

**TESTATE ESTATE OF THE DECEASED MAECELO DE CASTRO,
ANGELITA DE CASTRO, ISABEL DE CASTRO, AND FELZSA DE
CASTRO, PETITIONERS AND APPELLANTS, VS. EMILIO DE CASTRO,
AND ALVARO DE CAS...**

G.R. No. L-8996. October 31, 1956

Ponente: FELIX, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a62f09c3e777/>

FELIX, J.:

This is an appeal from a resolution promulgated by the Court of First Instance of Quezon City in Special Proceedings No. Q-453 disallowing the probate of the alleged last will and testament of Marcelo de Castro, marked as Exhibit C, declaring it fraudulent if not falsified, converting the proceedings from estate to an intestacy, of the late Marcelo de Castro and taxing costs against petitioners.

The facts of the case may be summarized as follows; Marcelo de Castro died on April 22, 1954, in his residence at 35 Espana Extension, Quezon City (Exhibit A), where he lived in company with all his brothers and sisters of half blood. Upon his death, Marcelo did not leave any descendants or ascendants, his nearest surviving relatives being his brothers of full-blood, the oppositors herein, and his sisters, the petitioners mentioned as heirs in the will (Exhibit C), and other brothers of half blood. The testator left properties of Quezon City, Manila and in the province of Batangas evaluated at not more than P75,000.00, after deducting his debts estimated at about P35,000. The order announcing the presentation of the petition for the probate of said will was properly advertized in the newspaper "La Nacion" (Exhibit B), in conformity with the requirements of the Rules of Court and the hearing of the petition was therein set for June 26, 1954, at 8:30 a.m.

On June 22, 1954, Emilio and Alvaro de Castro filed their Opposition praying that the petition for probate be denied and that the alleged last will be disallowed with costs against the petitioners. They state, among other reasons: (a) that the alleged last will sought to be admitted to probate was not executed and attested as required by law; (b) that at the time of the execution of the said alleged last will, Marcelo de Castro was mentally and physically incapable of making a valid will, in view of his then serious illness and paralysis; (c) that at the time of the execution of said will, the testator was not of sound and disposing mind and memory by reason of his grave illness; (d) that Marcelo de Castro was for a long time member of the U. S. Navy and knew how to read and write, and the thumbmark he allegedly stamped on said supposed will, even granting the same to be his own mark, was procured by improper pressure and influence or by fraud or trick practised upon him by petitioners; and (e) that granting that Marcelo de Castro had affixed his thumbmark on said alleged will, he did not intend nor could he have intended that said instrument should be his last will. On September 27, 1954, before the hearing of the case was continued, the oppositors moved for the admission of their amended opposition dated September 25, 1954, for the purpose of including paragraph to the effect that the thumb mark appearing on the various pages of the alleged last will is riot the thumb-mark of the deceased Marcelo de Castro. The amended opposition was admitted by the Court over the objection of the petitioners.

According to the testimony of Isabel de Castro, she came to be the custodian of the will (Exhibit C), before it was signed and executed by their testator and the instrumental witnesses, and from April 21, 1953, up to the death of the testator. It happened thus: one day, which she did not specify, she went with her half brother, Marcelo de Castro, to the office of Atty. Gregorio Pascual near the Society Theatre in Quiapo, Manila, to get the notarial will which her brother had ordered said attorney to prepare. After getting the document they returned home where she placed the original in the "aparador" of their residence. Atty. Pascual did not notarize the will when it was executed on April 21, 1953, because he died before that date.

