

**TESTATE ESTATE OF GLICERIA A. DEL ROSARIO, DECEASED.
CONSUELO S. GONZALES VDA. DE PRECILLA, PETITIONER AND
ADMINISTRATRIX, VS. SEVERINA NARCISO, ROSA NARCISO, JOSEFA
NARCISO, V...**

G.R. No. L-27200. August 18, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Motion for reconsideration and/or new trial filed by petitioner-appellee praying that the decision in this case promulgated on April 30, 1970 disallowing the purported will, Exhibit D, of the deceased Glicería A. del Rosario, be reconsidered and set aside and that the judgment of the trial court admitting the same to probate be affirmed, or, in the alternative, that before finally resolving the said issue of the probate of said purported will, this case be remanded to the court a quo in order that further evidence may be admitted relative to the factual question of whether or not the said deceased could have read the said document on December 29, 1960, the date of the alleged execution of the same, considering the condition of her eyes then.

The grounds alleged in support of the present motion are:

- "1. Article 808 of the Civil Code applies solely to a blind testator and does not include one with a defective eyesight or one who is illiterate or cannot read;
2. The testimony of Dr. Jesus V. Tamesis, upon which the disallowance of the will was based, has no probative value, because: (a) it is premised upon a grave factual error; (b) such testimony is contradicted by his own clinical record; and (c) it is glaringly superficial and evasive;
3. The testatrix, Doña Glicería A. del Rosario, was not blind; she could read and did actually read the will now in question, Exhibit "D"; and
4. Should this Honorable Court still believe that it is necessary to reopen the case to admit additional evidence showing that Doña Glicería A. del Rosario was not blind, could read and did actually read the aforesaid will, Exhibit "D", then we respectfully move for a new trial for the purpose of admitting such evidence."

No doubt counsel's scholarly dissertation of the above first ground both in their motion and in their reply to appellant's opposition is impressive and, insofar as the writer of this opinion is concerned, quite logically persuasive and plausible in many respects; but considering the view the Court takes, as hereunder discussed, of the main factual issue here, on the determination of which the point discussed by counsel has to be predicated, the more fitting occasion to resolve the question thus very ably and vigorously pressed upon would be if and when this case comes back to this Court later, in the event that anyone of the parties should find it necessary to submit an appeal after the court a quo has held the further proceedings herein ordered. At the moment, consideration and resolution of the above second ground should suffice to terminate the present proceeding in this Court.

Under the said second ground, counsel for movant contends that the testimony of Dr. Jesus V. Tamesis, the

witness of the so-called intestate heirs, upon which the Court has relied in disallowing the supposed testament, Exhibit D, in its decision now under review, has no probative value. In other words, it is argued that said testimony should not have been believed.

In this connection, it should not, of course, be lost sight of that, as pointed out by appellants in their opposition to the present motion, there are other considerations stated in the decision additionally supporting the assailed conclusion of the Court that "with the condition of her eyesight in August, 1960, and there is no evidence that it had improved by 29 December, 1960, Gliceria del Rosario was incapable of reading and could not have read the will supposedly signed by her on 29 December, 1960." For instance, the numerous typographical errors in the document and its informal and untidy appearance, considering its importance, were taken into account as suggestive of the fact that the supposed testatrix might not have been capacitated to read the same, as otherwise, it is to be normally assumed that she would have refused or, at least, hesitated to proceed with its execution without the proper corrections being made first.

Accordingly, for the Court now to accede to movant's prayer that it overturn its previous findings in this case, more than mere ratiocination regarding the testimony of Dr. Tamesis is needed. The pivotal issue here is one of fact, and bare arguments, no matter how forceful, if not based on concrete and substantial evidence which the Court might have overlooked and which would convincingly show that said doctor's observations and conclusions are or might be gravely erroneous cannot suffice to move the Court to reverse itself. Stated differently, the question that confronts Us now is this: does appellee's motion at hand allege and demonstrate that there are factual circumstances extant in the record, related to the doctor's testimony or forming part thereof and probably not clearly brought out before, which if considered now would tend to show that the judgment of this Court may be materially erroneous on account precisely of Our having relied on said testimony?

On this score, movant points out that the testimony of Dr. Tamesis is belied by the very records referred to by said witness himself in the material portions of his declaration in court. Certainly, this point is serious, for if it turns out to be supported by the record, what appears to be one of the main props of the decision would naturally fall and this may eventually cause modification of the judgment, depending on how materially important such discordance is in the resolution of the very issue of whether or not the deceased could have read Exhibit D on December 29, 1960. Consequently, a second look at the relevant evidence discussed in the motion is more than justified.

Before going, however, to the points raised by movant, it bears stating that the first thing that would strike anyone who reviews the testimony of Dr. Tamesis is that the reason or purpose of the so-called appellant intestate heirs in presenting the same is not clear, considering that in none of the nine formal and detailed oppositions filed in the Court below, sometimes individually, at other times jointly by the two groups of appellants, is there any specific indication of the ground for disallowance now under discussion, namely, that there was failure to comply with the requirements of Article 808 of the Civil Code because Doña Gliceria, if she was not blind, had such a defective eyesight on December 29, 1960 that she could not have read the will in question, Exhibit D. In other words, judged from the grounds of disallowance alleged in their formal oppositions on record before the witness was presented, there was nothing to indicate that the good doctor was going to testify on the alleged totally defective reading vision of the right eye of the deceased, which paucity, as We see it now, might account for the rather ambiguous or equivocal tenor of his declarations regarding the most material facts in dispute. It may be pointed out that the so-called testate heirs represented by Attys. Inton and Garcia closed their case on February 23, 1966 without presenting any evidence of their own on such alleged defective eyesight of Doña Gliceria; neither does the record show that they adopted the testimony of Dr. Tamesis, offered by the so-called intestate heirs, thru Atty. Ordoñez, when the latter closed his evidence at the hearing of March 2, 1966. Indeed, this particular ground of

opposition seems not to have surfaced until after Dr. Tamesis had already testified, for it was only in his memorandum submitted to the court after the trial, that Atty. Ordoñez, the counsel for oppositors Severina, Rosa and Josefa Narciso and Vicente and Delfin Mauricio, some of the intestate heirs, discussed the same for the first time. Even the discussions among counsel during the course of the doctor's testimony hardly suggest such point. No wonder, in making reference to the oppositions filed with the lower court, the learned trial Judge said in his decision:

"The probate of the will has been opposed by several persons. For the purpose of simplifying the proceedings and in order to avoid confusion, the Court divided them into the so-called "testate" heirs and "intestate" heirs. The testate heirs are the oppositors who stand to inherit under a prior will allegedly executed by the testatrix in 1956; while the intestate heirs are those who stand to inherit in case of intestacy. The documentary exhibits submitted by them had been marked with the appendix "Garcia et als." for the Testate heirs, and "Narciso et als." for the intestate heirs. After the close of the proceedings, memorandums were filed by the petitioner and by both the testate heirs and the intestate heirs, while a separate memorandum was filed in behalf of oppositors Natividad del Rosario-Sarmiento and Pascuala Narciso-Manahan.

