G.R. Nos. L-3087 and L-3088

[G.R. Nos. L-3087 and L-3088. July 31, 1954]

IN RE: TESTATE ESTATE OF THE DECEASED JOSE B. SUNTAY. SILVINO SUNTAY, PETITIONER AND APPELLANT.

IN RE: INTESTATE ESTATE OF THE DECEASED JOSE B. SUNTAY, FEDERICO C, SUNTAY, ADMINISTRATOR AND APPELLEE.

D E C I S I O N

PADILLA, J.:

This is an appeal from a decree of the Court of First Instance of Bulacan disallowing the alleged will and testament executed in Manila on November 1929, and the alleged last will and testament executed in Kulangsu, Amoy, China, on 4 January 1931, by Jose B. Suntay. The value of the estate left by the deceased is more than P50,000.

On 14 May 1934 Jose B. Suntay, a Filipino citizen and resident of the Philippines, died in the city of Amoy, Fookien province, Republic of China, leaving real and personal properties in the Philippines and a house in Amoy, Fookien province, China, and children by the first marriage had with the late Manuela T. Cruz namely, Apolonio, Concepcion, Angel, Manuel, Federico, Ana, Aurora, Emiliano and Jose, Jr. and a child named Silvino by the second marriage had with Maria Natividad Lim Billian who survived him. Intestate proceedings were instituted in the Court of First Instance of Bulacan (special proceedings No. 4892) and after hearing letters of administration were issued to Apolonio Suntay. After the latter's death Federico C. Suntay was appointed administrator of the estate. On 15 October 1934 the surviving widow filed a petition in the Court of First Instance of Bulacan for the probate of a last will and testament claimed to have been executed and signed in the Philippines on November 1929 by the

late Jose B. Suntay. This petition was denied because of the loss of said will after the filing of the petition and before the hearing thereof and of the insufficiency of the evidence to establish the loss of the said will- An appeal was taken from said order denying the probate of the will and this Court held the evidence before the probate court sufficient to prove the loss of the will and remanded the case to the Court of First Instance of Bulacan for further proceedings (63 Phil., 793). In spite of the fact that a commission from the probate court was issued on 24 April 1937 for the taking of the deposition of Go Toh, an attesting witness to the will, on 7 February 1938 the probate court denied a motion for continuance of the hearing sent by cablegram from China by the surviving widow and dismissed the petition. In the meantime the Pacific War supervened. After liberation, claiming that he had found among the files, records and documents of his late father a will and testament in Chinese characters executed and signed by the deceased on 4 January 1931 and that the same was filed, recorded and probated in the Amoy district court, Province of Fookien, China, Silvino Suntay filed a petition in the intestate proceedings praying for the probate of the will executed in the Philippines on November 1929 (Exhibit B) or of the will executed in Amoy, Fookien, China, on 4 January 1931 (Exhibit N).

There is no merit in the contention that the petitioner Silvino Suntay and his mother Maria Natividad Lim Billian are estopped from asking for the probate of the lost will or of the foreign will because of the transfer or assignment of their share right, title and interest in the estate of the late Jose B. Suntay to Jose G. Gutierrez and the spouses Ricardo Gutierrez and Victoria Gofio and the subsequent assignment thereof by the assignees to Francisco Pascual and by the latter to Federico C. Suntay, for the validity and legality of such assignments cannot be threshed out in this proceedings which is concerned only with the probate of the will and testament executed in the Philippines on November 1929 or of the foreign will allegedly executed in Amoy on 4 January 1931 and claimed to have been probated in the municipal district court of Amoy, Fookien province, Republic of China.

As to prescription, the dismissal of the petition for probate of the will on 7 February 1938 was no bar to the filing of this petition on 18 June 1947, or before the expiration of ten years.

As to the lost will, section 6, Rule 77, provides:

> No will shall be proved as a lost or destroyed will unless the" execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded.

The witnesses who testified to the provisions of the lost will are Go Toh, an attesting witness, Anastacio Teodoro and Ana Suntay. Manuel Lopez, who was an attesting witness to the lost will, was dead at the time of the hearing of this alternative petition. In his deposition Go Toh testifies that he was one of the witnesses to the lost will consisting of twenty-three sheets signed by Jose B. Suntay at the bottom of the will and each and every page thereof in the presence of Alberto Barretto, Manuel Lopez and himself and underneath the testator's signature the attesting witnesses signed and each of them signed the attestation clause and each and every page of the will in the presence of the testator and of the other witnesses (answers to the 31st, 41st, 42nd, 49th, 50th, 55th and 63rd interrogatories, Exhibit D-1), but did not take part in the drafting thereof (answer to the 11th interrogatory, Id.); that he knew the contents of the will written in Spanish although he knew very little of that language (answers to the 22nd and 23rd interrogatories and to X-2 cross-interrogatory, Id.) and all he knows about the contents of the lost will was revealed to him by Jose B. Suntay at the time it was executed (answers to the 25th

interrogatory and to X—1 and X-8 cross-interrogatories, Id.); that Jose B. Suntay told him that the contents thereof are the same as those of the draft (Exhibit B) (answers to the 33rd interrogatory and to X-8 cross-interrogatory, Id.) which he .saw in the office of Alberto Barretto in November 1929 when the will was signed (answers to the 69th, 72nd, and 74th interrogatories, Id) ; that Alberto Barretto handed the draft and said to Jose B; Suntay: "You had better see if you want any correction" (answers to the 81st, 82nd and 83rd interrogatories, Id.); that "after checking Jose B. Suntay put the 'Exhibit B' in his pocket and had the original signed and executed" (answers to the 91st interrogatory, and to X-18 cross-interrogatory, Id.) ; that Mrs. Suntay had the draft of the will (Exhibit B) translated into Chinese and he read the translation (answers to the 67th interrogatory, Id.); that he did not read the will and did not compare it (check it up) with the draft (Exhibit B) (answers to X-6 and X-20 cross-interrogatories, Id.).

Ana Suntay testifies that sometime in September 1934 in the house of her brother Apolonio Suntay she learned that her father left a will "because of the arrival of my brother Manuel Suntay, who was bringing along with him certain document and he told us or he was telling us that it was the will of our father Jose B. Suntay which was taken from Go Toh. . . ." (p. 524, t. s. n., hearing of 24 February 1948); that she saw her brother Apolonio Suntay read the document in her presence and of Manuel and learned of the adjudication made in the will by her father of his estate, to wit: one-third to his children, one-third to Silvino and his mother and the other third to Silvino. Apolonio, Concepcion and Jose, Jr. (pp. 526-8, 530-1, 542, t. s. n. Id.) ; that "after Apolonio read that portion, then he turned over the document to Manuel, and he went away," (p. 528, t. s. n., Id.). On cross-examination, she testifies that she read the part of the will on adjudication to know what was the share of each heir (pp. 530, 544, t. s. n., Id.) and on redirect she testifies that she saw the signature of her father, Go Toh, Manuel Lopez and Alberto Barretto (p. 546, t. s. n., Id.).

Anastacio Teodoro testifies that one day in November 1934 (p. 273,

t. s. n., hearing of 19 January 1948), before the last postponement of the hearing granted by the Court, Go Toh arrived at his law office in the De los Reyes Building and left an envelope wrapped in red handkerchief [Exhibit C] (p. 32, t. s. n., hearing of 13 October 1947); that he checked up the signatures on the envelope Exhibit A with those on the will placed in the envelope (p. 33, t. s. n., Id.); that the will was exactly the same as the draft Exhibit B (pp. 32, 47, 50, t. s. n., Id.).

If the will was snatched after the delivery thereof by Go Toh to Anastacio Teodoro and returned by the latter to the former because they could not agree on the amount of fees, the former coming to the latter's office straight from the boat (p. 315, t. s. n., hearing of 19 January 1948) that brought him to the Philippines from Amoy, and that delivery took place in November 1934 (p. 273, t. s. n., Id.), then the testimony of Ana Suntay that she saw and heard her brother Apolonio Suntay read the will sometime in September 1934 (p. 524, t. s. n., hearing of 24 February 1948), must not be true.

Although Ana Suntay would be a good witness because she was testifying against her own interest, still the fact remains that she did not read the whole will but only the adjudication (pp. 526-8, 530-1, 542, t. s. n., Id.) and saw only the signature, of her father and of the witnesses Go Toh, Manuel Lopez and Alberto Barretto (p. 546, t. s. nM Id.). But her testimony on cross-examination that she read the part of the will on adjudication is inconsistent with her testimony in chief that after Apolonio had read that part of the will he turned over or handed the document to Manuel who went away (p. 528, t. s. n., Id.).

If it is true that Go Toh saw the draft Exhibit B in the office of Alberto Barretto in November 1929 when the will was signed, then the part of his testimony that Alberto Barretto handed the draft to Jose B. Suntay to whom he said: "You had better see if you want any correction" and that "after checking Jose B. Suntay put the 'Exhibit B' in his pocket and had the original signed and executed" cannot be true, for it was not the time for correcting the draft of the will, because it must have been corrected before and all corrections and additions written in

lead pencil must have been inserted and copied in the final draft of the will which was signed on that occasion. The bringing in of the draft (Exhibit B) on that occasion is just to fit it within the framework of the appellant's theory. At any rate, all of Go Toh's testimony by deposition on the provisions of the alleged lost will is hearsay, because he came to know or he learned of them from information given him by Jose B. Suntay and from reading the translation of the draft (Exhibit B) into Chinese.

Much stress is laid upon the testimony of Federico C. Suntay who testifies that he read the supposed will or the alleged will of his father and that the share of the surveying widow, according to the will, is two-thirds of the estate (p. 229, t s. n;, hearing of 24 October 1947). But this witness testified to oppose the appointment of a co-administrator of the estate, for the reason that he had acquired the interest of the surviving widow not only in the estate of her deceased husband but also in the conjugal property (pp. 148, 205, 228, 229, 231, t. s. n., Id.) Whether he read the original will or just the copy thereof (Exhibit B) is not clear. For him the important point was that he had acquired all the share, participation and interest of the surviving widow and of the only child by the second marriage in the estate of his deceased father. Be that as it may, his testimony that under the will the surviving widow would take two-thirds of the estate of the late Jose B. Suntay is at variance with Exhibit B and the testimony of Anastacio Teodoro. According to the latter, the third for strict legitime is for the ten children; the third for betterment is for Silvino, Apolonio, Conception and Jose Jr.; and the third for free disposal is for the surviving widow and her child Silvino.

Hence, granting that there was a will duly executed by Jose B. Suntay placed in the envelope (Exhibit A) and that it was in existence at the time of, and not revoked before, his death, still the testimony of Anastacio Teodoro alone falls short of the legal requirement that the provisions of the lost will must be "clearly and distinctly proved by at least two credible witnesses." Credible witnesses mean competent witnesses and those who testify to facts from or upon hearsay are neither competent nor credible witnesses.