The evidence for the petitioners tends to show that in the afternoon of April 21, 1953 Marcelo de Castro voluntarily executed his last will, Exhibit C, in his aforementioned residence at 35 Espafia Extension, before 3 attesting witnesses—Dr. Trinidad Banuelos, Mrs. Rhoda del Rosario-Lanting and Mrs. Maria Rivera-Sangalang and before Atty. Heraclio H. del Pilar, who notarized it. The execution and acknowledgment of said will by the testator and the 3 attesting witnesses were done in the following manner: Atty. del Pilar read the will once within the hearing of the testator and the 3 attesting witnesses and then gave the will to Dr. Banuelos for a second oral reading, but the testator stopped such second reading saying he had already understood all its contents and voluntarily affixed his thumb mark at the end of the will on page 4 and on the left margin of all of the other 5 pages of the will including those containing the attestation clause and notarial acknowledgment, in the presence of all the attesting witnesses. Atty. del Pilar helped the testator in affixing thumb mark to all the pages of the will, while Dr. Banuelos helped holding the will to keep it in place. After the testator finished affixing his thumb mark to all the pages of the will including the pages containing attestation clause and notarial acknowledgment, Dr. Banuelos, Mrs. del Rosario-Lanting and Mrs. Rivera-Sangalang took turns in signing at the end of the attestation clause on page 5 and on the left margin on all the other pages of the will in the presence of the testator and of one another. Then the testator and will the 3 attesting witnesses acknowledged their act before Atty. del Pilar.

At the time he executed his will, Exhibit C, on April 21, 1953, the testator seemed to be of sound mind though he was suffering from paresis or partial paralysis of the right side of the body which rendered it impossible for him to write his customary handwritten signature. Earlier, in 1951, he was suffering from high blood pressure or hypertension and from an attack of cerebral thrombosis. For these and other ailments, he was customarily treated by Dr. Banuelos, one of the attesting witnesses, from 1951 up to the time of the testator's death on April 22, 1954. The testator knew the English language having served in the United States Navy for about 20 years and when aided by someone, he could walk or move about from place to place. As a matter of fact, Isabel de Castro admitted that after the signing of the will (Exhibit C) up to the time of his death the deceased oftenly went out with her and even went to the province of Batangas. The oppositors themselves contend that in the national elections held on November 10, 1958, Marcelo de Castro voted in Precinct No. 2 of Talisay, Batangas, and affixed his signature and right hand thumb mark at the space corresponding to his name on one of the pages (Exhibit 5-A) of the list of registered voters (Exhibit 5) of that precinct.

The oppositors had no witness to testify on the execution of Exhibit C, so they limited their evidence to established by Vicente Balbos, principal clerk in the Office of the Municipal Treasurer of Talisay, Batangas, that he prepared for the signature of the Municipal Treasurer, the original and a copy (Exhibits 2 and 2-A) of a certification of certain data contained in the list of registered voters of Precinct No. 2 of Talisay, Batangas (Election Form No. 11) on file in his office (Exhibit 5), corresponding to the election of November 10, 1953, regarding certain inscriptions appearing on the fourth line under the columns of the page thereof marked as Exhibit 5-A, to wit:

Number in consecutive order—39; Surname and name—Castro, Marcelo de; Street and number or brief description of residence— Asamblea St.; Serial number of ballot—434; Thumb mark and signature of voter— (there is the alleged thumbmark and signature of Marcelo de Castro; Signature of inspector or poll clerk

delivering the ballot to the voter—Adelaida Dogelio;

that he personally knew Marcelo de Castro as well as the petitioners Angelita, Isabel and Felisa, surnamed de Castro; and that officially he came to know that they are half-sisters of the late Marcelo de Castro. This witness also identified Exhibit 3, which is a copy of the Declaration of Real Property (Provincial No. 684) for the period 1948 up to 'this 4atef still in the name of Marcelo de Castro, covering the same property indicated in the first paragraph, letter (c), of the will Exhibit C.

After Balbos, oppositor Emilio de Castro took the witness stand to prove that parcel (c), of the first paragraph of the will is the same property that his brother, the late Marcelo de Castro, sold to him on July 24, 1943, at Tanauan, Batangas, as shown by Exhibit 4. He recognized and identified the signature of his said brother written therein.

Then the trial judge, at his own initiative, called Detective Reynaldo Sanchez of the Quezon City Police Department in charge of fingerprint detections, who testified that the thumbmark appearing on the several pages of the will Exhibit C is not the thumbmark of the person named Marcelo de Castro appearing on Exhibit 5-A; that the characteristics of the thumbmark stamped on Exhibit C are not similar to the characteristics of the thumbmark in Exhibit 5-A; that the difference can be noted with the naked eye, for it is plain that they are dissimilar from each other. After this detective testified, counsel for petitioners moved for the continuation of the hearing oil some other date in order to give him an opportunity to make another fingerprint expert to examine the thumbmarks tn question. The motion was granted, but on the date set for the continuation of the hearing, counsel for the petitioners announced to the court that they desisted to present the fingerprint expert for the reason that the court had already called a witness to that effect, and because of the allegations contained in paragraphs 3, 4, 5 and 6 of the opposition.

