conclusion that, indeed, the petitioner stood to gain if the testate proceedings were to be dismissed because then he would not be compelled to submit for inclusion in the inventory of the estate of Rosendo Ralla 149 parcels of land from which he alone had been collecting rentals and receiving income, to the exclusion and prejudice of his brother, Pedro Ralla,*

who was being deprived of his successional rights over the said properties.) The denial of this motion to dismiss was likewise affirmed by this Court (in G.R. No. L-26253).

On a hearing, the petitioner reiterated his lack of interest in the probate of the subject will. Consequently, the court, through Judge Perfecto Quicho, declared Pedro and Pablo Ralla the only heirs of Rosendo Ralla who should share equally upon the division of the latter's estate, and thereupon converted the testate proceedings into one of intestacy.

Meanwhile, the brothers *agreed to compromise in the partition* case. On December 18, 1967, they entered into a project of partition whereby sixty-three parcels of land, apparently forming the estate of their deceased mother, Paz Escarella, were amicably divided between the two of them. This project of partition was approved on December 19, 1967 by Judge Ezekiel Grageda.

Eleven years later, or on February 28, 1978, Joaquin Chancoco, brother-in-law of the petitioner (Pablo) filed a petition for the probate of the same will of Rosendo Ralla on the ground that the decedent owed him P5,000.00. Pablo Ralla then filed a manifestation stating that he had no objections to the probate; thereafter, he filed a "Motion to Intervene as Petitioner for the Probate of the Will." This motion was heard *ex parte* and granted despite the written opposition of the heirs of Pedro Ralla. Likewise, the petition for probate was granted; Teodorico Almine, son-in-law of the petitioner, was appointed special administrator, over and above the objection of the heirs of Pedro Ralla. However, in taking possession of the properties belonging to the estate of Rosendo Ralla, Teodorico Almine also took possession of the sixty-three parcels of land covered by the project of partition mentioned earlier. Consequently, the heirs of Pedro Ralla (the private respondents herein) moved to exclude from the estate of Rosendo Ralla the aforesaid parcels of land.

About two years later, or on June 11, 1981, the private respondents filed a "Petition To Submit Anew For Consideration Of The Court The Exclusion Of 67 (sic) Parcels of Land Subject Of The Project Of Partition In Civil Case No. 2023." In his Order, the Jude reconsidered his earlier Order and excluded the sixty-three (63) parcels from the proceedings. Thereafter, the petitioner filed a motion for recommendation but the same was denied.

ISSUE:

Whether or not the extrajudicial partition of the 63 parcels made after the filing of the petition for the probate of the Will, and before said Will was probated, is a NULLITY.

RULING:

Where a partition had not only been approved and thus become a judgment of the court, but distribution of the estate in pursuance of such partition had fully been carried out, and the heirs had received the property assigned to them, they are precluded from subsequently attacking its validity or any part of it. Likewise: Where a piece of land has been included in a partition, and there is no allegation that the inclusion was effected through improper means or without the petitioners' knowledge, *the partition barred any further litigation on said title* and operated to bring the property under the control and jurisdiction of the court for proper disposition according to the tenor of the partition. *They cannot attack the partition collaterally, as they are trying to do in this case.*

Based on the foregoing pronouncements, the Order of August 3, 1979 setting aside the project of Partition was clearly erroneous. Realizing this and the fact that it was not yet too late for him to correct his mistake, respondent Judge Untalan issued the questioned Order of July 16, 1981.

In fine, the partition in Civil Case No. 2023 is valid and binding upon the petitioner and Pedro Ralla, as well as upon their heirs, especially as this was accompanied by delivery of possession to them of their respective shares in the inheritance from their mother, the late Paz Escarella. They are duty bound to respect the division agreed upon by them and embodied in the document of partition.

Thus, the petitioner could no longer question the exclusion of the lands subject of the partition from the proceedings for the settlement of the estate of Rosendo Ralla.

IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF LEODEGARIA JULIAN, FELIX BALANAY, JR. -versus- HON. ANTONIO M. MARTINEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, BRANCH VI; AVELINA B. ANTONIO AND DELIA B. LANABAN
G.R. No.L-39247, SECOND DIVISION, June 27, 1975, Aquino, J.