On the other hand, Alberto Barretto testifies that in the early part of 1929 he prepared or drew up two wills for Jose B. Suntay at the latter's request, the rough draft of the first will was in his own handwriting, given to Manuel Lopez for the final draft or typing and returned to him; that after checking up the final with the rough draft he tore it and returned the final draft to Manuel Lopez; that this draft was in favor of all the children and the widow (pp. 392-4, 449, t. s. n., hearing of 21 February 1948); that two months later Jose B. Suntay and Manuel Lopez called on him and the former asked him to draw up another will favoring more his wife and child Silvino; that he had the rough draft of the second will typed (pp. 395. 449 t. s. n., Id.) and gave it to Manuel Lopez (p. 396. t. s. n,, Id.); that he did not sign as witness the second will of Jose B. Suntay copied from the typewritten draft [Exhibit B] (p. 420, t. s. n., Id.) ; that the handwritten insertions or additions in lead pencil to Exhibit B are not his (pp. 415—7 435-6, 457, t. s. n.f Id.) ; that the final draft of the first will made up of four or five pages (p. 400, t. s. n., Id.) was signed and executed, two or three months after Suntay and Lopez had called on him (pp. 397-8, 403, 449, t. s. n., Id.) in his office at the Cebu Portland Cement in the China Banking Building on Dasmarinas street by Jose B. Suntay, Manuel Lopez and a Chinaman who had all come from Hagonoy (p. 398, t. s. n., Id.) ; that on that occasion they brought an envelope (Exhibit A) where the following words were written: "Testamento de Jose B. Suntay" (pp. 399, 404, t. s. n., Id.) ; that after the signing of the will it was placed inside the envelope (Exhibit A) together with an inventory of the properties of Jose B. Suntay and the envelope was sealed by the signatures of the testator and the attesting witnesses (pp. 398, 401, 441, 443, 461, t. s. n., Id.); that he again saw the envelope (Exhibit A) in his house one Saturday in the later part of August 1934, brought by Go Toh and it was then in perfect condition (pp. 405-6, 411, 440-2, t. s. n., Id.) ; that on the following Monday Go Toh went to his law office bringing along with him the envelope (Exhibit A) in the same condition; that he told Go Toh that he would charge P25,000 as fee for probating the will (pp. 406, 440-2, Id.) ; that Go Toh did not leave the envelope (Exhibit A) either in his house or in his law office (p. 407, t. s. n., Id.) ; that

Go Toh said he wanted to keep it and on no occasion did Go Toh leave it to him (pp. 409, 410, t. s. n., Id.).

The testimony of Go Toh taken and heard by Assistant Fiscal F. B. Albert in connection with the complaint for estafcu filed against Manuel Suntay for the alleged snatching of the envelope (Exhibit A), corroborates the testimony of Alberto Barretto to the effect that only one will was signed by Jose B. Suntay at his office in which he (Alberto Barretto), Manuel Lopez and Go Toh took part as attesting witnesses (p. 15, t. s. n., Exhibit 6). Go Toh testified before the same assistant fiscal that he did not leave the will in the hands of Anastacio Teodoro (p. 26, t. s. n., Exhibit 6). He said, quoting his own words, "Because I can not give him this envelope even though the contract (on fees) was signed. I have to bring that document to court or to anywhere else myself." (p. 27, t. s. n., Exhibit 6).

As to the will claimed to have been executed on 4 January 1931 in Amoy, China, the law on the point is Rule 78. Section 1 of the rule provides:

> Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.

Section 2 provides:

> When a copy of such will and the allowance thereof, duly authenticated, is filed with a petition for allowance in the Philippines, by the executor or other person interested, in the court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.

Section 3 provides:

> If it appears at the hearing that the will should be allowed in the Philippines, the court shall so allow it, and a certificate of its allowance, signed by the Judge, and attested by the seal of the court, to which shall be attached a copy of the will, shall be filed and recorded by the clerk, and the will shall have the same effect as if originally proved and allowed in such court.

The fact that the municipal district court of Amoy, China, is a probate court must be proved. The law of China on procedure in the probate or allowance of wills must also be proved. The legal requirements for the execution of a valid will in China in 1931 should also be established by competent evidence. There is no proof on these points. The unverified answers to the questions propounded by counsel for the appellant to the Consul General of the Republic of China set forth in Exhibits R-l and R-2, objected to by counsel for the appellee, are inadmissible, because apart from the fact that the office of Consul General does not qualify and make the person who holds it an expert on the Chinese law on procedure in probate matters, if the same be admitted, the adverse party would be deprived of his right to confront and cross-examine the witness. Consuls are appointed to attend to trade matters. Moreover, it appears that all the proceedings had in the municipal district court of Amoy were for the purpose of taking the testimony of two attesting witnesses to the will and that the order of the municipal district court of Amoy does not purport to probate the will. In the absence of proof that the municipal district court of Amoy is a probate court and on the Chinese law of procedure in probate matters, it may be presumed that the proceedings in the matter of probating or allowing a will in the Chinese courts are the same as those provided for in our laws on the subject. It is a proceedings in rent and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made. The interested parties in the case were known to reside in the Philippines. The evidence shows that no such notice was received by the interested parties residing in the Philippines (pp. 474, 476, 481, 503-4, t. s. n., hearing of 24 February 1948). The proceedings had in the municipal district court of Amoy, China, may be likened to a deposition or to a

perpetuation of testimony, and even if it were so it does not measure or come up to the standard of such proceedings in the Philippines for lack of notice to all interested parties and the proceedings were held at the back of such interested parties.

The order of the municipal district court of Amoy, China, which reads, as follows:

ORDER:

SEE BELOW

The above minutes were satisfactorily confirmed by the interrogated parties, who declare that there are no errors, after said minutes were loudly read and announced actually in the court.

Done and subscribed on the Nineteenth day of the English month of the 35th year of the Republic of China in the Civil Section of the Municipal District Court of Amoy, China.

HUANG KUANG CHENG
Clerk of Court

CHIANG TENG HWA
Judge

(Exhibit N-13, p. 89 Folder of Exhibits.)

does not purport to probate or allow the will which was the subject of the proceedings. In view thereof, the will and the alleged probate thereof cannot be said to have been done in accordance with the accepted basic and fundamental concepts and principles followed in the probate and allowance of wills. Consequently, the authenticated transcript of proceedings held in the municipal district court of Amoy, China, cannot be deemed and accepted as proceedings leading to the probate or allowance of a will and, therefore, the will referred to therein cannot be allowed, filed and recorded by a competent court of this country. .

The decree appealed from is affirmed, without pronouncement as to costs.

Pablo, Bengzon, A. Reyes, Labrador and *Concepcion, JJ.,* concur.

DISSENTING:

PARAS, C. J.:

As a preliminary statement we may well refer to the case of Maria Natividad Lim Billian, petitioner and appellant, *vs.* Apolonio Suntay, Angel Suntay, Manuel Suntay, and Jose Suntay, oppositors and appellees, 63 Phil., 793-797, in which the following decision was rendered by this Court on November 25, 1936, holding that the will executed by Jose B. Suntay who died in the City of Amoy, China, on May 14, 1934, was lost under the circumstances pointed out therein, and ordering the return of the case to the Court of First Instance of Bulacan for further proceedings:

"On May 14, 1934, Jose B. Suntay died in the City of Amoy, China. He married twice, the first time to Manuela T. Cruz with whom he had several children now residing in the Philippines, and the second time to Maria Natividad Lim Billian with whom he had a son.

"On the same date, May 14, 1934, Apolonio Suntay, eldest son of the deceased by his first marriage, filed the latter's intestate in the Court of First Instance of Manila (civil case No. 4892).

"On October 15, 1934, and in the same court, Maria Natividad Lim Billian also instituted the present proceedings for the probate of a will allegedly left by the deceased.

"According to the petitioner, before the deceased died in China he left with her a sealed envelope (Exhibit A) containing his will and, also another document (Exhibit B of the petitioner) said to be a true copy of the original contained in the envelope. The will in the envelope was

executed in the Philippines, with Messrs. Go Toh, Alberto Barreto and Manuel Lopez as attesting witnesses. On August 25, 1934, Go Toh, as attorney-in-fact of the petitioner, arrived in the Philippines with the will in the envelope and its copy Exhibit B. While Go Toh was showing this envelope to Apolonio Suntay and Angel Suntay, children by first marriage of the deceased, they snatched and opened it and, after getting its contents and throwing away the envelope, they fled."

'Upon this allegation, the petitioner asks in this case that the brothers Apolonio, Angel, Manuel and Jose Suntay, children by the first marriage of the deceased, who allegedly have the document contained in the envelope which is the will of the deceased, be ordered to present it in court, that a day be set for the reception of evidence on the will, and that the petitioner be appointed executrix pursuant to the designation made by the deceased in the will.

"In answer to the court's order to present the alleged will, the brothers Apolonio, Angel, Manuel and Jose Suntay stated that they did not have the said will and denied having snatched it from Go Toh.

"In view of the allegations of the petition and the answer of the brothers Apolonio, Angel, Manuel and Jose Suntay, the questions raised herein are: The loss of the alleged will of the deceased, whether Exhibit B accompanying the petition is an authentic copy thereof, and whether it has been executed with all the essential and necessary formalities required by law for its probate.

"At the trial of the case on March 26, 1934, the petitioner put two witnesses upon the stand, Go Toh and Tan Boon Chong, who corroborated the allegation that the brothers Apolonio and Angel appropriated the envelope in the circumstances above-mentioned. The oppositors have not adduced any evidence counter to the testimony of these two witnesses. The court, while making no express finding on this fact, took it for granted in its decision; but it dismissed the

petition believing that the evidence is insufficient to establish that the envelope seized from Go Toh contained the will of the deceased, and that the said will was executed with all the essential and necessary formalities required by law for its probate.

"In our opinion, the evidence is sufficient to establish the loss of the document contained in the envelope. Oppositors' answer admits that, according to Barretto, he prepared a will of the deceased to which he later become a witness together with Go Toh and Manuel Lopez, and that this will was placed in an envelope which was signed by the deceased and by the instrumental witnesses. In court there was presented and attached to the case an open and empty envelope signed by Jose B. Suntay, Alberto Barretto, Go Toh and Manuel Lopez. It is thus undeniable that this envelope Exhibit A is the same one that contained the will executed by the deceased—drafted by Barretto and with the latter, Go Toh and Manuel Lopez as attesting witnesses. These tokens sufficiently point to the loss of the will of the deceased, a circumstance justifying the presentation of secondary evidence of its contents and of whether it was executed with all the essential and necessary legal formalities.

"The trial of this case was limited to the proof of loss of the will, and from what has taken place we deduce that it was not petitioner's intention to raise, upon the evidence adduced by her, the other points involved herein, namely, as we have heretofore indicated, whether Exhibit B is a true copy of the will and whether the latter was executed with all the formalities required by law for its probate. The testimony of Alberto Barreto bears importantly in this connection.

"Wherefore, the loss of the will executed by the deceased having been sufficiently established, it is ordered that this case be remanded to the court of origin for further proceedings in obedience to this decision, without any pronouncement as to the costs. So ordered"

On June 18, 1947, Silvino Suntay, the herein petitioner, filed a petition in the Court of First Instance of Bulacan praying "that an order be issued (a) either directing the continuation of the proceedings in the case remanded by the Supreme Court by virtue of its decision in G. R. No. 44276 and fixing a date for the reception of evidence of the contents of the will declared lost, or the allowance, filing and recording of the will of the deceased which had been duly probated in China, upon the presentation of the certificates and authentications required by Section 41, Rule 123 (Yu Chengco *vs.* Tiaoqui supra), or both proceedings concurrently and simultaneously; (b) that letters of administration be issued to herein petitioner as co-administrator of the estate of the deceased together with Federico Suntay; and (c) that such other necessary and proper orders be issued which this Honorable Court deems appropriate in the premises." While this petition was opposed by Federico C. Suntay, son of the deceased Jose B. Suntay with his first wife, Manuela T. Cruz, the other children of the first marriage, namely, Ana Suntay, Aurora Suntay, Conception Suntay, Lourdes Guevara Vda. de Suntay, Manuel Suntay and Emiliano Suntay, filed the following answer stating that they had no opposition thereto; "Come now the heirs Conception Suntay, Ana Suntay, Aurora Suntay, Lourdes Guevara Vda. de Suntay, Manuel Suntay, and Emiliano Suntay, through their^ undersigned attorney, and, in answer to the alternative petition filed in these proceedings by Silvino Suntay, through counsel, dated June 18, 1947, to this Honorable Court respectfully state that, since said alternative petition seeks only to put into effect the testamentary disposition and wishes of their late father, they have no opposition thereto."