In behalf of the intestate heirs, the probate is opposed on the following grounds:

- (1) The physical appearance of the will itself reveals irregularities in its execution;
- (2) There had been incontrovertible evidence presented that the testatrix did not have testamentary capacity;
- (3) The testimonies of the attesting witnesses and of the notary public show irreconcilable inconsistencies on material matters; and
- (4) The proponent and her family had been guilty of suppressing material evidence and using perjured testimony in support of the probate of the will.

On the part of the testate heirs, it is averred that Exhibit D is not the true and authentic will of the decedent, the true will of the deceased being the one executed on June 9, 1956 (Exhibit 9-Garcia et als) before Notary Public Jose Ayala; the 1960 will was not executed in accordance with law; and inconsistencies in the testimonies of the witnesses presented by the proponent are vital to its probate.

Oppositors Natividad del Rosario-Sarmiento and Pascuala Narciso-Manahan contend that (1) from August 30, 1960 up to December 29, 1960, the testatrix was a blind woman for reading purposes and could not have read the will; (2) there is no evidence presented as to who prepared or typewrote the will Exhibit D; (3) the alleged will Exhibit D was not signed by the testatrix in the presence of the witnesses and of the notary public nor in the presence of each other on December 29, 1960; (4) the signature of the deceased to the document marked as Exhibit D was secured through misrepresentation; (5) the testatrix was not possessed of a sound and disposing memory on December 29, 1960; and (6) the testimonies of the witnesses for the petitioner, including that of the petitioner herself, are highly incredible."

"* * * * *

"The oppositors do not question the authenticity of the will Exhibit D nor the genuineness of the signature of the testatrix and of the attesting witnesses appearing thereon. In synthesis, the opposition to the probate of the said will Exhibit D is centered on the alleged lack of testamentary capacity on the part of the decedent, and the supposed irregularities in its execution.

On the testamentary capacity of the decedent the oppositors maintain that the decedent was no longer in a position to execute a will on December 29, 1960 because she was then more than 91 years old; that she could not manage her own properties so much so that her properties were under the management of Alfonso D. Precilla; that she was

well on the way to blindness due to glaucoma; that she was so weak that she had to be assisted whenever she moved from place to place; and that as certified to by the Clerk of Court of the Court of First Instance of Manila on July 11, 1961 in Special Proceedings No. 43871 of this Court, the decedent could hardly understand the questions propounded to her, that she took much time to understand and answer the questions and that most of her answers were not responsive to the questions."

"* * * * *

"It is noteworthy that aside from claiming that the decedent was much advanced in age and that she suffered from a weakened eyesight, the oppositors have not imputed any infirmity which would affect the mental capacity or soundness of mind of the testatrix. 'To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause. It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act. The law presumes that every person is of sound mind, in the absence of proof to the contrary.' (Articles 799, 800, Civil Code)."

We are not saying that because of these observations, the alleged blindness or incapacity to read of the supposed testatrix and the testimony of Dr. Tamesis in regard thereto may not be considered at this stage. Mention of the above circumstances is here made only to stress the point that even the oppositors themselves are not unanimous as regards this specific ground of opposition. As a matter of fact, even at the appeal level in this Court, nowhere in the discussion of the ten errors assigned by so-called testate heirs in their brief is mention made of this specific issue. It may, therefore, be said that subjectively said testate heirs, who precisely would have the greater probability of benefitting from the disallowance of the will in controversy, because they appear to be testamentary heirs under the prior will of 1956, which stands a good chance of being the one probated if the 1960 will is ultimately rejected, might not have considered said point to be factually tenable, as may be inferred from the fact that they did not present any witness to prove this alleged deficiency of the eyesight of the deceased, nor did they even adopt the evidence on this point of the other oppositors. They limited themselves to the presentation of documentary evidence, none of which touched on the said point. Only the intestate heirs presented two witnesses in their attempt to substantiate this unannounced ground of their opposition, namely, Atty. Vidal Ranoa and Dr. Tamesis, and at that, only the latter's testimony appears to have some relevance.

It is clear, however, that whatever fault there might be in the tactics or exact position of the testate heirs, We cannot now dodge this issue of the alleged blindness or incapacity to read of the deceased. Even the failure of appellee's counsel to properly object to evidence on said issue, for not being directly relevant to the grounds of opposition alleged by appellants, or the apparent waiver of such possible objection as a consequence of his act of cross-examining the doctor are of no consequence. In *Guevara vs. Guevara*, 74 Phil. 479, this Court postulated:

"* * *. We hold that under section 1 of Rule 74, in relation to Rule 76, if the decedent left a will and no debts and the heirs and legatees desire to make an extrajudicial partition of the estate, they must first present that will to the court for probate and divide the estate in accordance with the will. They may not disregard the provisions of the will unless those provisions are contrary to law. Neither may they do away with the presentation of the will to the court for probate, because such suppression of the will is contrary to law and public policy. The law enjoins the probate of the will and public policy requires it, because unless the will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory, as is attempted to be done in the instant case. Absent legatees and devisees, or such of them as may have no knowledge of the will, could be cheated of their inheritance thru the collusion of some of the heirs who might agree to the partition of the estate among themselves to the exclusion of others."

"* * * * *

"Even if the decedent left no debts and nobody raises any question as to the authenticity and due execution of the will, none of the heirs may sue for the partition of the estate in accordance with that will without first securing its allowance or probate by the court, first, because the law expressly provides that 'no will shall pass either real or personal estate unless it is proved and allowed in the proper court'; and, second, because the probate of a will, which is a proceeding in rem, cannot be dispensed with and substituted by any other proceeding, judicial or extrajudicial, without offending against public policy designed to effectuate the testator's right to dispose of his property by will in accordance with law and to protect the rights of the heirs and legatees under the will thru the means provided by law, among which are the publication and the personal notices to each and all of said heirs and legatees." (Italics supplied)

So much is the concern of the law for the indispensability of probating a will that Section 4 of Rule 75 penalizes with a fine not exceeding two thousand pesos the failure of the custodian of a will to deliver the same to the court or to the executor named therein, as also the failure of the executor to present the will to the proper court for probate; and under Section 5 of the same rule, such custodian may be detained by order of the court until he makes the required delivery of the will. The court has to be convinced of the authenticity and due execution of the will even if its allowance is not opposed and the rule requires in such a situation that, at least, one attesting witness must testify. (Sec. 5, Rule 76). A testament may be disallowed just because the attesting witnesses declare against its due execution; neither does it have to be necessarily allowed just because all the attesting witnesses declare in favor of its legalization; what is decisive is that the court is convinced by evidence before it, not necessarily from the attesting witnesses, although they must testify, that the will was or was not duly executed in the manner required by law (Section 11, Rule 72; *Unson vs. Abella*, 43 Phil. 494; *Fernandez vs. Tantoco*, 49 Phil. 380; *Tolentino vs. Francisco*, 57 Phil. 742; *Ramirez vs. Butte*, 100 Phil. 635) because the proponent is not concluded by the testimonies of the attesting witnesses. (*Fernandez vs. Tantoco*, *supra*.) Withal, the dismissal of a petition for probate for non-appearance of petitioner or counsel does not constitute *res adjudicata* (*Arroyo vs. Albay*, L-15814, Feb. 28, 1962, 4 SCRA 555), and the presentation for authentication of a will does not prescribe. (*Guevara vs. Guevara*, *supra*.) Irrespective, therefore, of the posture of any of the parties as regards the authenticity and due execution of the will here in question, it is the mandate of the law that it is the evidence before the Court and/or ought to be before it that is controlling.