Invalidity of one of several dispositions contained in a will does not result in the invalidity of the other dispositions, unless it is to be presumed that the testator would not have made such other dispositions if the first invalid disposition had not been made.

FACTS:

Leodegaria Julian (Leodegaria) died on February 1973. She was survived by her husband, Felix Balanay, Sr.(husband), and by their six legitimate children named Felix Balanay, Jr.(Felix Jr.), Avelina B. Antonio, Beatriz B. Solamo, Carolina B. Manguio, Delia B. Lanaban and Emilia B. Pabaanon. Felix Jr. filed a petition for probate of his mother's notarial will in the RTC. In that will, she declared that she is the owner of the southern half of nine conjugal lots; and that it was her desire that her properties should not be divided among her heirs during her husband's lifetime and that their legitimes should be satisfied out of the fruits of her properties. Furthermore, paragraph V thereof stated that after her husband's death her paraphernal lands and all the conjugal lands should be divided and distributed in the manner set forth in her will. She devised and partitioned the conjugal lands as if they were all owned by her. She disposed of in the will her husband's one half share of the conjugal assets. The husband conformed to the wife's will and renounced his hereditary rights to his one-half conjugal share and thus it became the property of Leodegaria. The RTC however, declared that the will is void because of certain provisions in the will that is of doubtful validity.

ISSUE:

Whether or not the will is void.

RULING:

No. Invalidity of one of several dispositions contained in a will does not result in the invalidity of the other dispositions, unless it is to be presumed that the testator would not have made such other dispositions if the first invalid disposition had not been made.

In this case, the statement of the testatrix that she owned the southern half of the conjugal lands is contrary to law because, although she was a co-owner thereof, her share was inchoate and pro

indiviso. But that illegal declaration does not nullify the entire will. It may be disregarded. The provision of the will that the properties of the testatrix should not be divided among her heirs during her husband's lifetime but should be kept intact and that the legitimes should be paid in cash is contrary to Article 1080 of the Civil Code. The conformity of the husband had the effect of validating the partition made in paragraph V without prejudice, of course, to the rights of the creditors and the legitimes of the compulsory heirs. To give effect to the intention and wishes of the testatrix is the first and principal law in the matter of testaments. Testacy is preferable to intestacy. As far as is legally possible, the expressed desire of the testator must be followed and the dispositions of the properties in her will should be upheld.

AMORANTE PLAN, petitioner, -versus- INTERMEDIATE APPELLATE COURT and FEDERICO BAUTISTA, respondents.

G.R. No. L-65656, SECOND DIVISION, February 28, 1985, AQUINO, J.

Article 1088 of the Civil Code does not justify legal redemption in this case because it refers to sale of hereditary rights, and not to specific properties, for the payment of the debts of the decedent's estate as to which there is no legal redemption. "In the administration and liquidation of the estate of a deceased person, sales ordered by the probate court for payment of debts are final and not subject to legal redemption. Unlike in ordinary execution sales, there is no legal provision allowing redemption in the sale of property for payment of debts of a deceased person"

FACTS:

Federico, who claims one-eighth (1/8) interest in the property, alleged that he was not notified of the sale of two conjugal lots made by his mother Florencia as administratrix in the intestate proceeding for his deceased father's estate, made to Amorante Plan with the authorization and approval of the probate court. His mother had a five-eighth (5/8) interest in the property.

In the intestate proceeding for the settlement of Regino Bautista's estate, his widow filed a motion dated December 9, 1964 for authority to sell to Plan the two lots and theater for not less than P140,000.00. The purpose was to pay the debts amounting to P117,220.00

On December 22, 1964, Judge Jose B. Jimenez granted the authority to sell to Plan the entire estate of the deceased for not less than P140,000 so as to pay the obligations of the estate "and it appearing that all the heirs have conformed thereto."