After hearing, the Court of First Instance of Bulacan rendered on April 19,1948, the following decision:

> "This action is for the legalization of the alleged will of Jose B. Suntay, deceased.
>
> "In order to have a comprehensive understanding of this case, it is necessary to state the background on which the alternative petition of

the herein petitioner Silvino Suntay has been based.

"The decision of the Supreme Court (Exhibit O), in re will of the deceased Jose B. Suntay, 63 Phil., 793-797, is hereunder produced:

(As quoted above)

"The above quoted decision of the Supreme Court was promulgated on November 25, 1936 (Exhibit 0).

"The Clerk of the Court of Court of First Instance of Bulacan notified the parties of the decision on December 15, 1936; and the case was set for hearing on . February 12, 1937, but it was transferred to March 29, 1937 (Exhibit C), on motion of the then petitioner Maria Natividad Lim Billian (Exhibit F). Again, it was postponed until 'further setting' in the order of court dated March 18, 1937, upon motion of the petitioner (Exhibit H).

"In the meantime, the deposition of Go Ton was being sought (Exhibit H).

"The hearing of the case was again set for February 7, 1936, by order of the court dated January 5, 1938, upon motion of Emiliano Suntay and Jose Suntay, Jr. On the same day of the hearing which had been set, the petitioner, then, Maria Natividad Lim Billian, sent a telegram from Amoy, China, addressed to the Court of First Instance of Bulacan moving for the postponement of the hearing on the ground that Atty. Eriberto de Silva who was representing her died (Exhibit K). The court, instead of granting the telegraphic motion for postponement, dismissed the case in the order dated February 7, 1938 (Exhibit L).

"On July 3, 1947, the petitioner Silvino Suntay filed a motion for the consolidation of the intestate Estate of the deceased Jose B. Suntay, Special Proceeding No. 4892 and the Testate Estate of Jose B. Suntay,

Special Proceeding No. 4952, which latter case is the subject of the said alternative petition. The motion for the merger and consolidation of the two cases was1 granted on July 3, 1947.

"The oppositor, Federico C. Suntay, in the Testate Proceeding filed a motion to dismiss the alternative petition on November 14, 1947, which was denied by the court in its resolution of November 22, 1947. The said oppositor not being satisfied with the ruling of this court denying the motion to dismiss, filed before the Supreme Court a petition for a writ of certiorari with preliminary injunction, which was dismissed for lack of merit on January 27, 1948.

"In obedience to the decision of the Supreme Court (Exhibit O) and upon the alternative petition of Silvino Suntay, and, further, upon the dismissal of the petition for a writ of certiorari with preliminary injunction, the court was constrained to proceed with the hearing of the probate of the lost will, the draft of which is Exhibit B, or the admission and recording of the will which had been probated in Amoy, China.

"The evidence for the petitioner, Silvino Suntay, shows that Jose B. Suntay married twice; first to Manuela T. Cruz who died on June 15, 1920 and had begotten with her Apolonio, now deceased, Concepcion, Angel, Manuel, Federico, Ana, Aurora, Emiliano and Jose, Jr., all surnamed Suntay, and second, to Maria Natividad Lim Billian with whom he had as the only child Silvino Suntay, the petitioner herein.

"Some time in November 1929, Jose B. Suntay executed his last will and testament in the office of Atty. Alberto Barretto in Manila, which was witnessed by Alberto Barretto, Manuel Lopez and Go Toh. The will was prepared by said Alberto Barretto upon the instance of Jose B. Suntay, and it was written in the Spanish language which was understood and spoken by said testator; After the due execution of the will, that is signing every page and the attestation clause by the testator and the

witnesses in the presence of each other, the will was placed inside the envelope (Exhibit A), sealed and on the said envelope the testator and the three subscribing witnesses also signed, after which it was delivered to Jose B. Suntay.

"A year or so after the execution of the will, Jose B. Suntay together with his second wife Maria Natividad Lim Billian and Silvino Suntay who was then of tender age went to reside in Amoy, Fookien, China, where he died on May 14, 1934. The will was entrusted to the widow, Maria Natividad Lim Billian.

"Upon the death of Jose B. Suntay on May 14, J.934, Apolonio Suntay, the oldest son now deceased, instituted the Intestate Proceedings No. 4892, upon the presumption that no will existed. Maria Natividad Lim Billian who. remained in Amoy, China, had with her the will and she engaged the services of the law firm of Barretto and Teodoro for the probate of the will. Upon the request of the said attorneys the will was brought to the Philippines by Go Toh who was one of the attesting witnesses, and it was taken to the law office of Barreto and Teodoro. The law firm of Barreto and Teodoro was composed of Atty. Alberto Barreto and Judge Anastacio Teodoro. The probate of the will was entrusted to the junior partner Judge Anastacio Teodoro; and, upon the presentation of the sealed envelope to him, he opened it and examined the said will preparatory to the filing of the petition for probate. There was a disagreement as to the fees to be paid by Maria Natividad Lim Billian, and as she (through Go Toh) could not agree to pay, P20,000 as fees, the will was returned to Go Toh by Judge Anastacio Teodoro after the latter had kept it in his safe, in his office, for three days.

"Subsequently, the will inside the envelope was snatched from Go Toh by Manuel Suntay and Jose, Jr., which fact has been established in the decision of the Supreme Court at the beginning of this decision. Go Toh could recover the envelope (Exhibit A) and the piece of cloth with which the envelope was wrapped (Exhibit C).

"The Testate Proceeding was filed nevertheless and in lieu of the lost will a draft of the will (Exhibit B) was presented as secondary evidence for probate. It was disallowed by this court through Judge Buenaventura Ocampo, but on appeal the Supreme Court remanded the case to this court for further proceeding (Exhibit C).

"In the meantime, a Chinese will which was executed in Amoy Fookien, China, on January 4, 1931, by Jose B. Suntay, written in Chinese characters (Exhibit P) was discovered in Amoy, China, among the papers left by Jose B. Suntay, and said will had been allowed to probate in the Amoy District Court, China, which is being also presented by Silvino Suntay for allowance and recording in this court.

"The said petition is opposed by Federico G. Suntay on the main ground that Maria Natividad Lim Billian and Silvino Suntay have no more interest in the, properties left by Jose B. Suntay, because they have already sold their respective shares, interests and participations. But such a ground of opposition is not of moment in the instant case, because the proposition involved herein in the legalization of the lost will or the allowance and recording of the will which had been probated in Amoy, China.

"It is now incumbent upon this court to delve into the evidence whether or not Jose B. Suntay, deceased, left a will (the draft of which is Exhibit. B) and another will which was executed and another will which was executed and probated in Amoy, China.

"There is no longer any doubt that Jose B. Suntay while he was still residing in the Philippines, had executed a will; such is the conclusion of the Supreme Court in its decision (Exhibit O). That the will was snatched and it has never been produced in court by those who snatched it, and consequently considered lost, is also an established fact.

"The contention of the oppositor, Federico C. Suntay, is that the will that was executed by Jose B. Suntay in the Philippines contained provisions which provided for equal distribution of the properties among the heirs; hence, the draft (Exhibit B) cannot be considered as secondary evidence, because it does not provide for equal distribution, but it favors Maria Natividad Lim Billian and Silvino Suntay. He relies on the testimony of Atty. Alberto Barretto who declared that the first will wfiich he drafted and reduced into a plain copy was the will that was executed by Jose B. Suntay and placed inside the envelope (Exhibit A).

"Granting that the first will which Atty. Alberto Barretto had drafted became the will of Jose B. Suntay and it was snatched by, and, therefore, it had fallen into the hands of, Manuel Suntay and the brothers of the first marriage, it stands to reason that said Manuel Suntay and brothers would have been primarily interested in the production of said will in court, for obvious reasons, namely, that they would have been favored. But it was suppressed and 'evidence willfully suppressed would be adverse if produced' (Section 69 (e), Rule 123 of the Rules of Court). The contention, therefore, that the first will which was drafted by Atty. Barretto was the one placed inside the envelope (Exhibit A) is untenable.

"It might be said in this connection that the draft of the will (Exhibit B) has been admitted by Atty. Alberto Barretto as identical in substance and form to the second draft which he prepared in typewriting; it differs only, according to him, in style. He denied that the insertions in long hand in the said draft are in his own handwriting; however, Judge Anastacio Teodoro averred that the said insertions are the handwriting of Atty. Alberto Barretto. But when Atty. Alberto Barretto was asked to show any manuscript of his for purposes of comparison, he declined to do so alleging that he did not have any document in his possession showing his handwriting notwithstanding the fact that he was testifying in his own house at 188 Sta. Mesa Boulevard, Manila. He further testified that the first will he drafted contained four or five pages, but the second draft contained

twenty-three pages; that he declared in one breath that he did not read the will any more when it was signed by the testator and the attesting witnesses because it would take up much time, and in the same breath he declared that he checked it before it was signed; and that he destroyed the draft of the first will which was in his own handwriting, but he delivered the draft of the second will which he prepared to Jose B. Suntay in the presence of Manuel Lopez, now deceased.

"Whether
or not the final plain copy of the draft of the will (Exhibit B) was executed by the testator, Jose B. Suntay, and attested by the subscribing witnesses, Atty. Alberto Barretto, Manuel Lopez and Go Toh, is the pivotal point in this instant case. Judge Anastacio Teodoro testified that he opened the sealed envelope when it was given to him by Go Toh preparatory to the presentation of the petition for the probate of the said will. As the lawyer entrusted with that task, he had to examine the will and have it copied to be reproduced or appended to the petition. He could not do otherwise if he is worth his salt as a good lawyer; lie could not perform the stunt of "blind flying" in the judicial firmament. Every step must be taken with certainty and precision under any circumstances. He could not have talked about the attorney's fees with Go Toh, unless he has not examined the will beforehand. And, declaring that it was the exact draft of the will that was inside the envelope (Exhibit A), the testimony of Atty. Alberto Barretto to the contrary notwithstanding.

"The testimony of
Judge Anastacio Teodoro is corroborated by Go Toh, one of the attesting witnesses, in his deposition (Exhibit D-l).

"Ana Suntay, one
of the heirs and who would be affected adversely by the legalization of the will in question, also testified on rebuttal that she saw the original will in the possession of Manuel Suntay, immediately after the snatching. She read it and she particularly remembers the manner in which the properties were to be distributed. Exhibit B was shown to her on the witness stand and she declared that the provision regarding the

distribution of the properties in said Exhibit B is the same as that contained in the original will. Said testimony of Ana Suntay, therefore, belies the testimony of Atty. Alberto Barretto.

"With respect to the proof of lost or destroyed will, Section 6 of Rule 77 provides as follows:

'No will shall be proved as a lost or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or it is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded.'

"Section 8 of the same Rule provides as follows:

'If it appears at the time fixed for the hearing that the subscribing witnesses are dead or insane, or that none of them resides in the Philippines the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will; and as evidence of the due execution of the will, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.'

"Manuel Lopez as one of the subscribing witnesses is dead. Atty. Alberto Barretto and Go Toh are still living. The former testified during the hearing, while Go Toh's deposition was introduced in evidence which was admitted. In the absence of the testimony of Manuel Lopez, deceased, the testimony of Judge Anastacio Teodoro and Ana Suntay was received.

"It is an established

fact that the will, draft of which is Exhibit B, was lost or destroyed; that it was executed and valid and that it existed at the time of the death of Jose B. Suntay. These circumstances also apply to the will (Exhibit P) which was executed in Amoy, China.

"The contents of the Chinese will is substantially the same as the draft (Exhibit B). Granting that the will executed in the Philippines is non-existent as contended by the oppositor, although the findings of this court is otherwise, the will executed and probated in China should be allowed and recorded in this court. All the formalities of the law in China had been followed in its execution, on account of which it was duly probated in the Amoy District Court. There is no cogent reason, therefore, why it should not be admitted and recorded in this jurisdiction.