In the case at bar, the evidence before Us with respect to the capacity of Doña Glicería to read on December 29, 1960, which appears on its face to be the date of the controverted execution of the will in question boils down to this: on the part of the appellee, direct evidence consisting of the testimonies of the three attesting witnesses, Francisco Decena, Francisco Lopez and Vicente Rosales, who uniformly declared that the testatrix read the will silently in their presence before signing the same and, in addition, the records of court proceedings more or less attesting to her capacity to read and some sworn certifications as well as checks signed by her; on the part of the intestate heirs, only the testimonies of their two witnesses, Atty. Vidal Ranoa and Dr. Jesus Tamesis, but actually, it was only the latter who gave what might be considered as evidence related to the eyesight of Doña Glicería. In other words, the evidence of appellee consisted of the direct evidence of three attesting witnesses as to their actual personal knowledge of the matter in dispute, corroborated by court records and other documents, whereas the intestate heirs-oppositors had only the testimony of Dr. Tamesis.

Referring now to said testimony of Dr. Tamesis, the record is rather vague as to whether he was presented to testify as a professional expert or he was called for the purpose of declaring from actual personal knowledge of the condition of the eyesight of the testatrix on the date in question, December 29, 1960. Having been her ophthalmologist and surgeon who operated on her left eye on August 8, 1960 and who had her "under medical supervision up to 1963" (meaning since March 11, 1960),^[1] it would indeed have been more desirable, in Our view, if the doctor had testified more directly from personal knowledge rather than on mere opinion, as he seems to have done, on the basis of records, which in some vital instances were prepared, according to him, by other

persons. And, perhaps, there would have been less difficulty in arriving at a safe conclusion as regards the vital fact now in controversy, if the doctor had only been more categorical and definite, rather than somehow ambiguous and equivocal in his testimony. Of course, We cannot wholly blame him alone; he might have waited for questions of counsel that were never asked.

It is quite interesting and very revealing to follow step by step the testimony of the doctor.

Testifying on notations made by him as to condition of the eyes of his patient (Doña Glicería) on March 11, 1960, the first day of consultation, he declared:

"Q After the words eye grounds O.D. there appears certain writings in ink above the two circles, will you kindly inform the court the significance of these and their meaning?

A My assistant did not draw, but I saw. However, these are my writings appearing here and I made notations that the optic nerve manifested that senile degeneration and was pale.

Q That is with respect to which eye?

A With respect to the right eye marked by O.D. – the letters O.D.

Q And the notation on the other circle, Doctor, will you kindly inform the court the significance?

A On the other circle there was no drawing and my remarks here were under the substance that open the pupil for examination the optic nerve was also pale and there was even a cupping of the optic nerve. Other details hardly noticeable.

Q When did you make these notations which appear to have been made near the circles in Exhibit 3-A?

A They were made on the day of consultation to me, March 11, 1960.

Q Can you inform the court, Doctor, in lay language what is the significance of the notation that the optic nerve was pale appearing on the circle above which you have written, the word pale, Doctor?

ATTY. AQUINO

I object to this line of questioning, Your Honor, these questions are absolutely immaterial in this case. The witness here, as he has said, is an ophthalmologist. He is not a psychiatrist or a neurology surgeon.

COURT

You just enter a general and continuing objection.

ATTY. AQUINO

I would like to register a general and continuing objection to these questions.

COURT

You may proceed.

Q What does that mean, that annotation? You are asked, Doctor, to explain * * *

A This "pale disc senile degenerates retina," it simply meant that the vital organs of the eye such as the retina and optic nerve had degenerated and, therefore, function is expected or might be below normal.

ATTY. ORDOÑEZ

Q On the right side of this document Exhibit 3-A under the word tension there appears written notation or

figures after the symbol O.D. and O.S. Will you inform the court the significance of those figures?

A Tension O.D. with the eye refers to the pressure of the eye, that is, whether the eye is soft, normal or hard.

Q In lay language, Doctor, what is the significance of this figure appearing under tension?

A You want me to interpret?

Q Yes.

A The right eye to me at that moment was normal in pressure, and the left eye at that moment was above normal.

Q Does the term "pressure" have any effect on the ability of the patient to see?

A In fact if the pressure is above normal indicates another disease.

Q Now, in this particular document what other disease, if any, is indicated by your notation, Doctor?

A I have diagnosed this aside from the cataract as a possible case of glaucoma.

Q What is the effect of glaucoma on the patient?

A Glaucoma invariably possesses blindness.

Q And at that time you examined the patient will you please inform the court what was the stage of that disease on the patient examined by you?

A Taking into consideration the findings in the eye grounds as manifested in the notation of this big circle and O.S. there were corroborative evidences that she has been suffering from glaucoma that time.

Q Approximately how long a time?

A At least a year from the changes mentioned.

ATTY. AQUINO

Already answered.

COURT

Let him answer.

WITNESS

A Blindness is the ultimate result.

COURT

Q You refer only to the left eye affected in this case?

A Yes." (pp. 14-18, t.s.n., March 23, 1966)

So far, as may be seen, the doctor was referring principally to the left eye. As to her right eye, his categorical declaration was:

"Q Even if the left eye has glaucoma that will permit the sight of the other eye?

A Yes, sir.

ATTY. ORDOÑEZ

Q From this record is there any indication of the condition of the right eye at the time you examined the patient?

A From the meager data set down by my assistant, however, after examining her, the right eye would be seen to be operated for cataract, that her optic nerve and retina showed regeneration, that she was wearing lens with the grade that was noted by my assistant."[2] (p. 19 id.)

This was followed by references to notes set down by his assistant which he called "farfetched data":

"Q From the entries appearing in this record, would you be able to form an opinion as to the condition of the right eye of the patient?

A As to vision, from the farfetched data here there is no evidence on the actual visual capacity of that right eye my assistant had not noted it down." (pp. 19-20, id.)

Moving afterwards to Exhibit 3-B, because of the insistence of counsel to get more specific information as to the "condition of the vision of the patient as to the right eye," he declared:

"Q But is there anything here in the entry appearing in the other documents Exhibits 3-B, 3-C and 3-D from which you could inform the court as to the condition of the vision of the patient as to the right eye?

A On the underside?

Q Referring to Exhibit 3-B?

A Exhibit 3-B, here * * *

ATTY. ORDOÑEZ

WITNESS:

A Underdate of August 30, 1960, is the record of refraction, that is setting of glass by myself which showed that the right eye with my prescription of glasses had a vision of 20 over 60 (20/60) and for the left eye with her correction 20 over 300 (20/300).

ATTY. ORDOÑEZ

Q In layman's language, Doctor, what is the significance of that notation that the right eye had a degree of 20 over 60 (20/60)?

A It meant that that eye at least would be able to recognize objects or persons at a minimum distance of twenty feet.

Q But would that grade enable the patient to read print?

A Apparently that is only a record for distance vision, for distance sight, not for near. (pp. 20-21)

At this juncture, two points must be elucidated. In the first place, We have re-examined Exhibit 3-B very carefully, and We are fully convinced that movant's contention that no such annotation of "20/60" appears in the entry therein for August 30, 1960 is well taken, because what is clearly visible therein is not 20/60 but 20/4 or 20/40 is written following the prescription of OD + 15.25(L) - 1.25 x 90 for the right eye OS+ 14.25 (Lic) - 300 x 90 followed by the visual acuity of 20/300.