A motion to approve the sale was filed on January 5, 1965. It should be noted that in 1963 the widow and four of her seven children as owners of 7/8 interest in the said property had, in consideration of P9,600.00 agreed to sell that same property to Plan for the same amount of P140,000.00

Sixteen days after the sale, Federico Bautista filed an "Opposition to Agreement to Sell Absolute Sale, Project of Partition and Request for inventory and Accounting of estate and for Furnishing of Orders, Notices and Pleadings." Judge Jimenez gave Federico's counsel ten (10) days within which to interpose any opposition to the project of partition filed by the administratrix on October 16, 1964 which had not been acted upon by the court and of which the decedent's six children were notified through Milagros Bautista.

Federico instituted a separate action to nullify the sale but the court dismissed the case on the ground that the remedy is in the intestate proceeding and not in a separate action. Upon appeal to the CA, the

CA declared the agreement as void and also allowed Federico to redeem the said lots even if he did not pray for the reconveyance of the lots. The reconveyance was based on Article 1088 of the Civil Code.

ISSUE:

Whether or not Federico Bautista could nullify in a separate action, instead of in the intestate proceeding for his deceased father's estate, the sale of two conjugal lots, with the theater thereon, made by his mother Florencia Topacio as administratrix to Amorante Plan with the authorization and approval of the probate court.

RULING:

Article 1088 of the Civil Code does not justify legal redemption in this case because it refers to sale of hereditary rights, and not to specific properties, for the payment of the debts of the decedent's estate as to which there is no legal redemption. "In the administration and liquidation of the estate of a deceased person, sales ordered by the probate court for payment of debts are final and not subject to legal redemption. Unlike in ordinary execution sales, there is no legal provision allowing redemption in the sale of property for payment of debts of a deceased person" (Abarro vs. De Guia, 72 Phil. 245). Such sale is not the one contemplated in article 1067, now article 1088 of the Civil Code (Vda. de Mendoza vs. Mendoza, 69 Phil. 155).

In the instant case, we agree with Judges Fule, Catolico and Vallejos that Federico's remedy is in the intestate proceeding where his petition for relief has been pending for nearly twenty years. He should amend it by impleading the present administratrix and Plan himself and serving copies of the petition upon them. Plan, as the purchaser of the disputed property, is a forced intervenor in the intestate proceeding. He should answer the amended petition for the annulment of the sale. The probate court has jurisdiction over him.

MARGIE SANTOS MITRA, *Petitioner*, -versus - PERPETUA L. SABLAN- GUEVARRA, REMEGIO L. SABLAN, ET AL., *Respondents*.
G.R. No. 213994, SECOND DIVISION, April 18, 2018, REYES, JR, J.

What is imperative for the allowance of a will despite the existence of omissions is that such omissions must be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence. An examination of the will in question reveals that the attestation clause indeed failed to state the number of pages comprising the will. However, as was the situation in Taboada, this omission was supplied in the Acknowledgment.

FACTS:

Margie Santos Mitra filed a petition for the probate of the notarial will of Remedios Legaspi. Mitra alleged she is a *de facto* adopted daughter of Legaspi and Legaspi left a notarial will instituting Mitra along with Orlando Castro, Perpetua Sablan-Guevarra, and Remigio Legaspi Sablan, as her heirs, legatees and devisees.

Perpetua Sablan-Guevarra and Remegio Sablan opposed the petition. They aver that the will was not executed in accordance with the formalities required by law since the last page of the will which contained the Acknowledgment was not signed by Legaspi and her instrumental witnesses. Further

the attestation clause failed to state the number of pages upon which the will was written. The number of pages was however supplied by the Acknowledgment portion.

ISSUES:

1. Whether the failure to sign the last page of the will is fatal to the will's validity (NO)
2. Whether the failure to state the number of pages in the attestation clause will invalidate the will (NO)

RULING:

It is a skewed stance in insisting that the testator Legaspi and the instrumental witnesses should have signed on the last page of the subject will. When Article 805 of the Civil Code requires the testator to subscribe at the end of the will, it necessarily refers to the logical end thereof, which is where the last testamentary disposition ends. As the probate court correctly appreciated, the last page of the will does not contain any testamentary disposition; it is but a mere continuation of the Acknowledgment.

In *Taboada vs. Hon. Rosal*, the Court allowed the probate of a will notwithstanding that the number of pages was stated not in the attestation clause, but in the Acknowledgment. In *Azuela vs. CA*, the Court ruled that there is substantial compliance with the requirement, if it is stated elsewhere in the will how many pages it is comprised of.