"The said will (Exhibit P) in Chinese characters is presented as an alternate in case the will executed in the Philippines would not be allowed to probate, or as a corroborative evidence that the will, the draft of which is Exhibit B, has been duly executed in the Philippines by Jose B. Suntay.

"Rule 78 of the Rules of Court covers the allowance of will proved outside of the Philippines and administration of estate thereunder.

"Section 1 of said rule provides:

'Wills proved and allowed in the United States, or any state or territory thereof, or in foreign country, according to the laws of such state, territory, or country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.'

"Section 2 of the. same rule provides:

'When a copy of such will and the allowance thereof, duly authenticated, is

filed with a petition for allowance in the Philippines, by the executor or other person interested, in the court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.'

"This court has delved deep into the evidence adduced during the hearing with that penetrating scrutiny in order to discover the real facts; it has used unsparingly the judicial scapel; and it has winnowed the evidenced to separate the grain from the chaff. All the facts lead to the inevitable conclusion that Jose B. Suntay, in his sound and disposing mind and not acting under duress or undue influence, executed the will which is lost, the draft of which is Exhibit B, with all the necessary formalities prescribed by law. He, likewise, executed the second will (Exhibit P) in Amoy, China, which has been duly probated in Amoy District Court,—a corroborative evidence that the testator really executed the will. Copies of the said wills duly certified and under the seal of the court are appended hereto, marked Exhibits B and P, and they form part of this decision.

"In view of the foregoing considerations, the court is of the opinion and so declares that the draft of the will (Exhibit B) is, to all legal intents and purposes, and testament of the deceased Jose B. Suntay. With costs against the oppositor, Federico C. Suntay."

Oppositor Federico C. Suntay filed on May 20, 1948, a motion for new trial and to set aside the decision rendered on April 19, 1948, to which the petitioner filed an opposition, followed by a reply filed by the oppositor and an answer on the part of the petitioner. Without reopening the case and receiving any new or additional evidence, the Court of First Instance of Bulacan, oh September 29, 1948, promulgated the following resolution setting aside his first decision and disallowing the wills sought to be probated by the petitioner in his alterative petition filed on June 18, 1947:

"This is a motion for new trial and to set aside the decision legalizing the will of Jose B. Suntay and allowing and recording another will executed by him in Amoy, China.

"By virtue of this motion, this court is constrained to go over the evidence and the law applicable thereto with the view of ascertaining whether or not the motion is well founded;. Both parties have presented extensive memoranda in support of their respective contentions.

"This court has gone over the evidence conscientiously, and it reiterates its findings of the same facts in this resolution, whether or not the facts established by the petitioner, Silvino Suntay, warrant the legalization of the lost will and the allowance and recording of the will that was executed in Amoy, China, is therefore, the subject of this instant motion.

"A. As to the legalization of the Lost Will.—There is no question in the mind of this court that the original will which Jose B. Suntay, deceased executed in the Philippines in the year 1929 was lost (Exhibit 0, Decision of the Supreme Court). The evidence adduced by the petitioner during the hearing has established through the testimony of Judge Anastacio Teodoro and that of Go Toh (an attesting witness) that the will was executed by Jose B. Luntay, deceased, with all the formalities required by law. For the purpose of legalizing an original and existing will, the evidence on record is sufficient as to the execution and attesting in the manner required by law.

"Section 8 of Rule 77 provides as follows:

'SEC. 8. *Proof when witnesses dead or insane or do not reside in the Philippines*.—If it appears at the time fixed for the hearing that the subscribing witnesses are dead or insane, or that none of them resides in the Philippines, the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will;

and as evidence of the execution of the will, may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.'

"Section 11 of said rule also provides as follows:

'SEC. 11. *Subscribing witnesses produced or accounted for where contest.*—If the will is contested, all the subscribing, witnesses present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of the subscribing witnesses are present in the Philippines, but outside the province where the will has been filed, their deposition must be taken. If all or some of the subscribing witnesses produced and examined testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law."

"The three attesting witnesses were
Manuel Lopez, deceased Alberto Barreto and Go Toh. The last two witnesses are still living; the former testified against and the latter in favor. In other words, the attesting witness, Go Toh, only, testified in his deposition in favor of the due execution of the will. Hence, the petitioner presented another witness, Judge Anastacio Teodoro, to establish and- prove the due execution of the said will. Ana Suntay was also presented as a witness in rebuttal evidence. The testimony of Go Toh in his deposition as an attesting witness, coupled with the testimony of Judge Anastacio Teodoro who was able to examine the original will that was executed by Jose B. Suntay, deceased, when it was given to him by Go Toh for the purpose of filing the petition in court for its legalization, and could recognize the signatures of the testator as well as of the three attesting witnesses on the said original will is sufficient to convince the court that the original will was executed by the deceased Jose B. Suntay with all the formalities required by law. The original will, therefore, if it was

presented in court to probate would be allowed to all legal intents and purposes. But it was not the original will that was presented, because it was lost, but an alleged draft (Exhibit B) of the said original will which does not bear the signature of the testator and any of the attesting witness. The original will was duly executed with all the formalities required by law, but it was unfortunately lost; and the curtain falls for the next setting.

"The Court is now
confronted with the legalization of the lost will—whether or not the draft (Exhibit B) should be admitted as secondary evidence in lieu of the lost will and allowed to probate.

"Section 6 of Rule 77 provides as follows:

'SEC. 6. *Proof of lost or destroyed will—Certificate thereupon.*—
No will shall be proved as a lost will or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its "provisions are clearly and distinctly proved by at least two credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the Judge, under the seal of the court and the certificate must be filed and recorded as other wills are filed and recorded1.' (Italic Court's)

"From
the above quoted provision of the law, it is clear that the petitioner should not only establish the execution and validity of the will, its existence at the time of the death of the testator or its fraudulent and accidental destruction in the lifetime of the testator without his knowledge, but also *must prove its provisions clearly and distinctly by at least two credible witnesses*.
The exact language of the clause in the above quoted provision of the law is 'nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.' The legalization of a lost will is

not so easy, therefore, as that of an original will. The question, therefore, is boiled down to, and projected on the screen, in a very sharp focus; namely, the execution and validity must be established and the provisions must be clearly and distinctly proved by at least credible witnesses.

"Granting that the execution and validity of the lost will have been established through the testimony of Judge Anastacio Teodoro and Go Toh, and perhaps superficially by the rebuttal witness, Ana Suntay, does it follow that the provisions of the lost will have been clearly and distinctly proved by at least two credible witnesses? A careful review of the evidence has revealed that at most the only credible witness who testified as to the provisions of the will was Judge Anastacio Teodoro, and yet he testified on the provisions of the lost will with the draft (Exhibit B) in his hands while testifying. It may be granted, however, that with or without the draft of the will (Exhibit B) in his hands, he could have testified clearly and distinctly on the provisions of the said lost will, because he had kept the will in his safe, in his office, for three days, after opening it, and he is well versed in Spanish language in which the will as written. But did the attesting witness Go Toh, testify in his deposition and prove clearly and distinctly the provisions of the lost will? He did not, and he could not have done so even if he tried because the original will was not read to him nor by him before or at the signing of the same. It was written in Spanish and he did not and does not understand the Spanish language. Neither was there any occasion for him to have the contents of the said will, after its execution and sealing inside the envelope (Exhibit A), read' to him because it was opened only when Judge Teodoro had examined it and then subsequently snatched from Go Toh. Ana Suntay on rebuttal did not, likewise, prove clearly and distinctly the provisions of the said lost will because she has not had enough schooling and she does possess adequate knowledge of the Spanish language as shown by the fact that she had to testify in Tagalog on the witness stand.

"It is evident, therefore, that although the petitioner has established the

execution and validity of the lost will, yet he has not proved clearly and distinctly the provisions of the will by at least two credible witnesses.

"B. *As to the Allowance and Recording of the will Executed in Amoy, China*.—Jose B. Suntay, while he was residing in China during the remaining years of his life, executed also a will, written in Chinese characters, the translation of which is marked Exhibit P. It was allowed to probate in the District Court of Amoy, China. The question is whether or not the said will should be allowed and recorded in this jurisdiction.

"Section 1 of Rule 78 provides as follows:

'SEC. 1. *Will proved outside Philippines may be allowed here*.—Will proved and allowed in the United States, or any state or territory thereof, or in a foreign country, according to the laws of such state, territory, or country, may be allowed, filed, and recorded by the proper court of First Instance in the Philippines.'

"Section 2 of the same Rule also provides:

'SEC. 2. *Notice of hearing for allowance*.—When a copy of such will and the allowance thereof, duly authenticated, is filed with a petition for allowance in the Philippines by the executor or other person interested, in the Court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.'

"Sections 41 and 42 of Rule 123 provides 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 attested 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. If the office in which the record is kept is within the United States or

its territory, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of the office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign country in which the record is kept, and authenticated by the seal of his office'

'SEC. 42. *What attestation of copy must state*.—Whenever a copy of writing is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.'

"In the case of Yu Changco *vs*. Tiaoqui, 11 Phil. 598, 599, 600, our Supreme Court said:

'Section 637 of the Code of Civil Procedure says that wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded in the Court of First Instance of the province in which the testator has real or personal estate on which such will may operate; but section 638 requires that the proof of the authenticity of a will executed in a foreign country must be duly *"authenticated"*. Such authentication, considered as a foreign judicial record, is prescribed by section 304, which requires the attestation of the clerk or of the legal keeper of the records with the seal of the court annexed, if there be a seal, together with a certificate of the chief judge or presiding magistrate that the signature of either of the functionaries attesting the will is genuine, and, finally, the certification of the authenticity of the signature of such judge or

presiding magistrate, by the ambassador, minister, consul, vice consul or consular agent of the United States in such foreign country. And, should the will be considered, from an administrative point of view, as a mere official document "of a foreign country", it may be proved, "by the original, or by a copy certified by the legal keeper thereof, with a certificate, under the seal of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original". (Sec. 313, par. 8).'

"In the case of Fluemer *vs.* Hix, 54 Phil. 610, 611, 612, and 613, our Supreme Court said:

'It
is the theory of the petitioner that the alleged will was executed in Elkins, West Virginia, on November 3, 1925, by Hix who had his residence in that jurisdiction, and that the laws of West Virginia govern. To this end, there was submitted a copy of section 3868 of Acts 1882, c. 84 as found in West Virginia Code* Annotated, by Hogg, Charles E., Vol. 2, 1914, p. 1690, and as certified to by the Director of the National Library. But this was far from compliance with the law. The laws of a foreign jurisdiction do not prove themselves in our courts. The courts of the Philippine Islands are not authorized to take judicial notice of the laws of the various States of the American Union. Such laws must be proved as facts. (In re Estate of Johnson (1918), 39 Phil., 156.) Here the requirements of the law were not met. There was no showing that the book from which an extract was taken was printed or published under the authority of the State of West Virginia, as provided in section 300 of the Code of Civil Procedure. Nor was the extract from the law attested by the certificate of the officer having charge of the original under the seal of the State of West Virginia, as provided in section 301 of the Code of Civil Procedure. No evidence was introduced to show that the extract from the laws of West Virginia was in force at the time the alleged will was executed.

'It was
also necessary for the petitioner to prove that the testator had his

domicile in West Virginia and not in the Philippine Islands. The only evidence introduced to establish this fact consisted of the recitals in the alleged will and the testimony of the petitioner.