In the second place, when the witness was asked, "But would that grade enable the patient to read print?," which certainly was the pivotal and most important question, his answer was rather obscure and susceptible of misinterpretation. Instead of giving a direct, definite and categorical reply, he testified thus: "Apparently that is

only a record for distance vision, for distant sight, not for near." While the reference to "distance vision, for distant sight" is apparently correct in the parlance of ophthalmologists, the last phrase "not for near" suffers from, at least, incompleteness, in the sense that, while again it appears to be the correct ophthalmological expression, the thought his words convey leaves the Court guessing as to whether or not it has the same connotation as when one says "the patient cannot read print," for, even casual acquaintance with ophthalmological symbols teaches that the notation 20/60 by itself alone, (assuming that such is the notation in Exhibit B although it is not, as already stated above) represents visual acuity for far or distance and is not exactly the symbol which indicates the capacity of the patient to read print.

In other words, when the good doctor said "not for near," technically, he did not refer to the incapacity of the patient to read print. By this statement, he simply meant that the notation "20 over 60 (20/60)," is not the usual manner of indicating whether or not the patient can read, for, indeed, as all ophthalmologists know, said notation refers to the visual acuity for far or distance vision measured on the Snellen chart. To be more specific, said notation is a clinical symbol referring to the size of the letters on the Snellen chart that a patient can recognize at a distance of 20 feet from the chart. The sizes of these letters on the chart vary and the measure of visual acuity for distance vision, not for reading, is determined according to the size of the letters on the chart that the patient can read from a distance of 20 feet. So, "20/60" means that the size of the letters on the Snellen chart that the patient can read from a distance of 20 feet is that which, according to the Snellen test, a person with normal vision can recognize even at a distance of 60 feet. While an ophthalmologist may venture offhand an opinion on the matter of the reading capacity of a patient on the basis of such notation of 20/60, it would be somewhat speculative for him to specify what type of print such patient can read. Indeed, according to the work on ocular diseases referred to in appellee's brief:

"4. Near vision. - The principles of visual acuity for distance apply for near, remembering the added factor of accommodation. In young individuals or with the proper addition of plus lens in presbyopes, visual acuity for near can be determined by suitable charts usually at 14 in. The notations of the letter size unfortunately vary, but the equivalents are given in Table 1. Lebensohn's chart (1) has several practical virtues, including the use of letters, numbers and illiterate symbols, correlation of various designations of letter size with comparable Snellen distance acuities, a bar of music for testing intermediate distance, the two line and duochrome tests, an attached chain measuring 14 in. and a hard plastic surface which is easily cleaned. A normal individual can usually detect 3 or 4 point type on testing for near vision, but larger print is required for reading comfortably. For example, telephone directories (6 point) require 4 point acuity, newsprint (8 point) requires 5 point, magazines and books (9-10 point) require 6 point, children's textbooks (12-18 point) require 8-12 point and sight-saving texts (24 point) require at least 16 point acuity. Although visual acuity for distance cannot be related exactly to visual acuity for near considering only the visual angle, an individual with corrected vision of less than 20/40 usually begins to have difficulty reading ordinary newsprint." (W.F. Hughes, Office Management of Ocular Diseases, p. 17)

and the Table 1 mentioned gives the corresponding types of print for different acuities as follows:

(The following page is the scanned copy of p. 18 of the above work where Table 1 is found.)

18 VISION

LOSS OF CENTRAL VISUAL ACUITY. - The usual method of recording vision as a fraction does not indicate the true percentage of visual efficiency; e.g., 20/40 vision is not 50% efficient visual acuity. In 1925, a standard method of relating visual acuity of a single eye to visual efficiency (2) was approved by the Section on Ophthalmology of the American Medical Association, a condensation of which is given in Table 1. The percentage of vision in one eye can be

Table 1 - Estimation of Percentage Loss of Central Visual Acuity in One Eye

Visual Acuity

For Distance

(Snellen)

Visual Acuity for Near, Distance in

% Visual

Efficiency

% Visual

Loss

Snellen

Meters (D)

Jaeger

Point

20/20

14/14

0.35

1-

3

100

0

20/25

14/18

0.44

2-

4

96

4

20/30

14/21

0.59

....

5

91

9

20/40

14/28

0.71

3

6

84

16

20/50

14/35

0.88

6

8

77

23

20/60

14/42

1.08

....

9+

70

30

20/70

14/49

1.30

7

10

64

36

20/80

14/56

....

8

12

59

41

20/100

14/70

1.76

11

14

49

51

20/160

14/112

.....

14-

22

29

71

20/200

14/140

3.53

....

....

20

80

20/400

14/280

7.06

....

....

3

97

20/800

14/560

14.12

....

....

0.1

99.9

calculated, utilizing both near and distance visual acuities, according to the following method, which weights the near vision twice.

$(\% \text{ acuity distance}) + (2 \times \% \text{ acuity for near}) = \% \text{ visual acuity for 1 eye}$

3

For Example:

Visual acuity = 20/100 for distance and 14/140 for near

% Visual acuity = 49% for distance and 20% for near

Combined visual acuity for this eye - $49 + 2 \times 20 = 89$

3

LOSS OF VISUAL FIELD. - An estimation of the percentage efficiency of visual field is determined according to the following method. The peripheral visual field (isopter) is determined with a 1 white test object (e.g. approximately a 6mm. object at 330 mm. distance) for each of the eight 45 meridians. A 100% field of

PHOTOSTAT OF PAGE -18-

W.F. HUGHES, Office Management of Ocular Diseases

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To reiterate, Dr. Tamesis did not give any opinion, in his above answer, as to the capacity of his patient's right eye to read any kind of print; rather, what he must be understood to have meant is that the annotation of 20/60 referred to in the question of counsel was a record of visual acuity for distance which is not a definite indicium of her capacity to read print. As may be seen in the above table, it is by reference to the Jaeger figures that the type or size of print, according to standard points, that a patient can read is usually indicated. In the reading chart commonly used in clinics of ophthalmologists and optometrists, the symbol used is J-1, J-2, etc. In the absence of any counter-reference in any of the pleadings or memoranda filed with this Court by appellants, We consider the information contained in the above reference book, which We have checked, to be sufficiently reliable insofar as the technical aspect of the issue before Us is concerned.

The reference made by the witness to his prescription for lenses is even more relevantly revealing. Here is positive proof of the utter lack of evidence in his testimony on the reading capacity of his patient. As may be readily noticed, the prescription given is only for distant vision. Putting aside for a while any reference to the left eye which had been operated for glaucoma only three weeks before, hence normally it could not have been tested for reading, it is obvious from the records referred to by the witness that no prescription was given by him for reading even for the right eye, the prescription pointed to being obviously for distance vision only as indicated precisely by the visual acuity noted therein. Anyone would know from common experience that the giving of a prescription for distant vision does not necessarily mean that the patient cannot be given a prescription for reading.