What is imperative for the allowance of a will despite the existence of omissions is that such omissions must be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence. "However, those omissions which cannot be supplied except by evidence aliunde would result in the invalidation of the attestation clause and ultimately, of the will itself."

An examination of the will in question reveals that the attestation clause indeed failed to state the number of pages comprising the will. However, as was the situation in *Taboada*, this omission was supplied in the Acknowledgment. It was specified therein that the will is composed of four pages, the Acknowledgment included.

ARACELI MAYUGA, SUBSTITUTED BY MARILYN MAYUGA SANTILLAN FOR and ON BEHALF OF ALL THE HEIRS, *Petitioner*, -versus- ANTONIO ATIENZA, REPRESENTING THE HEIRS OF ARMANDO* ATIENZA; BENJAMIN ATIENZA, JR., REPRESENTING THE HEIRS OF BENJAMIN A. ATIENZA, SR., *Respondents*.

G.R. No. 208197, SECOND DIVISION, January 10, 2018, CAGUIOA, J.

Fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation.

Upon the expiration of said period of one year from and after the date of entry of the decree of registration, the decree of registration and the certificate of title issued shall become incontrovertible.

FACTS:

On May 4, 2000, Araceli Mayuga instituted a petition for Cancellation and Recall of Free Patent and Reconveyance against Antonio Atienza, representing the heirs of Armando Atienza, Benjamin Atienza, Jr., representing the heirs of Benjamin Atienza, Sr., Community Environment and Natural Resource Officer and Register of Deeds of Romblon, as defendants.

In her Petition, Araceli, alleged, that she, Benjamin A. Atienza, Sr. and Armando A. Atienza are the surviving legitimate, legal and forced heirs of the late Perfecto Atienza who died intestate and that he left estates, LOT 61-A, and LOT 61-B or a total area of 574 square meters, both lots are located at Budiong, Odiongan, Romblon to which the three (3) compulsory/forced heirs are entitled to an equal share of 1/3 each; and that through manipulation and misrepresentation with intent to defraud a co-heir, respondent Antonio L. Atienza, son of the deceased Armando Atienza, was able to secure Free [P]atent (NRDN-21) 11636 while respondent Benjamin A. Atienza was able to secure Free Patent (NRDN- 21) 11637. Petitioner alleged that he was not notified of the application filed with public respondent Community Environment & Natural Resource Officer nor any notice of hearings of proceedings as required by law, being a co-heir and party- in-interest.

She prayed for the cancellation of their FPAs and the division of the 2 lots into 3 equal parts.

Defendants denied the material allegations of the complaint, and by way of affirmative defenses, averred that, the petition is moot and academic; the Free Patent Titles have become indefeasible after the lapse of one year from its issuance in 1992; fraud as a ground for review of title under Section 38 of Act 496 is not applicable to a case where a certificate of title was issued in pursuance of a patent application; that they and their predecessors-in-interest have been in open, public, continuous possession of the subject property for over 30 years; the basis for their Application for Free Patent with the CENRO is a Confirmation Affidavit of Distribution of Real Estate executed by their father, Perfecto Atienza, confirming partition in 1960.

The RTC ruled in favor of Plaintiff Araceli. It ruled that the application by the defendants for a Free Patent with the CENRO is tainted with fraud because said application was processed without the plaintiff's knowledge nor a notice of hearing of any proceeding was sent to her. In fact, the defendants took advantage while the latter was in the United States. Moreover, the titling of the fraudulently registered real property will not bar the action for reconveyance.

Defendants filed a motion for reconsideration but the same was denied in the Order dated July 29, 2010. Aggrieved, defendants interposed an appeal.

The CA granted the appeal. It dismissed the Amended Complaint for Recall and Cancellation of Free Patent Application (FPA) No. 11636 and FPA No. 11637 and Action for Reconveyance.

It held that the free patents issued in favor of the respondents can no longer be assailed under the rule of indefeasibility and incontrovertibility of the certificate of title upon the expiration of one year from and after the date of the entry of the decree of registration pursuant to Section 32 of Presidential Decree No. 1529. It ruled that the claims of fraud were unsubstantiated. It held that the RTC erred in ordering the reconveyance of 1/3 of the subject properties to the petitioner since she failed to establish her title and ownership over such portion.