'While the appeal was pending submission in this court, the attorney for the appellant presented an unverified petition asking the court to accept as part of the evidence the documents attached to the petition. One of these documents discloses that a paper writing purporting to be the last will and testament of Edward Randolph Hix, deceased, was presented for probate on June 8, 1929, to the clerk of Randolph County, State of West Virginia, in vacation, and was duly proven by the oaths of Dana Vansley and Joseph L. Madden, the subscribing witnesses thereto, and ordered to be recorded and, filed. It was shown by another document that in vacation, on June 8, 1929, the clerk of court of Randolph County, West Virginia, appointed Claude E. Maxwell as administrator, *cum testamento annexo*, of the estate of Edward Randolph Hix, deceased . . . However this may be no attempt has been made to comply with, the provisions of sections 637, 638, and 639 of the Code of Civil Procedure, for no hearing on the question of the allowance of a will said to have been proved and allowed in West Virginia has been requested. * * *.'

"Granting that the will of Jose B. Suntay which was executed in Amoy, China, was validly done in accordance with the law of the Republic of China on the matter, is it necessary to prove in this jurisdiction the existence of such law in China as a prerequisite to the allowance and recording of said will? The answer is in the affirmative as enunciated in Fluemer *vs.* Hix, supra, and in Yañez de Barnuevo *vs.* Fuster, 29 Phil., 606. In the latter case, the Supreme Court said:

'A foreign law may be proved by the certificate of the officer having in charge of the original, under the seal of the state or country. It may also be proved by an official copy of the same published under the authority of the particular state and purporting to contain such law. (Sees. 300 and

301, Act No. 190.), (Syllabus.)

"The provisions of section 300 and 301 of the Code of Civil Procedure (Act No. 190) are as follows:

'SEC 300. *Printed laws of the State or Country.*—Books printed or published under the authority of the United States, or one of the States of the United States, or a foreign country, and purporting to contain statutes, codes, or other written law of such State or country or proved to be commonly admitted in the tribunals of such State or country an evidence of the written law thereof, are admissible in the Philippine Islands are evidence of such law.'

'SEC. 301. *Attested copy of foreign laws*.—A copy of the written law or other public writing of any state or country, attested by the certificate of the officer having charge of the original, under the seal of the state or country, is admissible as evidence of such law or writing.'

"The petitioner has presented in evidence the certification of the Chinese Consul General, Tsutseng T. Shen, of the existence of the law in China (Exhibit B-3), relative to the execution and probate of the will executed by Jose B. Suntay in Amoy, China (Exhibit P). Is that evidence admissible, in view of the provisions of Sections 41 and 42 of the Rules of the Rules of Court. Is the said certification of the Chinese Consul General in the Philippines a substantial compliance with the provisions of the above mentioned section 41 ..and 42 of our Rules of Court?

"This court has its doubts as to the admissibility in evidence of the Chinese Consul General in the Philippines of the existence of the laws of Republic of China relative to the execution and probate of a will executed in China. Such law may exist in China, but,

'An official record or an entry therein, when admissible for any purpose, may be evidence by an official publication thereof or by a copy

attested 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. * * * If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.' (Sec. 41 of Rule 123.)

"The law of the Republic of China is a public or official record and it must be proved in this jurisdiction through the means prescribed by our Rules of Court. It is, therefore, obvious that the Chinese Consul General in the Philippines who certified as to the existence of such law is not the *officer having the legal custody of the record*, nor is he a deputy of such officer. And, if the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

It is clear, therefore, that the above provisions of the Rules of Court (Rule 123, sec. 41) not having been complied with, the doubt of this court has been dissipated, and it is of the opinion and so holds that the certification of the Chinese Consul General *alone* is not admissible as evidence in the jurisdiction.

"The evidence of record is not clear as to whether Jose B. Suntay, who was born in China, but resided in the Philippines for a long time, has become a Filipino citizen by naturalization, or he remained a citizen of the Republic of China. The record does not, likewise, show with certainty whether or not he had changed his permanent domicile from the Philippines to Amoy, China. His change of permanent domicile could only

be inferred. But the question of his permanent domicile pales into insignificance in view of the overtowering fact that the law of China pertinent to the allowance and recording of the said will in this jurisdiction has been satisfactorily established by the petitioner.

"Both
the petitioner and the oppositor have extensively urged in their respective memorandum and in the oral argument in behalf of the oppositor the question of estoppel. The consideration of the points raised by them would open the door to the appreciation of the intrinsic validity of the provisions of the will which is not of moment at the present stage of the proceeding. While the probate of a will is conclusive as to the compliance with all formal requisites necessary to the lawful execution of the will, such probate does not affect the intrinsic validity of the provisions of the will. With respect to the latter the will is governed by the substantive law relative to descent and distribution. (In re Johnson, 39 Phil., 157).

"IN VIEW OF
THE FOREGOING, and upon reconsideration, the previous decision rendered in this case allowing the will (Exhibit B) and allowing and recording the foreign will (Exhibit P) is set aside; and this court is of the opinion and so holds that the said two wills should be, as they are hereby disallowed. Without special pronouncement as to costs."

It is very significant that in the foregoing resolution, the Court of First Instance of Bulacan "reiterates its finding of the same facts in this resolution" and merely proceeds to pose the sole question "whether or not the facts established by the petitioner, Silvino Suntay, warrant the legalization of the lost will and allowance and recording of the will that was executed in Amoy, China." The somersault executed by the trial court is premised on the ground that "although the petitioner has established the execution and validity of the lost will, yet he has not proved clearly and distinctly the provisions of the will by at least two credible witnesses"; and that, assuming that the will of Jose B. Suntay executed in Amoy, China, was in accordance

with the law of the Republic of China, the certification of the Chinese Consul General in the Philippines as the existence of such law is not admissible evidence in this jurisdiction. In effect the resolution on the motion for reconsideration promulgated by the trial court, and the decision of the majority herein, adopt the position that the testimony of Judge Anastacio Teodoro as to the provisions of the lost will, while credible and perhaps sufficient in extent, is not corroborated by the witnesses Go Toh and Ana Suntay and, therefore, falls short of the requirement in section 6, Rule 77, of the Rules of Court that the provisions of the lost will must be "clearly and distinctly proved by at least two witnesses." That this requirement was obviously construed to mean that the exact provisions are to be established, may be deduced from the following dialogue between his Honor, Judge Potenciano Pecson, and Attorney Teofilo Sison, new counsel for oppositor Federico C. Suntay, who appeared for the first time at the ex parte hearing of oppositor's motion for new trial on September 1,1949:

> "COURT: However, Rule 77, Section 6, provides in proving a lost will, the provisions of the lost will mast be distinctly stated and certified by the Judge.
>
> "ATTY. TEOFILO SISON: Yes, Your Honor.
>
> "COURT: That presupposes that the judge could only certify to the *exact provisions* of the will from the evidence presented.
>
> "ATTY. TEOFILO SISON: That is our contention, provided that provision is clearly established by two credible witnesses so that the Court could state that in the decision, we agree, that is the very point.
>
> (t s. n. 75, Session of Sept. 1, 1948)"

The sound rule, however, as we have found it to be, as to the degree of proof required to establish the contents of a lost or destroyed will, is that there is sufficient compliance if two witnesses have

substantiated the provisions affecting the disposition of the testator's properties; and this is especially necessary to prevent the "perpetration of fraud by permitting a presumption to supply the suppressed proof," to keep a wrong-doer from utilizing the rule as his "most effective weapon," or to avoid the enjoyment of a "premium from the rascality of one whose interests might suggest the destruction of a will."

"Section 1865 of the Code requires that the provisions of a lost will must be clearly and distinctly proved by at least two credible witnesses before it can be admitted to probate; but this section must receive a liberal construction (Hook *vs.* Pratt, 8 Hun. 102-109) and its spirit is complied with by holding that *it applies only to those provisions which affect the disposition of the testator's* property and which are of the substance of the will."

"The allegations of the contents of the will are general, and under ordinary circumstances, would be in sufficient; but the fact alleged, if proven as alleged, would certainly authorize the establishment of the will so far as its bequests are concerned. To require that a copy of the will or the language of the bequests, in detail, should be pleaded, where no copy has been preserved, and where the memory of the witnesses does not hold the exact words, would not only deny the substance for mere form, but would offer a premium upon the rascality of one whose interests might suggest the destruction of a will. As said in Anderson *vs.* Irwin, 101 111. 411: 'The instrument in controversy having been destroyed without the fault of the defendant in error * * * and there not appearing to be any copy of it in existence, it would be *equivalent to denying the complainant relief altogether to require her to prove the very terms in which it was conceived. All that could reasonably be required of her under the circumstances could be to show in general terms the disposition which the testator made of his property by the instruments;* that it purported to be his will and was duly attested by the requisite number of witnesses.' In Allison *vs.* Allison, 7 Dana 91, it was said in speaking of the character and extent of proof required in such a case:' nor is there any just ground to object to the proof because the witnesses have not given the language of the will or the substance thereof. *They have given the substance of the*

different devises as to the property or interest devised, and to whom devised and we would not stop, in the case of a destroyed will, to scan with rigid scrutiny the form of the proof, provided we are satisfied of the substance of its provisions.'" (Joses *vs.* Casler 139 Ind. 392, 38 N. E. 812).

"The evidence in the case falls short of establishing the existence of such a writing, except as it may be presumed, under the maxim Omnia preasumuntur in odium spoliateris." There was evidence tending to show that the second will of Anne Lambie was in the possession of Francis Lambie, and that it came to the hands of the proponents, warranting the inference that it has been suppressed or destroyed. If from this evidence the jury found such paper destroyed the law permits the presumption that it was legally drawn and executed, notwithstanding the terms of the statute, which requires the revoking instrument to be formally executed. *If a will be lost, secondary evidence may be given of its contents; if suppressed or destroyed, the same is true; and, if necessary the law will prevent the perpetration of a fraud by permitting a presumption to supply the suppressed proof. We cannot assent to the proposition that the statute is so right as to be the wrong-doer's most effective weapon. The misconduct once established to the satisfaction of the jury, it is no hardship to the wrongdoer to say. 'Produce the evidence in your possession, or we will presume that your opponent's contention is true.' When one deliberately destroys, or purposely induces another to destroy, a written instrument subsequently become a matter of judicial inquiry between the spoliator and an innocent party, the latter will not be required to make strict proof of the contents of such instrument in order to establish a right founded thereon.* Brook, Leg. Max. 576, Preston *vs.* Preston, 132, Atl. 55, 61. (Re Lambie's Estate, 97 Mich. 55, 56 N. W. 225)"

Judged from the standard set forth in the foregoing authorities, and bearing in mind that the circumstances of this case lead to the only conclusion that the loss of the will in question is of course imputable to those whose interests are adverse to the petitioner and the widow Lim Billian, we have no hesitancy in holding the view that the dispositions of the properties left by the deceased Jose B. Suntay as provided in his will which was lost or snatched in the manner recited

in the decision of this Court in the case of Lim Billian *vs.* Suntay, 63 Phil., 798-797, had been more than sufficiently proved by the testimony of Judge Anastacio Teodoro, Go Toh, and Ana Suntay, supported conclusively by the draft of the lost will presented in evidence as Exhibit "B", and even by the testimony of oppositor Federico C. Suntay himself.

It is to be recalled that the trial Judge, in his first decision of April 19, 1948, made the following express findings with respect to the testimony of Judge Teodoro: "Judge Anastacio Teodoro testified that he opened the sealed envelope when it was given to him by Go Toh preparatory to the presentation of the petition for the probate of the said will. As the lawyer entrusted with that task, he had to examine the will and have it copied1 to be reproduced or appended to the petition. He could not do otherwise if he is worth his salt as a good lawyer. He could not perform the stunt of 'blind flying' in the judicial firmament. Every step must be taken with certainty and precision under any circumstances. He could not have talked about the attorney's fees with Go Toh, unless he has not examined the will beforehand. And, when he was shown Exhibit B, he did not hesitate in declaring that it was the exact draft of the will that was inside the envelope (Exhibit A), the testimony of Atty. Alberto Barretto to the contrary notwithstanding."