Counsel for oppositors would make much of the reference made by Dr. Tamesis to the so-called "counting fingers" method to indicate the extent of Doña Glicería's vision, but the record of the doctor's testimony on this point is clear to the effect that he was referring to the left eye only of the patient, not to her right eye. This is what is in the record:

"Q Will you inform the court those entries which you made after the operation in the Lourdes Hospital?

A My record in my chart shows entries with respect to the post operative care of the patient until she was finally given glasses on August 30, 1960, and that she had come to my clinic on various occasions for follow-up and other consultations.

Q During your conferences with the patient, Doctor, and after the operation did you have any occasion to propound questions to her relating to objects which were presented to her for identification?

A Well, naturally in the testing of sight especially with respect to fitting her glasses, we had to rely on what she would answer.

Q Do you have any procedure or test to indicate the extent of vision which utilizes counting of fingers of the patient?

A We utilize counting of fingers as one of the standard procedures when the vision is actually very poor.

Q And did you employ that method on this patient?

A I believe I did.

Q Will you kindly inform the court where you entered that procedure of counting fingers?

A One such entry is here dated August 23.

ATTY. ORDOÑEZ

Witness pointing to entry on Exhibit 3-B.

WITNESS

A Referring to division of newly operated left eye and inspite of the glasses at that time for reflection, her vision was only counting fingers at five feet.

ATTY. ORDOÑEZ

May I request to read previous to the last answer of the witness.

STENOGRAPHER

"We utilize counting of fingers as one of the standard procedures when the vision is actually very poor."

ATTY. ORDOÑEZ

Q What do you actually mean by the phrase "actually very poor" which justified your method of counting fingers?

A It is manifested by the inability of the patient or the person to see clearly with curve glasses, and when we see objectively changes on the eye which would block the passage of the light rays towards the retina."

Thus ended the doctor's direct testimony, and so far, as already explained, it cannot be said therefrom that there is adequate basis for the conclusion that the right eye of Doña Glicería could or could not read on August 30, 1960. Indeed, and more importantly, it should be noted that the witness much less made any reference, as he could not really have had any safe basis to do so, to the condition of the eyes of his patient on the very date in issue, December 29, 1960.

Coming now to the cross-examination, the impression one easily gets from the tendency thereof is that counsel was more interested in extracting facts from the witness indicative of the capacity of the patient's right eye to read rather than to directly belie the points attempted to be proven by oppositors during the direct examination, vague and equivocal tho they were. For example:

"Q Before you performed the operation on Doña Glicería A. del Rosario, she went to your clinic?

A Yes, sir, for consultation.

Q And you talked with her?

A Yes, sir.

Q You propounded questions to her?

A Yes, sir.

Q And she answered your questions?

A Yes, sir.

Q What was her principal complaint?

A She was dizzy. The fact that was her main complaint that she was dizzy and she had practically poor vision of the left eye.

Q She told you that personally?

A Yes, sir.

Q Was she walking when she went to your clinic?

A Yes, sir."

Then, when the witness was asked how successful was the operation on his patient's left eye on August 8, 1960, he explained:

"Q The operation performed by you was successful?

A Technically successful.

Q In fact according to this Exhibit 4- Narciso, the record of the hospital, there is a statement here "condition on discharge" with the handwritten answer "fair"?

A Yes, sir.

Q Can you elaborate on the meaning of the word "fair" here?

A Well, this was written by the resident on duty in the hospital, and that signified only that the patient was physically healthy as far as ordinary activities are concerned. She can walk.

Q And because her condition was fair you consented to have her discharged from the hospital?

A Yes, sir.

Perhaps, it was because at this stage, the cross-examiner understandably avoided for obvious reasons, asking directly the opponent's witness about the patient's capacity to read that nothing was mentioned by the doctor on that point, but nonetheless, he later declared more relevantly thus:

"Q After she was discharged from the hospital you prescribed lenses for her, or glasses?

A After her discharge from the hospital she was coming to my clinic for further examination and then sometimes later glasses were prescribed.

Q If I remember correctly, according to the test of August 30, 1960?

A Because here it is marked Rx prescription.

Q And the glasses prescribed by you enabled her to read, Doctor?

A As far as my record is concerned, with the glasses for the left eye which I prescribed - the eye which I operated - she could see only forms but not read. That is on the left eye.

Q What about the right eye?

A The same, although the vision on the right eye is even better than the left eye.

Q After that did you prescribe other glasses?

A No other glasses were prescribed, but subsequent visits were made to my clinic because we gave her some vitamins and drugs to improve the vision of the eyes.

Of course, the looseness or ambiguity of this testimony is manifest. As can readily be noted, although the doctor was testifying on a most crucial point, which, under the circumstances, it may be presumed he should have had personal knowledge of as Doña Glicería's attending physician, hence he could be considered as giving direct evidence rather than merely the opinion of one professionally engaged as an expert witness, he based his answers neither on present nor on past recollection but simply on "as far as my record is concerned." And then, his answer to the question, "What about the right eye?" saying "the same, although the vision on the right eye is even better than the left eye," is as devoid of any concrete information on the point at issue as his later declaration as follows:

"Q In this certificate you stated, and I quote: "Patient was provided with aphakic lens and she had been under medical supervision up to 1963 with apparently good condition"?"

A Yes.

Q When you said that she had apparently good vision you mean that she was able to read?

A No, not necessarily, only able to go around, take care of herself, and see. This I can tell you, this report was made on pure recollections and I recall she was using her glasses although I recall also that we have to give her medicines to improve her vision, some medicines to improve her identification some more.

Q Will you kindly inform the Honorable Court what you mean by aphakic glasses?

A The cataract glasses.

Q Those lenses were used by the patients who had a cataract operation?

A Yes.

It is immediately noteworthy that to the direct question whether or not "apparently good vision" meant that his patient "was able to read," the answer "No, not necessarily etc.," and, at that, based, according to the doctor himself, on his "report (which) was made on pure recollections etc." is hardly the clear and categorical answer expected of an attending physician having personal knowledge of the condition of his patient. Withal, the aphakic glasses the doctor mentioned in the above testimony may not have been prescribed by him but by Dr. Ocampo who had performed the operation on the right eye.

In any event, it is generally known that almost normal vision is usually restored after a successful operation for cataract such as that which Doña Glicería underwent in 1956:

"There are numerous operations now developed which are relatively simple and which are quite safe in the majority of instances. Moreover, good vision follows in 97% of the operations for cataract. After cataract is removed, the person wears what are known as cataract glasses. These are made so that they help in forming the image properly on the retina. By use of a hormone called chymotrypsin the tissues surrounding the lens may be softened and this has greatly facilitated the operation for cataract.

"The person who has been unable to see for some time because of the development of clouding, who has been unable to play golf or get about, and who then recovers his eyesight by a simple operation that any competent specialist in diseases of the eye can perform, is one of the most appreciative of all people benefited by the modern medical and surgical science. When the cataract is removed, the result is like defrosting a window or raising the window shade: the light comes in without obstruction, and the individual is able to see." (p. 940, Illustrated Medical and Health Encyclopedia, Edited by Morris Fishbein, M.D., Vols. 3 and 4, 1966 ed.)

In other words, and as maybe confirmed from anyone who has undergone an operation for cataract, with the use

of aphakic glasses, vision for reading as well as for far is generally nearly as normal as anybody else who uses ordinary corrective eye glasses or even one who does not have defective eyes. Testifying further, the doctor declared:

“Q She was wearing eyeglasses?