The trial court did not give much credence to the witnesses for the petitioners in the belief that they had incurred in marked contradictions. We have gone over the records and do not find justification for the pointed remarks of the trial judge on the testimony of the will attesting witnesses, who do not appear to have any interest in the case, and We believe that the execution of said will was done in the manner narrated by them. The trial judge also opined that the attestation clause does not conform with the requirements of the law and that the evidence is against the recital of the same. The attestation clause of the will Exhibit C reads as follows:

"Last Will and Testament consisting of (6) pages, including the pages on which our attestation clause and the acknowledgment before the notary public are written, was executed this & day of April, 1953, at Quezon City Philippines, by the testator Marcelo de Castro, after the same was read to him clearly by the said notary public himself and again by Db, Trinidad Banuelos, 6ne of the attesting witnesses, by affixing voluntarily the thumb mark (right) at the bottom of the Will appearing on this page four and on the left' hand margin of each and every page of said Will, including the pages on which the attestation clause and acknowledgment are written, in the presence of all and of each of us, and we thereupon, at his request, have witnessed and signed our names on this Will and Testament, below the Attestation Clause appearing on page five hereof and on the left hand margin of each and every page in the presence of the testator Marcelo de Castro and in the presence of each and every one of us."

We find nothing irregular, unusual or illegal in this attestation clause and the only defect that could be pointed out, if that could be considered as a flaw, is that on the line intended for the date of the execution of the will is written the sign "&", instead of "21st" which is the real date of the execution thereof; but we take it that the notary public who proposed the will did not know the date it was to be executed and Attorney Heraclio H. del Pilar, who notarized it, forgot to fill that the space left in blank. This flaw,, however, is of no importance because a few lines over the space and at the end of the will over the thumbmark of the testator appears that it was executed on the 21st day of April, 1953, in Quezon City, Philippines.

The fact testified to by the witnesses for the petitioners that in stamping his thumbmark, the testator was helped by Atty. del Pilar and Dr. Banuelos, is not in conflict with the recitation of the attestation clause that "the will was executed by the testator by affixing voluntarily his thumbmark {right} at the bottom of the Will appearing on this page four and on the left hand margin of each and every page of said WILL including the pages on which the attestation clause and acknowledgment are written"

It may be true that in the execution of the will Exhibit C there was no formalities required of the witnesses either before or after the signing of the objected will, such as the raising of the hand on the part of the witnesses, like in oath taking which seems to be the ceremony that the trial judge alluded to and missed. ' But as counsel for the petitioners properly observe, Article 806 of the New Civil Code merely requires in very explicit and unmistakable terms that " every will must be acknowledged before a notary public by the testator and the witnesses", and to acknowledge, is to own as genuine, to assent to, to avow or admit. And when a person affixes his signature to an instrument in the presence of a notary public, undoubtedly, he acknowledges it to be his own and there is no need or provision that requires the hand raising ceremony as a prerequisite to the validity of an acknowledgment. Even in cases of oath taking the hand raising is a mere formality which does not go into the binding effect of the oath, for if a person says "I swear" before the proper officer without raising his right hand he nevertheless "swears".

Again the fact that the property situated at Tranca, municipality of Talisay, Batangas, bequeathed to Angelita de Castro in paragraph First—(c) of the will, had been already been allegedly sold on July 24, 1943, by Marcelo de Castro to the spouses of Emilio de Castro (one of the oppositors) and Leoncia Mercado, even if true, does not go against the allowance or probate of the will but against the adjudication of said property to the person to whom it was bequeathed. At most, it could cast some doubt as to the identity of the person who executed the will Exhibit C who was supposed to know that he did not own said property any more and could not, therefore, bequeath it to her half-sister Angelita de Castro. But even in the respect, We fail to understand why according to the declaration of the oppositor Emilio de Castro, his deceased brother Marcelo sold absolutely and definitely said property to him when what his said brother wanted was to redeem the property from the bank. There would be no reason for this definite sale unless the sum needed for the redemption of the property would be much less than the sum of P534.97 that Emilio and his wife paid for it, a fact that we do not find established in the record.