We should not forget, in this connection, that in the resolution on the motion for reconsideration the trial Judge reiterated the findings in his decision, although as regards the testimony of Judge Teodoro admittedly "the only credible witness who testified as to the provisions of the will," he observed that Judge Teodoro had the draft Exhibit "B" in his hands while testifying. We cannot see any justification for the observation, assuming that Judge Teodoro consulted the draft, since even the trial Judge granted that he "could have testified clearly and distinctly on the provisions of the said lost will, because he had kept the will in his safe, in his office, for three days, after opening it, and he is well versed in Spanish language in which the will was written." As a matter of fact, however, it is not true that Judge Teodoro had the draft in question before him while

testifying as may be seen from the following passages of the transcript:

"Q.	And, have you read that will which was inside this envelope, Exhibit A?—
"A.	Yes.
"Q.	Do you remember more or less the contents of the will?
"ATTY. FERRIN:	With our objection, the best evidence is original will itself, Your Honor.
"ATTY. RECTO:	We are precisely proving by means of secondary evidence, the contents of the will, because according to the Supreme Court, and that is a fact already decided, that the will of Jose B. Suntay was lost and that is res adjudicata.
"COURT:	Witness may answer.
"WITNESS:	I remember the main features of the will because as I said I was the one fighting for the postponement of the hearing of the intestate case because I was asked by Don Alberto Barretto to secure the postponement until the will that was executed by the deceased is sent here by the widow from China, with whom we communicated with several letters, and when the will arrived I had to check the facts as appearing in the will, and examined fully in connection with the facts alleged in the intestate, and there was a striking fact in the intestate that Apolonio Suntay has.
"ATTY. FERRIN:	(Interrupting) May we ask that the witness answer categorically the questions of Atty. Recto, it seems that the answers of the witness are kilometric . . .
"ATTY. RECTO:	Sometimes the question cannot be answered fully unless the witness would relate and give all the facts.
"COURT:	The Attorney for the Administrator may move for the striking out of any testimony that is not responsive to the question.
"ATTY. FERRIN:	That is why, our objection, the answer is out of the question.
"COURT:	Atty. Recto may propound another question.
"ATTY. RECTO:	I heard the witness was saying something and he has not finished the sentence, and I want to ask the Court just to allow the witness to finish his sentence.
"COURT:	You may finish.

"WITNESS:

"A. There was a sentence, the point I was trying to check first was whether the value of the estate left by the deceased was sixty thousand pesos (P60,000.00) as Apolonio Suntay made it appear in his petition, and when I looked at the original will, I found out that it was several hundred thousand pesos, several thousands of pesos, hundreds of pesos, that was very striking fact to me because the petition for intestate was for sixty thousand pesos (P60,000.00), and I came to know that it was worth more than SEVEN HUNDRED THOUSAND (P700,000.00) PESOS.

"Q. Do you remember, Judge, the disposition of the will, the main disposition of the will?—

"A. Yes, because our client were the widow, Maria Natividad Lim Billian, and his son, Silvino, the only son in the second marriage, that was very important for me to know.

"Q. How were the properties distributed according to that will?—

"A. The properties were distributed into three (3) parts, one part which we call legitima corta, were equally distributed to the ten (10) children, nine (9) in the first marriage, and one (1) in the second marriage with Maria Natividad Lim Billian. The other third, the betterment was given to four (4) children, Conception, and Apolonio getting a quite substantial share in the betterment, around sixty thousand (P60.000.00) for Concepcion, Apolonio the amount of seventy thousand (70,000.00) pesos or little over, and then about ONE HUNDRED THOUSAND (P100,000.00) PESOS of the betterment in favor of Silvino, the minor of the second marriage, and to Jose equal to Concepcion.

"Q. So the betterment, as I understand from you went to four (4) children?—

"A. Yes.

"Q. Silvino in the second mariage, Concepcion, Apolonio and Jose in the first mariage?—

"A. Yes.

"Q. What about the free disposal?—

"A. The free disposal was disposed in favor of the widow, Maria Natividad Lim Billian and Silvino, his minor son in equal parts.

"Q. What about, if you remember, if there was something in the will in connection with that particular of the usufruct of the widow?—

"A. It was somewhat incorporated into the assets of the estate left by the deceased.

"Q. Do you remember the number of pages of which that will consisted?—

"A. Twenty-three (23) pages.

"Q. Do you remember if the pages were signed by the testator?—

"A. Yes, sir, it was signed.

"Q. And the foot of the testament or the end of the testament, was it signed by the testator?—

"A. Yes, sir, and the attestation clause was the last page signed by the three instrumental witnesses, Alberto Barreto, one Chinaman Go Toh, and Manuel Lopez, my former Justice of the Peace of Hagonoy.

"Q. Do you remember if these witnesses signed on the different pages of the will?—

"A. Yes, sir, they signed with their name signatures."

"Q. Showing you this document consisting of twenty-three (23) pages in Spanish and which document appears already attached to this same testamentary proceedings and already marked as EXHIBIT B, will you please tell the Court if and for instance on page eight (8) of this document, pagina octavo, it says, there are handwritings in pencil, some of which read as follows: 'Los cinco-octavos (5|8) partes corresponds a mi hijo Emiliano', can you recognize whose handwriting is that?—

"A. From my best estimate it is the handwriting of Don Alberto Barretto.

"Q. About the end of the same page eight (8) *pagina octavo*, of the same document Exhibit B, there is also the handwriting in pencil which reads: 'La otra sexta parte (6.a) corresponde a Bonifacio Lopez', can you recognize that handwriting?—

"A. Yes, sir, this is the handwriting of Don Alberto Barretto, and I wish to call the attention of the Court to compare letter "B" which is in capital letter with the signature of Don Alberto Barretto in the envelope, 'Alberto Barretto' and stroke identifies one hand as having written those words.

"Q. *Will you please go over cursorily this document, Exhibit B composed of twenty-three (23) pages and please tell the Court if this document had anything to do with the will which according to you was contained in the envelope, Exhibit A?—*

"A. This is exactly the contents of the original will which I received and kept in my office inside the safe for three (3) days, and I precisely took special care in the credits left by the deceased, and I remember among them, were the De Leon family, and Sandiko, well known to me, and then the disposition of the estate, divided into three (3) equal parts, and I noticed that they are the contents of the will read."

His Honor, Judge Pecson, was positive in his first decision that "the testimony of Judge Anastacio Teodoro is corroborated by Go Toh, one of the attesting witnesses, in his deposition (Exhibit D-l)." Yet in setting aside his first decision, he remarked that Go Ton's

testimony did not prove clearly and distinctly the provision of the lost will, because: “He did not, and he could not have done so even if he tried because the original will was not read to him nor by him before or at the signing of the same. It was written in Spanish and he did not and does not understand the Spanish language. Neither was there any occasion for him to have the contents of the said will, after its execution and sealing inside the envelope (Exhibit A), read to him, because it was opened only when Judge Teodoro had examined it and then subsequently snatched from Go Ton.”

The later position thus taken by Judge Pecson is palpably inconsistent with the following unequivocal statements of Go Toh contained in his desposition taken in Amoy, China, on April 17, 1938, and in oppositor’s Exhibit “6”:

> “26. State what you know of the contents of that will.
>
> “.
> . . .Regarding (1) expenditures (2) Philippine citizenship; (3) Distribution of estates among children (4) Taking care of grave lot; (5) guardianship of Silvinb Suntay and (6) after paying his debts he will have approximately 720,000 pesos left. This amount will be divided into three equal parts of 240,000 pesos each. The first part is to be divided equally among the ten children born by the first and second wives and the second part among the three sons Silvino Suntay, 75,000 approximately; Apolonio Suntay, 50,000 pesos approximately; Jose Suntay and Concepcion Suntay, 36,000 each approximately. The third part is to be divided between Maria Lim Biliian and Silvino Suntay; each will get approximately 110,000 pesos. Silvino Suntay will get a total of 210,000 pesos approximately, Maria Natividad Lim Biliian a total of 290,000 approximately, and Apolonio Suntay a total of 80,000 approximately, Concepcion Suntay and Jose Suntay will get 60,000 pesos each approximately. The rest of the children will get approximately 29,000 each. The way of distribution of the property of Jose B. Suntay, movable and immovable, and the outstanding debts to be collected was arranged by Jose B. Suntay.”

* * * * * * *

“78. On the occasion of the execution of the testament of Jose B. Suntay, state whether or not you say Exhibit B— . . . Yes.

“79.
In the affirmative case, state if you know who had the possession of Exhibit B and the testament the first time you saw them on that occasion.— . . . Yes, I know who had possession of them.

“80.
Can you say whether or not Jose B. Suntay happened to get those documents later on, on that same occasion?— … He got them after the execution.

“81. Please name the person who gave those documents to Mr. Suntay.— … Alberto Barretto gave the documents to Jose B. Suntay,

“82. Did the person who gave those documents to Suntay say anything to him (Suntay) at the time of giving them?— . . . Yes.

“83. If so what was it that he said, if he said any?— … He said, ‘You had better see if you want any correction.’

“84.
What did Mr. Suntay do after those documents were given to him?— . . . Jose B. Suntay looked at them and then gave one copy to Manuel Lopez for checking.

“85. State whether or not Mr. Suntay gave one of those documents to another man.— . . . Yes.

“86.
In the affirmative case, can you say which of the two documents was given and who the man was?— . . . Yes he gave Exhibit B to Manuel Lopez.

“87. State whether or not Mr. Suntay said something to the man to whom he gave one of those documents.— . . . Yes.

"88.
In the affirmative case can you repeat more or less what Mr. Suntay said to that man?— ... He told him to read it for checking.

"89. State if you know what did the man do with one of those documents given to him.— . . . He took it and read it for checking.

"90.
What did in turn Mr. Suntay do with the other one left with him?— . . . Jose B. Suntay looked at the original and checked them.

"91.
What was done with those documents later on if there was anything done with them?— . . . After checking, Jose B. Suntay put Exhibit B in his pocket and had the original signed and executed.

"92. What
was done with the testament of Jose B. Suntay after it was signed by the testator and its witnesses?— ... It was taken away by Jose B. Suntay." (Exhibit D, D-1.)

"Q. Did you know the contents of this envelope?—
"A. I knew that it was a will.
"Q. But did you know the provisions of the will?—
"A. It is about the distribution of the property to the heirs.
"Q. *Did you know how the property was distributed according to the will?—*
"A. *I know that more than P500,000 was for the widow and her son, more than P100,000 for the heirs that are in the family."* (Exhibit "6" p. 28).
"Q. You stated that you were one of the witnesses to the will and that the will was written in Spanish. Was it written in typewriting or in handwriting of somebody?—
"A. That will was written in typewriting.
"Q. Did you read the contents of that will, or do you know the contents of that will?—
"A. No, sir, because I do not know Spanish.
"Q. How do you know that it was the will of Jose B. Suntay?—
"A. Because I was one of the signers and I saw it." (Exhibit "6", p. 19.).
"22. Do you understand the language in which that will was written?— ... I know a little Spanish."

“23. Do you talk or write that language? I can write and talk a little Spanish.” (Exhibits D, D-1.)