A Yes, sir, she had to wear eyeglasses.

Q What about the vision in the right eye, was that corrected by the glasses?

A Yes, with the new prescription which I issued on August 30, 1960. It is in the clinical record.

Q The vision in the right eye was corrected?

A Yes, that is the vision for distant objects.

Here again, the answers of the good doctor were as safe as any equivocal testimony can be. Obviously, he was referring to his prescription noted on Exhibit 3-B Narciso which is indicated thereon as having been given on August 30, 1960 and which earlier he said was based on the visual acuity of his patient of 20/60 (which We have already seen is actually 20/4 or 20/40). Evidently, therefore, the correction the doctor was talking about must have been necessarily with reference to what is shown by the entry for September 22, 1960 on the same Exhibit 3-B Narciso indicating that, indeed, the vision of his patient's right eye had improved its visual acuity to 20/3 or 20/30, approximating almost the normal acuity of 20/20. Considering again that any ophthalmologist knows that 20/60 means that a person with such visual acuity can distinguish in the Snellen chart at a distance of only 20 feet letters of the size or type that, according to the same chart, a person with normal vision can see at 60 feet, naturally, 20/30 means that the vision had greatly improved, such that smaller letters in the chart which can be read by the normal eye at 30 feet distance could already be read by the patient at 20 feet. But instead of being more categorical about what such improvement signifies, the good doctor merely made reference to “the vision for distant objects,” leaving unsaid what such notations of the visual acuity for distance of his patient indicate regarding her capacity to read ordinary print. As We have discussed above, in ophthalmological parlance, the capacity to read is indicated by the Jaeger symbols, and since the doctor limited himself only to the entries on the record regarding visual acuity for distance on the Snellen chart, his testimony may be quite accurate but certainly, it is incomplete as to the very point at issue. Why he did not care to testify on present or past recollection and why he did not elucidate directly and specifically by the use of unequivocal words on whether or not his patient could read ordinary print on any particular date are incomprehensively unexplained.

Finally, his testimony to the following effect:

“Q When you said that the operation was successful and that you provided glasses for the patient, according to you she would be able to see?

A She would have been able to see very clearly if her retina and optic nerve were also normal. But the operation by itself was successful in the sense that the cataract was successfully removed and her post-operative recovery was uneventful and she was able to be discharged without any complication.”

lest, it be misunderstood, refers to the left eye he operated on and not to the right eye of Doña Gliceria.

In any event, in such state of the evidence before Us – ambiguous, indefinite, equivocal and even misleading, as to a very vital issue of fact – and considering the importance of the probate of a will, as explained above, not to mention the substantial value of the estate herein involved, We are persuaded, in the light of the points raised by appellee in her motion for reconsideration, that the best interests of justice will be better served by reopening this case.

The very existence of a purported testament is in itself prima facie proof that the supposed testator has willed that his estate be distributed in the manner therein provided, and it is incumbent upon the state that, if legally tenable, such desire be given full effect independent of the attitude of the parties affected thereby. No less than public policy requires adherence to this view. While, as indicated earlier, no will may be probated unless the court is convinced of its authenticity and due execution on the basis of the evidence before it, it is as important a matter of public interest that a purported will is not denied legalization on dubious grounds. Otherwise, the very institution of testamentary succession will be shaken to its foundation, for even if a will has been duly executed in fact, whether or not it will be probated would have to depend largely on the attitude of those interested in his estate. All they have to do is control the available evidence and make it good or bad, depending on whether they like to follow the wishes of the testator or they don't. We hold that the underlying principles of the law on probate dictate that subjective considerations should not be the determinative factor as to whether a will should be allowed or not. We are of the considered view that in probate cases, the courts should disregard the ordinary rules of procedure and of evidence to the end that nothing less than the best evidence of which the matter is susceptible should be required to be presented to it before a document purported to be legalized as a will is to be probated or to be denied probate. Whenever the court has reasonable doubt as to the material facts concerning the proper execution of a will, it should take the initiative of requiring the parties to take the appropriate steps to erase such doubt. Unlike in adversary proceedings wherein the rule is that the party in whose favor the evidence preponderates should be awarded the palm of victory, probate proceedings are instituted so that the state may see to it that a testator's will, if duly executed, may be legalized, and the courts, as agents of the state, should not stop short of being fully convinced that there has been or has not been compliance with the requirements of the formalities required by law in the execution of the testament, so much so that if the opposing parties, for any reason, should leave material evidence unrepresented or unclarified, and from the circumstances, the court has reason to believe that better evidence exists, the court should try to remedy the situation by calling for more complete and clearer evidence; and so it is that when it appears to the appellate court that the evidence is incomplete or insufficient to either establish or disprove any essential fact in an appealed probate proceeding, it is not only within its authority, but more of an obligation on its part to return the case for further proceedings, so that the evidence may be completed and in order that the court may be provided with adequate and concrete basis for deciding the issues of authenticity and due execution of the will before it with as much degree of certainty as all the attendant circumstances will permit. Thus, in the case at bar, it is really of no moment that, as contended by appellants, the alternative motion for new trial of appellee is not based on the ground of newly discovered evidence within the contemplation of Section 1 of Rule 53, for, aside from what has just been said of the nature of probate proceedings and the duties of the courts in relation to the evidence of the parties therein, Section 3 of Rule 51 expressly and definitely empowers this Court to order a new trial for reasons other than newly discovered evidence, such as when the court feels that the reception of additional evidence on some points is needed in order to clear doubts engendered by the evidence already in the record. Indeed, when We consider again the nature of probate proceedings and the imperativeness of attaining the most approximate certainty possible in determining the authenticity and due execution of a purported testament, this power of the court to order, upon its own motion, the reception of additional evidence becomes even more handy and appropriate. Thus, in *Testate Estate of Jovellana vs. Jovellana*, 106 Phil. 1073, the Court could not ascertain from the meager evidence on record whether or not the testator knew the Spanish language in which the will therein in question was written, but instead of denying probate for insufficiency of the evidence of the petitioner, as should ordinarily be done when the plaintiff in a civil action fails to show preponderance of the evidence in his favor, the Court ordered the remand of the case to the trial court in order "to afford the parties an opportunity to present evidence, if they so desire, on this controversial issue." The Court held:

"But petitioner-appellees insist in their brief that the burden is on the oppositors to allege and prove that the

testator did not know the Spanish language in the face of the legal presumptions that “the law has been obeyed,” “that a will executed in the Philippines must be presumed to have been accordance with the ordinary course of nature and the ordinary habits of life”, concluding that it would certainly be contrary to the ordinary habits of life for a person to execute his will in a language unknown to him. This, we believe, is, to use a colloquial term, begging the question. If the argument of counsel is correct, then every unopposed will may be probated upon its mere presentation in court, without need of producing evidence regarding its, execution. Counsel's statement is its own refutation.

We find, however, in the record some indicia, although insufficient to give rise to the presumption, that the testator might, in fact, have known the Spanish language. In oppositors' own Exhibit 3 (a letter admittedly written by the testator) appear the salutation “Querido Primo” and the complimentary ending “Su primo” which are Spanish terms. Having found that all the formal requisites for the validity of the will have been satisfactorily established, except the language requirement, we deem it in the interest of justice to afford the parties an opportunity to present evidence, if they so desire, on this controverted issue.