ISSUE:

Whether the CA erred in dismissing the amended complaint of the petitioner for cancellation of free patent and reconveyance. (NO)

RULING:

The action for declaration of nullity of the free patents issued in favor of the respondents must fail, as the CA correctly ruled.

As noted by the CA, the respondents satisfactorily complied with the requirements for the issuance of a free patent. **The grant of free patents to defendants-appellants, having been performed in the course of the official functions of the DENR officers, enjoys the presumption of regularity.** This presumption of regularity was not successfully rebutted by plaintiff-appellee. All told, there is **no clear and convincing evidence of fraud and plaintiff-appellee's failure to prove it is fatal to her own cause.**

The averment that she was not notified of the applications for the free patent as well as of the proceedings which transpired leading to the granting and registration of the land in the respondent's name is bare and self-serving. The records negate this claim because a Notice of Application for Free Patent was 'posted in a conspicuous place on the land applied for, on the bulletin board of the barrio where the land is located, and at the door of the municipal building on the 2nd day of January, 1987 and remained posted until the 18th of December. The CA was likewise not convinced with the petitioner's allegation of fraud and misrepresentation in the execution of the Confirmation Affidavit of Distribution of Real Estate by the petitioner's father, the late Perfecto Atienza (Perfecto). Being a notarized document, the CA imbued it with the legal presumption of validity, its due execution and authenticity not having been impugned by the mere self-serving allegations of the petitioner.

Fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation.

Petitioner likewise failed to prove that she is entitled to an action for reconveyance. In such, two facts must be alleged in the complaint and proved during the trial, namely: (1) the plaintiff was the owner of the land or possessed it in the concept of owner, and (2) the defendant illegally divested him of ownership and dispossessed him of the land.

Such facts, as the CA observed, were not only not alleged in the amended complaint, the petitioner Araceli Mayuga also failed to prove that she was entitled to 1/3 of the two lots in dispute by succession.

Assuming that Perfecto owned the disputed lots and the Confirmation Affidavit was a deed of partition, Perfecto could have legally partitioned his estate during his lifetime. Under Article 1080 of the Civil Code, should a person make a partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.

Since the Civil Code allows partition inter vivos, it is incumbent upon the compulsory heir questioning its validity to show that his legitime is impaired. Unfortunately, Araceli has not shown to what extent the Confirmation Affidavit prejudiced her legitime.

Araceli could not also claim preterition by virtue of the Confirmation Affidavit on the assumption that the disputed two lots pertained to Perfecto's inheritance, he had only three legal heirs and he left Araceli with no share in the two lots. Article 854 of the Civil Code partly provides: the preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

Preterition consists in the omission in the testator's will of a compulsory heir in the direct line or anyone of them either because they are not mentioned therein or although mentioned they are neither instituted as heir nor expressly disinherited. The act of totally depriving a compulsory heir of his legitime can take place either expressly or tacitly. The express deprivation of the legitime constitutes disinheritance.

Although Araceli was a compulsory heir in the direct descending line, she could not have been preterited. Firstly, Perfecto left no will. As contemplated in Article 854, the presence of a will is necessary. Secondly, before his death, Perfecto had properties in Limon, Rizal which was almost 50 hectares, part of which was developed for residential and agricultural purposes, and in Odiongan. Araceli could not have been totally excluded in the inheritance of Perfecto even if she was not allegedly given any share in the disputed two lots.

If Araceli's share in the inheritance of Perfecto as claimed by her was indeed impaired, she could have instituted an action for partition or a settlement of estate proceedings instead of her complaint for cancellation of free patent and reconveyance.

The free patents having been issued by the Department of Environment and Natural Resources on February 28, 1992 and recorded in the Book of Entries at the Office of the Registry of Deeds in June 1992, the respondents' certificates of title have already become indefeasible pursuant to Section 32 of Presidential Decree No. 1529 (the Property Registration Decree), which pertinently provides that upon the expiration of said period of one year from and after the date of entry of the decree of registration, the decree of registration and the certificate of title issued shall become incontrovertible.