As to Ana Suntay’s corroborating testimony, Judge Pecson aptly made the following findings: “Ana Suntay, one of the heirs and who would be affected adversely by the legalization of the will in question, also testified on rebuttal that she saw the original will in the possession of Manuel Suntay immediately after the snatching. She read it and she particularly remembers the manner in which the properties were to be distributed. Exhibit B was shown to her on the witness stand and she declared that the provision regarding the distribution of the properties in said Exhibit B is the same as that contained in the original will. Said testimony of Ana Suntay, therefore, belies the testimony of Atty. Alberto Barretto.” And yet in the resolution on the motion for new trial, the trial Judge had to state that “Ana Suntay on rebuttal did not, likewise, prove clearly and distinctly the provisions of the said lost will, because she has not had enough schooling and she does not possess adequate knowledge of the Spanish language as shown by the fact that she had to testify in Tagalog on the witness stand.” The potent error committed by Judge Pecson in reversing his views as regards Ana’s testimony, is revealed readily in the following portions of the transcript:

“P.	Cuantas paginas tenia aquel documento a que usted se refiere?—”R. Probablemente seria mas de veinte (20) paginas.
“P.	No serian treinta (30) paginas?—”Abogado Recto: La testigo ha contestado ya que mas de veinte (20).
“Juzgado:	Se estima
“Abogado Mejia:	
“P.	Usted personalmente leyo el documento?—”R. Yo leyo mi hermano en presencia mia.
“P.	La pregunta es, si usted personalmente ha leido el documento?—”R. *Si, lo he visto.*
“P.	No solamente le pregunto a usted si Vd. ha visto el testamento sino *si usted ha leido personalmente el testamento?—*”R. *Si la parte de la adjudication lo he leido* para asegurarme a que porcion corresponder a cada uno de nosotros.

“P.	Puede usted repetir poco mas o menos esa porcion a que se hacia la distribucion del alegado testamento?—”R. Como ya he declarado, que las propiedadtes de mi difunto padre se habian dividido en tres partes, una tercera parte se nos adjudica a nosotros diez (10) hijos en primeros nupcias y segunda nupcia, la segunda tercera parte los adjudica a la viuda y a Silvino, y la otra tercera parte se lo adjudica a sus hijos como mejora a Silvino, Apolonio, Concepcion y Jose.
“P.	*Eso, tal como listed personalmente to leyo en el documento?—*
“R.	Si Senor,
“P.	Quiere usted tener la bondad, seiiora, de repetir poco mas o menos las palabras en ese documento que se distribuia las propiedades del defundo padre usted como usted relata aqui? “Abogado Recto: Objetamos a la pregunta por falta de base, porque elle solamente se fijo en la parte como se distribuian las propiedades pero no ha dicho la testigo que ella lo ha puesto de memorin, ni Vd. ha preguntado en que lenguaje estaba escrito el testamento . . .
“Juzgado:	Se estima.
“Abogado Mejia:	
“P.	Sabe usted en que lenguaje estaba redactado el documento que usted leyo personalmente?—”R. En Castellano.
“P.	Puede usted repetirnos ahora en Castellano algunas frases o palabras como se hizo la distribucion en aquel supuesto testamento?—
“Abogado Recto:	Objecion, por falta de base, uno puede entender el espafiol y sin embargo no podra repetir lo que ha leido, y no se sabe todavia si ha estudiado el espafiol bastante hasta el punto de poder hablarlo.
“Juzgado:	Se estima.
“Abogado Mejia	
“P.	Usted dijo que estaba puesto en castellano el supuesto testamento que Vda. leyo, usted poso el castellano?—”R. *Yo entiendo el castellano, pero no puedo Iiablar bien.*
“P.	Usted estudio el castellano en algun coleglo?—”R. Si, senor, en Sta. Catalina
“P.	Cuantos anos?—”‘R. Nuestros estudios no han sido continuous porque mi padre nos ingresaba en el colegio y despues nos sacaba para estar afuera, y no era continuo nuestro estudio.
“P.	Pero en total, como cuantos meses o aiios estaba usted en el colegio aprendiendo el castellano?—”R. Unos cuatro o cinco anos.
“P.	Entonces usted puede leer el castellano con facilidad, senora?—

"R.	Si, castellano sencillo puedo entender y lo puedo leer.
"P.	Usted entiende las preguntas que se le dirigian aqul en castellano sin interpretacion o sin el interprete?—"R. Si, Senor.
"P.	Puede usted contestar en castellano?—"R. Bueno, pero como usted debe comprender quisiera asegurarme del significado antes de contestar, por eso quiero que la pregunta se me traduzca antes. asi puedo contestar debidaraente." (t, s. n. pp. 533-534.)

We are really at a loss to understand why, without any change whatsoever in the evidence, the trial Judge reversed his first decision, particularly when he announced therein that "it is now incumbent upon this court to delve into the evidence whether or not Jose B. Suntay, deceased, left a will (the draft of which is Exhibit B) and another will which was executed and probated in Amoy, China." His action is indeed surprising when we take into account the various circumstantial features presently to be stated, that clearly confirm the testimony of Judge Anastacio Teodoro, Go Toh and Ana Suntay, or otherwise constitute visible *indicia* of oppositor's desire to frustrate the wishes of his father, Jose B. Suntay.

In our opinion the most important piece of evidence in favor of the petitioner's case is the draft of the lost will, Exhibit "B." Its authenticity cannot be seriously questioned, because according to the trial Judge himself, oppositor's own witness, Atty. Alberto Barretto, admitted it to be "identical in substance and form to the second draft which he prepared in typewriting." Indeed, all the "A's" and "B's" in the handwritten insertions on the draft are very similar to those in Barretto's admittedly genuine signature on the envelope, Exhibit "A." The finding of Judge Pecson on the point in his first decision (reiterated expressly in the resolution on the motion for new trial), should control, not only because it is in accordance with the evidence but because the oppositor had failed and did not even attempt to have the trial Judge reconsider or reverse his factual conclusions. The draft, Exhibit "B," having been positively identified by the witnesses for the petitioner to be an exact copy of the lost will of Jose B. Suntay, is therefore conclusive. Oppositor's effort to show that said draft was never signed in final form, and was thought of merely to

deceive petitioner's mother, Lim Billian, and that the will actually executed and put in the envelope, Exhibit "A", provided that the testator's estate would be" divided equally among his heirs, as in the case of intestacy, was necessarily futile because, if this allegation is true, the will would not have been "snatched" from Go Ton— and the loss certainly cannot be imputed to the widow Lim Billian or the petitioner; the snatched will would have been produced to put an end to petitioner's and his mother's claim for greater inheritance or participation under the lost will; and the envelope containing the first will providing for equal shares, would not have been entrusted to the care and custody of the widow Lim Billian.

It is very noteworthy that out of the nine children of the first marriage, only Angel, Jose and Federico Suntay had opposed the probate of the will in question; the rest, namely, Ana, Aurora, Concepcion, Lourdes, Manuel and Emiliano Suntay, having expressly manifested in their answer that they had no opposition thereto, since the petitioner's alternative petition "seeks only to put into effect the testamentary disposition and wishes of their late father." This attitude is significantly an indication of the justness of petitioner's claim, because it would have been to their greater advantage if they had sided with oppositor Federico Suntay in his theory of equal inheritance for all the children of Jose B. Suntay. Under the lost will or its draft Exhibit "B", each of the Suntay children would receive only some P25,000.00, whereas in case of intestacy or under the alleged will providing for equal shares, each of them would receive some P100,000.00. And yet the Suntay children other than Angel, Jose and Federico had chosen to give their conformity to the alternative petition in this case.

Another unequivocal confirmation of the lost will is the will which Jose B. Suntay executed in Amoy, Fookien, China, on January 4, 1931, and probated in Amoy District Court, China, containing virtually the same provisions as those in the draft Exhibit "B". What better evidence is there of an man's desire or insistence to express his last wishes than the execution of a will reiterating the same provisions contained in an earlier will. Assuming that the Chinese will cannot be probated

in the jurisdiction, its probative value as corroborating evidence cannot be ignored.

Oppositor himself had admitted having read the will in question under which the widow Lim Billian was favored; and this again in a way goes to corroborate the evidence for the petitioner as to the contents of the will sought to be probated.

"Court:

"Q. Have you read the supposed will or the alleged will of your father?—"A. Yes, sir.

"Court:

"Q. Can you tell the court the share or participation in the inheritance of Maria Natividad IAm Billian according to the will?—

"A. Yes sir, she will inherit, I think, two-thirds (2/3) of the estate, in other words she is the most favored in the will, so when they sold that, they sold everything, they are selling everything even the conjugal property." (t. s. n. 228-229.)

The decision of the majority leans heavily on the testimony of Atty. Alberto Barretto, forgetful perhaps of the fact that the trial Judge gave no credence to said witness. It should be repeated that Judge Pecson reiterated in the resolution on the motion for new trial all his findings in the first decision. If as Atty. Barretto testified, Lim Billian was entitled under the will actually signed by Jose Suntay only to P10,000.00, in addition to properties in China valued at P15,000.00, the fees of P25,000.00 admittedly asked by him would absorb her entire inheritance; and this would normally not be done by any law practitioner. Upon the other hand, there is evidence to the effect that Atty. Barretto might have become hostile to the petitioner and his mother Lim Billian in view of the latter's refusal to agree to the amount of P25,000.00 and her offer to pay only P100.00. There is also evidence tending to show that as early as 1942, Atty. Barretto was paid by oppositor Federico Suntay the sum of P16,000.00 which, although allegedly for services in the testate proceedings, was paid out of the personal funds of said oppositors to supply Atty. Barretto's needs. This circumstances perhaps further explains why the latter had to

support the side of Federico Suntay.

We have quoted in full the decision of this court in the "snatching" case and the first decision of Judge Pecson in this case, both in the hope and in the belief (1) that the first would reveal the manner by which those adversely affected had planned to prevent the last wishes of the deceased Jose B. Suntay from being carried out, and (2) that the second, by the facts correctly recited therein and by the force and accuracy of its logic would amply show the weakness and utter lack of foundation of the resolution on the motion for reconsideration. We have set forth at length pertinent portions of the testimony of various witnesses to demonstrate more plainly the plausibility of the original decision of Judge Pecson, and the latter's consequent bad judgment in having forced himself to accomplish a somersault, a feat which the majority, in my opinion, have mistakenly commended. We have found this to be one of the cases of this court in which we have had occasion to participate, where there can be absolutely no doubt as to the result—outright reversal—for which, with due respect to the majority opinion, we vote without hesitancy.

Montemayor and *Jugo, JJ.,* concur.

RESOLUTION

5 November 1954

PADILLA, J.:

This is a motion for reconsideration of the decision promulgated on 31 July 1954, affirming the decree of the Court of First Instance of Bulacan which disallowed the alleged last will and testament executed in November 1929 and the alleged last will and testament executed in Kulangsu, Amoy, China, on 4 January 1931, by Jose B. Suntay, without pronouncement as to costs, on grounds that will presently be taken up and discussed.

Appellant points to an alleged error in the decision where it states that—

> * * * This petition was denied because of the loss of said will after the filing1 of the petition and before the nearing thereof, * * *

because according to him the "will was lost before not after (the) filing of the petition." This slight error, if it is an error at all, does not, and cannot, after the conclusions and pronouncements made in the judgment rendered in the case. In his alternative petition the appellant alleges:

> 4. That on October 15, 1934, Maria Natividad Lim Billian, the mother of herein petitioner filed a petition in this court for the allowance and probate of a last will and testament executed, an signed in the Philippines in the year 1929 by said deceased Jose B. Suntay. (P. 3, amended record on appeal.)

If such last will and testament was already lost or destroyed at the time of the filing of the petition by Maria Natividad Lim Billian (15 October 1934), the appellant would have so stated and alleged. If Anastacio Teodoro, a witness for the appellant, is to be believed when he testified—

> * * * that one day in November 1934 (p. 273, t. s. n., hearing of 19 January 1948), * * * Go Toh arrived at his law office in the De los Reyes Building and left an envelope wrapped in red handkerchief [Exhibit C] (p. 32, t. s. n., hearing of 13 October 1947); * * * and—
>
> If the will was snatched after the delivery thereof by Go Toh to Anastacio Teodoro and returned by the latter to the former because they could not agree on the amount of fees, * * *

then on 15 October 1934, the date of the filing of the petition, the will was not yet lost. And if the facts alleged in paragraph 5 of the

appellant's alternative petition which states:

> That this Honorable Court, after hearing, denied the aforesaid petition for probate filed by Maria Natividad Lim Billian in view of the loss and/or destruction of said will subsequent to the filing of said petition and prior to the hearing thereof, and the alleged insufficiency of the evidence adduced to established the loss and/or destruction of the said will, (Italics supplied. P. 3, amended record on appeal.)

may be relied upon, then the alleged error pointed out by the appellant, if it is an error, is due to the allegation in said paragraph of his alternative petition. Did the appellant allege the facts in said paragraph with reckless abandon? Or, did the appellant make the allegation rs erroneously as that which he made in paragraph 10 of the alternative petition that "his will which was lost and ordered *probated* by our Supreme Court in G. R. No. 44276, above referred to?" (P. 7, amended record on appeal.)