Wherefore, let the records of this case be remanded to the court of origin for further proceedings as above indicated, without costs. It is so ordered.”

Echoing the foregoing, in the case at bar, We hold, after a careful review of the entire record and upon consideration of the points raised by counsel in the motion for reconsideration and/or new trial now before Us, that it is but consistent with the fundamental principles governing probate proceedings that there be more definite, clear and unequivocal evidence, which We believe exists, as to whether or not Doña Gliceria could read print on December 29, 1960. Without in any manner passing on their probative weight, the Court feels that the affidavits of Dr. Gemeniano de Ocampo and Dr. Roberto N. Sunga attached to the present motion of appellee, and against which nothing technically authoritative has been offered by appellants in their oppositions, sufficiently indicate that better evidence is available upon which the Court can decide the vital issue before it with a more satisfactory degree of certainty. As already explained, the direct evidence consisting of the unanimous testimonies of the three attesting witnesses to the effect that the testatrix read the will, Exhibit D, silently in the presence of all three of them stands uncontradicted by any direct evidence of the oppositors. Only the intestate heirs have attempted to overthrow the weight of this evidence of the proponents by presenting Dr. Tamesis, but, as already demonstrated above, the good doctor never referred to any personal knowledge of his that Doña Gliceria could or could not have read ordinary print on August 30, 1960, and much less did he give any direct evidence that she could not have read Exhibit D, the testament in question, on December 29, 1960, there being nothing either in Exhibits 3-B and 3-C Narciso or in his whole testimony indicating that he had relevantly examined Doña Gliceria for such purpose anywhere near the latter date. As a whole, as already demonstrated above, his testimony on the facts most vital and material to the specific issue on hand leaves many important and decisive questions unanswered. On the other hand, while indeed some circumstances extant on the face of the document in controversy do lend significance to the testimony of Dr. Tamesis, it cannot be denied that there are also in the record circumstances tending to show that it is not improbable that Doña Gliceria could have read the said document on the day of its execution as testified to by the attesting witnesses, such as, mainly, the complete silence of the testate heirs regarding this particular issue before Our decision of April 30, 1970 and, of course, the exhibits presented by appellee (Exhibits C to E-13, G and the two G-3's as well as Exhibit I) which, taken together with the testimonies of the witnesses who testified on them, are not entirely without probative weight in regard to the point in dispute. What we are saying is that, all in all, in the state of the evidence before Us, the Court does not find itself in a position to determine with fairness and justice to all concerned the pivotal question – with the condition of her eyes on December 29, 1960, could Doña Gliceria have read the will, Exhibit D, before she signed the same on that day? The evidence in the record is short of what the nature of probate proceedings require. We

have, therefore, no other recourse than to remand this case to the court a quo in order that the parties may present additional evidence, more definite, unequivocal and convincing on said point in controversy.

WHEREFORE, the decision in this case of April 30, 1970 is hereby set aside, and this case is ordered remanded to the court a quo for the purposes above indicated, after which said court may render the appropriate decision. No costs.

Zaldivar, Fernando, Antonio, and Esguerra, JJ., concur.

Concepcion, C.J., Makalintal, and Castro, JJ., concur in the dissent of Reyes, J.B.L.

Reyes, J.B.L., J., dissents from the resolution.

Teehankee, J., concurs and files a brief concurrence.

Makasiar, J., concurs in the concurrence of Mr. Justice Teehankee.

[1] See p. 15, t.s.n. March 23, 1966.

[2] Referring evidently to the notation reading "Glasses used: O.D. /15.00 etc."

CONCURRING

TEEHANKEE, J.:

I concur in the resolution setting aside the decision of April 30, 1970 which reversed the lower court's allowance to probate of the purported last will and testament of the late Gliceria Avelino del Rosario dated 29 December 1960 and ordering the remand of the case to the court a quo for the reception of further evidence relative to the factual question of whether or not the said decedent had actually read or understood the said document as her last will and testament.

I had concurred in the original decision of April 30, 1970 on the premises therein stated that "the supposed testatrix could not have physically read or understood (her) alleged testament" and that "for all intents and purposes of the rules on probate, the deceased Gliceria del Rosario was, as appellant oppositors contend, not unlike a blind testator, and the due execution of her will would have required observance of the provisions of Article 808 of the Civil Code[3]" which requisites had not been complied with.

However, upon further consideration of the record as extensively and forcefully discussed in the resolution penned by Mr. Justice Barredo, serious doubts have risen in my mind as to whether Dr. Tamesis' testimony vaguely and loosely given and the vital portions thereof as to the decedent's ability to read being inconclusively made on pure recollections, etc." would justify the conclusion in the original decision that the decedent was "not unlike a blind testator" whose will must be governed not by the normal strict requirements of Article 805 of the Civil Code but by the special and extra-strict requirements of Article 808 of the Code, that the will be read to the testatrix twice, once, by one of the subscribing witness and again by the acknowledging notary public.

This is in contrast to the direct evidence of the three instrumental witnesses of the will uniformly declaring that the testatrix read the will silently in their presence and that of the notary public before signing the same, which direct evidence was given full credence by the trial court. This, in turn, gives rise to another serious question of whether or not the secondary and professional testimony of Dr. Tamesis provides sufficient basis for this Court to overthrow the lower court's acceptance of such direct evidence.

Consequently, it cannot be said that the evidence of record is sufficiently preponderant as to warrant setting aside such an important document as the decedent's last will and testament which has been executed with all the formalities required by law.

Under these circumstances and even at the cost of the inevitable delay that would ensue, since it is vital to determine whether indeed the questioned document was indeed the decedent's last will and testament so that in the affirmative case her intention and mandate as the "life and soul of a will" may beduly obeyed and implemented by her heirs, I believe that the best interests of the justice and of the contending heirs themselves would be subserved by ordering the remand of the case to the trial court for the purposes indicated in the main resolution.

[3] Original decision of April 30, 1970, at pp.10 and 11. Article 808, Civil Code, quoted therein provides: "If the testator is blind, the will shall be read to him twice; once, by one of the subscribing witnesses, and again, by the notary public before whom the will is acknowledged."

DISSENTING OPINION

REYES, J.B.L., J.:

I am constrained to express my disconformity with the resolution remanding this case for reception of further evidence on the question of whether the late Da. Gliceria del Rosario was able to read the will, Exhibit "D", before she signed the same on 29 December 1960, for the reason that no further evidence is needed beyond that extant on record.

The resolution of remand is predicated on the alleged ambiguity or deficiency of the testimony of the ophthalmologist Dr. Jesus Tamesis on the visual acuity (sharpness) of the deceased's right eye, because he made reference to his notes of her vision for distant objects "leaving unsaid what such notations of the visual acuity for distance of his patient indicate regarding her capacity to read ordinary print."

I submit that the resolution, in stressing the importance of visual acuity for distant vision and its relation to acuity of vision for near objects in the same person, completely misses the basic fact that sharpness of vision depends upon the eyes' ability to focus at the required distance. The resolution overlooks that both the right and the left eyes of Da. Gliceria had been previously operated for cataract. This is clearly proved not only by the clinical record of Dr. Tamesis but also by his transcribed testimony.

As to the right eye, the clinical record (Exhibit "3-A", Narciso) carries the following notation:

"COMPLAINTS & HISTORY: Rt eye operated by Ocampo 1954." (Italics supplied)

And in his testimony in Court, Dr. Tamesis clarified:

A. From the meager data set down by my assistant however, after examining her, the right eye would be seen to be operated for cataract, that her optic nerve and retina showed regeneration, that she was wearing lens with the grade that was noted by my assistant." (t.s.n., page 19, Session of 23 March 1966) (Italics supplied)

As to Da. Gliceria's left eye, the undisputed records of Our Lady of Lourdes Hospital are to the effect that Dr. Tamesis also operated on it for cataract (Exhibit "4-B", Narciso) on 8 August 1960 (Decision, 32 SCRA 499).

The cataract operation consists in the removal of the eye lenses that have become opaque and useless for seeing (a

matter so well known as to be of judicial notice). The removed lenses formerly located inside the eyeball then have to be replaced by external eyeglasses. Under these conditions the ability to read does not merely, or even largely, depend upon visual acuity: the question becomes whether with the glasses furnished her for normal or distant vision. Da. Gliceria could adjust or accomodate for vision of near objects or for reading. In normal eyes operation of the accomodation mechanism is described thus:

"ACCOMODATION

"It will be remembered that the lens is suspended by the radially directed fibres of the suspensory ligament which join it to the ring of ciliary muscle. These fibres are under tension, so that the lens is pulled radially outwards all round its circumference. The effect is to flatten the curved surfaces, so making the lens thinner than when unconstrained. Thus it must be emphasised that when no accommodative effort is made and the eye is set for distant vision, the ciliary muscle is relaxed, the suspensory ligament is tense, and the lens is made to have lesscurved surfaces than when removed from the eye and left free to assume its natural shape.

When a near object is to be viewed, the ring of ciliary muscle contracts, so shrinking into a ring of smaller diameter. The tension in the suspensory fibres is thereby reduced; the lens is therefore pulled less strongly outwards, and accordingly the equator shrinks to a circle of smaller diameter so that the lens itself becomes thicker, as the surfaces assume a greater degree of curvature. The lens is now stronger, and can bend rays more, as is required to bring the more divergent rays to a point." (Harry Asher, "Experiments in Seeing", Physiology Department, Birmingham University, December, 1960)

From this explanation, it can be readily seen that a normal eye varies the thickness of its lens in order to achieve near vision; but it is precisely this process that was not possible for Da. Gliceria to perform at the time her alleged will was executed. Why? Because, as pointed out in the original decision (page 10), both her natural eye lenses had been removed (through the cataract operations which she had undergone) and had been replaced by external lenses of glass that are rigid and not deformable at will, as they were no longer subject to the action of the ciliary muscles and suspensory fibres of her eyeballs.

The essential fact is that, having lost the power to adjust or accomodate for near vision, even if with the glasses prescribed and used by Da. Gliceria, she had normal 20/20 vision for distance, she would still remain unable to read, due to her previous operations for cataract on both eyes.

The correctness of the foregoing observations is attested to by the affidavit of Dr. Geminiano de Ocampo, Annex "B" of the motion to reconsider. In paragraph 6 of Dr. Ocampo's affidavit, he states:

"6. In fact, a person with the above-stated visual acuity could read print in pica or elite type in two ways, i.e., either with reading glasses, meaning glasses for near vision, or even with his distance glasses, provided that it is slid down the bridge of the nose to place it farther from the eye. This act of sliding the glasses down the bridge of the nose takes the place of automatic adjustment that the natural lenses of a normal eye make when one is reading."

Yet no evidence exists on record that Da. Gliceria possessed reading glasses or resorted to the maneuver described by Dr. Ocampo.

It is further objected that Dr. Tamesis failed to state categorically whether or not his patient could read print with the glasses he had equipped her, or whether he had prescribed glasses for near vision. But the doctor was not asked on those points, and certainly the burden of clarifying the matter lay squarely on the shoulders of the appellees, proponents of the will, whose duty it was to establish satisfactorily that Da. Gliceria was able to read the same. That their cross examination of Dr. Tamesis did not touch on those basic points is no ground for remanding the case for additional evidence, unless the doctrine is to be laid that a party whose proof is found on

appeal to be deficient must be given opportunity to cure the deficiency. If that is the proposition, then it flies in the teeth of all precedents as to what constitutes newly discovered evidence, and throw overboard long and well established jurisprudence.

And this is not all. If Da. Gliceria had been prescribed glasses for near vision by any ophthalmologist (not necessarily by Dr. Tamesis) then she must have replaced the distance glasses she ordinarily wore when, after greeting and talking with the instrumental witnesses, she sat down to read and sign the purported will. But no witness ever testified about her changing eyeglasses in order to read and sign the will. None of the witnesses asserted that in order to read and sign the paper on the table in front of her she resorted to the unusual and extraordinary maneuver suggested in Dr. Geminiano de Ocampo's affidavit (jam quoted) of pushing down her glasses to the tip of her nose. Such action is so out of the ordinary that none of the witnesses would have failed to notice and testify about it. Is the case then being remanded to enable these witnesses to bridge the gaps in their previous testimony? I need not stress how dangerous such a policy would be.

The best proof that Da. Gliceria could not read her purported will is the fact that the document's extraordinarily cramped aspect, the repeated replacement in it of the word "and" by the sign "&" in order to save space, and the obvious typographical errors, for example, "HULINH" for "HULING", "MERCERDAS" for "MERCEDES", etc. (See first Decision, 32 SCRA page 501) were passed over without any comment, remark or protest from her. She was apparently oblivious of the need for clarity in such an important document as her last will and testament. The instrumental witnesses stated (t.s.n., pages 164-165) that the alleged testatrix merely read the document "silently" – a surmise that reminds one of the gipsy who insisted that his horse could read, only it could not pronounce what it was reading.

The resolution declares that in probate cases the court has the right to be satisfied by the evidence. Is this not true in every case? Yet the rule is that civil cases are to be decided by preponderance of evidence (Rule 133) and probate cases are civil cases. How often has this court refused to reopen trial because the evidence proffered was not newly discovered, but only forgotten evidence that did not justify a remand?

Since the deficiencies in the technical evidence do not touch or refer to the essential facts required for pronouncing a judgment, and the facts that served as bases for the previous decision appear of record clear and un rebutted, I submit that the order of remand is unnecessary, unjustified and improper.

This is particularly true when it is considered that the Del Rosario estate proceedings were initiated in the Court of First Instance since 1960; our first decision on appeal was arrived at in 30 April 1970. Now after two more years, a remand is ordered; when will the final decision be arrived at? Yet this Court has repeatedly held that the policy of the Rules is to close up the estates as promptly and as economically as possible;^[4] that the state fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of a decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division.^[5]

WHEREFORE, I dissent from the resolution, and vote to deny the motion for reconsideration.

[4] Lizarraga Hermanos vs. Abada, 40 Phil. 124; Pascual vs. Santos, 62 Phil. 148.

[5] Moran on Rules of Court, Vol. 3 (1970 Ed.) 499-500; McMicking vs. Sy Cong Bieng, 21 Phil. 211, 220; Mendoza vs. Pacheco, 64 Phil. 134; Borja vs. Borja, 83 Phil. 405.

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