This Court did not order the probate of the will in said case because if it did, there would have been no further and subsequent proceedings in the case after the decision of this Court referred to had been rendered and had become final. Be that as it may, whether the loss of the will was before or subsequent to the filing of the petition, as already stated, the fact would not affect in the slightest degree the conclusions and pronouncements made by this Court.

The appellant advances the postulate that the decision of this Court in the case of Lim Billian *vs.* Suntay, G. R. No. 44276, 63 Phil., 793, constitutes res judicata on these points: (a) that only one will was prepared by attorney Baretto, and (b) that the issue to be resolved by the trial court was whether the draft (Exhibit B) is a true copy or draft of the snatched will, and contends that these points already adjudged were overlooked in the majority opinion. The decision of this Court in the case referred to does not constitute res judicata on the points adverted to by the appellant. The only point decided in that

case is that "the evidence is sufficient to establish the loss of the document contained in the envelope." In the opinion of this Court, this circumstance justified "the presentation of secondary evidence of its contents and of whether it was executed with all the essential and necessary legal formalities." That is all that was decided. This Court further said:

> The trial of this case was limited to the proof of loss of the will, and from what has taken place we deduce that it was not petitioner's intention to raise, upon the evidence adduced by her, the other points involved herein, namely, as we have heretofore indicated, whether Exhibit B is a true copy of the will and whether the latter was executed with all the formalities required by law for its probate. The testimony of Alberto Barretto bears importantly in this connection. (V. 796, *supra*.)

Appellant's contention that the question before the probate court was whether the draft (Exhibit B) is a true copy or draft of the snatched will is a mistaken interpretation and view of the decision of this Court in the case referred to, for if this Court did make that pronouncement, which, of course, it did not, such pronouncement would be contrary to law and would have been a grievous and irreparable mistake, because what the Court passed upon and decided in that case, as already stated, is that there was sufficient evidence to prove the loss of the will and that the next step was to prove by secondary evidence its due execution in accordance with the formalities of the law and its contents, clearly and distinctly, by the testimony of at least two credible witnesses.[1]

The appellant invokes Rule 133 to argue that Rule 77 should not have been applied to the case but the provisions of section 623 of the Code of Civil Procedure (Act No. 190), for the reason that this case had been commenced before the Rules of Court took effect. But Rule 133 cited by the appellant provides:

> These rules shall take effect on July 1, 1940. They shall govern all cases brought after they take effect, and *also all further proceedings in cases then pending,* except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply. (Italics supplied.) So, Rule 77 applies to this case because it was a further proceedings in a case then pending. But even if section 623 of the Code of Civil Procedure were to be applied, still the evidence to prove the contents and due execution of the will and the fact of its unauthorized destruction, cancellation, or obliteration must be established "by full evidence to the satisfaction of the Court." This requirement may even be more strict and exacting than the two- witness rule provided for in section 6, Rule 77. The underlying reason for the exacting provisions found in section 623 of Act No. 190 and section 6, Rule 77, the product of experience and wisdom, is to prevent imposters from foisting, or at least to make for them difficult to foist, upon probate courts alleged last wills or testaments that were never executed.

In commenting unfavorably upon the decree disallowing the lost will, both the appellant and the dissenting opinion suffer from an infirmity born of a mistaken premise that all the conclusions and pronouncements made by the probate court in the first decree which allowed the probate of the lost will of the late Jose B. Suntay must be accepted by this Court. This is an error. It must be borne in mind that this is not a petition for a writ of certiorari to review a judgment of the Court of Appeals on questions of law where the findings of fact by said Court are binding upon this Court. This is an appeal from the probate court, because the amount involved in the controversy exceeds P50,000, and this Court in the exercise of its appellate jurisdiction must review the evidence and the findings of fact and legal pronouncements made by the probate court. If such conclusions and pronouncements are unjustified and erroneous this Court is in duty bound to correct them. Not long after entering the first decree the probate court was convinced that it had committed a mistake, so it set aside the decree and entered another. This Court affirmed the last decree not precisely upon the facts found by the probate court but upon facts found by it

after a careful review and scrutiny of the evidence, parole and documentary. After such .review this Court has found that the provisions of the will had not been established clearly and distinctly by at least two credible witnesses and that conclusion is unassailable be- cause it is solidly based on the established facts and in accordance with law.

The appellant and the dissent try to make much out of a pleading filed by five (5) children and the widow of Apolonio Suntay, another child of the deceased by the first marriage, wherein they state that—

> * * * in answer to the alternative petition filed in these proceedings by Silvino Suntay, through counsel, dated June 18, 1947, to this Honorable Court respectfully state that, since said alternative petition seeks only to put into effect the testamentary disposition and wishes of their late father, they have no opposition thereto. (Pp. 71-72, amended record on appeal.)

Does that mean that they were consenting to the probate of the lost will? Of course not. If the lost will sought to be probated in the alternative petition was really the will of their late father, they, as good children, naturally had, could have, no objection to its probate. That is all that their answer implies and means. But such lack of objection to the probate of the lost will does not relieve the proponent thereof or the party interested in its probate from establishing its due execution and proving clearly and distinctly the provisions thereof by at least two credible witnesses. It does not mean that they accept the draft Exhibit B as an exact and true copy of the lost will and consent to its probate. Far from it. In the pleading copied in the dissent, which the appellant has owned and used as argument in the motion for reconsideration, there is nothing that may bolster up his contention. Even if all the children were agreeable to the probate of said lost will, still the due execution of the lost will must be established and the provisions thereof proved clearly and distinctly by at least two credible witnesses, as provided for in

section 6, Rule 77. The appellant's effort failed to prove what is required by the rule. Even if the children of the deceased by the first marriage, out of generosity, were willing to donate their shares in the estate of their deceased father or parts thereof to their step mother and her only child, the herein appellant, still the donation, if validly made, would not dispense with the proceedings for the probate of the will in accordance with section 6, Rule 77, because the former may convey by way of donation their shares in the state of their deceased father or parts thereof to the latter only after the decree disallowing the will shall have been rendered and shall have become final. If the lost will is allowed to probate there woud be no room for such donation except of their respective shares in the probated will.

The part of the deposition of Go Toh quoted in the motion for reconsideration which appellant underscores does not refer to Go Toh but to Manuel Lopez. Even if Go Toh heard Manuel Lopez read the draft (Exhibit B) for the purpose of checking it up with the original held and read by Jose B. Suntay, Go Toh should not have understood the provisions of the will because he knew very little of the Spanish language in which the will was written (answer to 22nd and 23rd interrogatories and to X-2 cross-interrogatory). In fact, he testifies in his deposition that all he knows about the contents of the lost will was revealed to him by Jose B. Suntay at the time it was executed (answers to 25th interrogatory and to X-4 and X-8 cross-interrogatories); that Jose B. Suntay told him that the contents thereof are the same as those of the draft [Ehhibit B] (answers to 33rd interrogatory and to X-8 cross-interrogatory); that Mrs. Suntay had the draft of the will (Exhibit B) translated into Chinese and he read the translation (answer to the 67th interrogatory) I that he did not read the will and did not compare it (check it up) with the draft [Exhibit B] (answers to X-6 and X-20 cross-interrogatories). We repeat that—

> * * * all of Go Toh's testimony by deposition on the provisions of the alleged lost will is hearsay, because he came to know or he learned of them from information given him by Jos6 B. Suntay and from reading the translation of the draft (Exhibit B) into Chinese.

This finding cannot be contested and assailed.

The appellant does not understand how the Court came to the conclusion that Ana Suntay, a witness for the appellant could not have read the part of the will on adjudication. According to her testimony "she did not read the whole will but only the adjudication," which, this Court found, "is inconsistent with her testimony in chief (to the effect) that 'after Apolonio read that portion, then he turned over the document to Manuel, "and he went away.'" (P. 528, t. s. n., hearing of 24 February 1948.) And appellant asks the question: "Who went away? Was it Manuel or Apolonio?" In answer to his own question the appellant says: "The more obvious inference is that it was Apolonio and not Manuel who went away." This inference made by the appellant not only is not obvious but it is also illogical, if it be borne in mind that Manuel came to the house of Apolonio and it happened that Ana was there, according to her testimony. So the sentence "he went away" in Ana's testimony must logically and reasonably refer to Manuel, who was a caller or visitor in the house of his brother Apolonio and not to the latter who was in his house. If it was Apolonio who "went away," counsel for the appellant could have brought that out by a single question. As the evidence stands could it be said that the one who went away was Apolonio and not Manuel? The obvious answer is that it was Manuel. That inference is the result of a straight process of reasoning and clear thinking.

There is a veiled insinuation in the dissent that Alberto Barretto testified as he did because he had been paid by Federico C. Suntay the sum of P16,000. Federico C. Suntay testifies on the point thus—

Q. You mentioned in your direct testimony that you paid certain amount to Atty. Alberto Baretto for services rendered, how much did you pay?—A. Around sixteen thousand (P16,000.00).

Q. When did you make the payment?—A. During the Japanese time.

Q. Did you state that fact in any accounts you presented to the Court?—A. I do not quite remember that.

* * * (P. 180, t. s. n., hearing of 24 October 1947.)

Q. When you made that payment, was (it) your intention to charge it to the state or to collect it later from the estate?—A. Yes, sir.

Q. More or less when was such payment made, during the Japanese time, what particular month and year, do you remember?—A. I think in 1942.

Q. And you said you paid him because of services he rendered?—A. Upon the order to the Court.

Q. And those services were precisely because he made a will and he made a will which was lost, the will of Jose B. Suntay? * * * (P. 181, t. s, n., *supra*.)—-A. I think I remember correctly according to ex-Representative Vera who is the administrator whom I followed at that time, that was paid according to the services rendered by Don Alberto Barretto with regard to our case in the testamentaria but he also rendered services to my father.

Q. At least your Counsel said that there was an order of the Court ordering you to pay that, do you have that copy of the order?—A. Yes, sir, I have, but I think that was burned. (P. 184, t. s. n., *supra*.)

So the sum of P16,000 was paid upon recommendation of the former administrator and order of the probate court for services rendered by Alberto Baretto not only in the probate proceedings but also for services rendered to his father. But if this sum of P16,000 paid to Alberto Barretto upon recommendation of the previous administrator and order of the probate court for professional services rendered in the probate proceedings and to the deceased in his lifetime be taken against his truthfulness and veracity as to affect adversely his testimony, what about the professional services of Anastacio Teodoro who appeared in this case as one of the attorneys for the petitioner-appellant? (P. 2, t. s. n., hearing of 13 October 1947.) Would that not likewise or by the same token affect his credibility? Is not the latter's interest more compelling than the former's?

For the foregoing reasons, the motion for reconsideration is denied.

Pablo, Bengzon, Reyes, A. and *Concepcion, JJ.,* concur.

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[1] Section 6, Rule 77.

DISSENTING:

PARAS, C. J.:

For the same reasons and considerations set forth in detail in my dissent promulgated on July 31, 1954, I vote to grant the motion for reconsideration.

Montemayor and *Jugo, JJ.,* concur.

Date created: August 05, 2010