It is claimed that the testator, who knew how to read and write only impressed his thumbmarks on the will instead of signing his name thereto, as he did in the list of voters Exhibits 5 and 5-A, in the November 10, 1953 elections at Precinct 2 of Talisay, Batangas. Even assuming that the testator voted in said election at said precinct this fact is of no consequence in the case at bar, because it will be noted that on the date of the execution of the will (April 21, 1953) the testator was sick and had to remain continuously at home. At that time, because of illness he was incapacitated to sign his will and had to be helped in stamping his thumbmarks by the notary public and Dr. Banuelos. But his health must have improved after that day, for he was even able to go to Batangas and the fact that he stamped his thumbmarks and signed in the list of voters Exhibit 5, if he really was the one who stamped his thumbmark and signed in that list, does not prove that the testator was able to sign his name on April 21, 1953.

The only standing block on the way to the probate of the will is the testimony of the handwriting expert, Detective Reynaldo Sanchez, to the effect that the thumbmarks appearing in Exhibit C are different from the thumbmark Stamped on Exhibit 5-A. We have examined all said thumbmarks with the aid of a magnifying glass and verified that the testimony of Detective Sanchez is correct. But we find no evidence in the record to establish that the Marcelo de Castro who voted in Precinct 2 of Talisay, Batangas, in the general elections of November 10, 1953 is the deceased Marcelo de Castro, the brother of the petitioners and the oppositors. In our efforts to come to a solution of the problem, we have examined the signature Marcelo de Castro, appearing in Exhibit 4—which Emilio de Castro said was executed in his presence—with the signature Marcelo de Castro written on page marked Exhibit

5-A, of said list of voters (Exhibit 5). Our examination did not help us any. We noticed, however, that the signature Marcelo de Castro in Exhibit 4 does not vistically appear to have been written by the same person who signed his name as Marcelo de Castro in Exhibit 5-A. In this connection, counsel for the petitioners called the attention of this Superiority that in the lower Court counsel for the oppositors manifested to the trial judge that he

"refrained from making any reference to the original of Exhibit 2 (which is Exhibit 5-A) because, as the court might have noticed it, When I examined the document which purports to be the last will and testament of the late Marcelo de Castro, marked as Exhibit C, and comparing the thumbmark appearing thereon with the thumb-mark appearing on the original of Exhibit 2 of (Exhibit 5—A) I have found out that they are different."

Counsel for the petitioners state that there was only one reason why the oppositors did not readily present the original of this exhibit:

"And this was that they knew that this would have proved that the thumbmark that appeared in Exhibit 5-A was not the testator's, as this appears in the will, and that, therefore, it would not in any way help their theory that the thumbmark in the will could not have been the testator's since, as they allege in paragraph 5 of their Opposition, the deceased, knew how to write."

Without giving much weight to this reasoning, we find that while the thumbmarks appearing on the will Exhibit C have been positively identified as the testator's by the three attesting witnesses to the will (who seem to be entirely disinterested and without any reason for falsifying the truth), as well as by Isabel de Castro and the Notary Public, there is no proof in the record to show that the thumbmark on the fourth line of Exhibit 5-A is of said testator, and that even the signature Marcelo de Castro appearing on Exhibit 4 (which Emilio de Castro said is the signature of his deceased brother) do not indicate the firmness of the hand of the signer of the name Marcelo de Castro on the fourth line of Exhibit 5-A, which strokes denote not only firmness and control of the pen, but also a better style on the part of the writer. This difference between the visual characteristic of the two signatures clearly indicates that both were not written by one and the same hand. By preponderance of evidence we declare therefore, that document Exhibit C is the duly executed last and only will and testament of the late Marcelo. de Castro the testator in the case at bar.

It is to be noted at this juncture that the deceased Marcelo de Castro had no force heirs, for he left only brothers of full and half blood and sisters of half blood, the petitioners herein. Up to the time of his demise he lived with his half brothers and sisters and yet he bequeathed all his properties and possessions to his sisters of half blood, giving nothing to his brothers of full or half blood. The half brothers attorney Jose P. Castro and Servilliano and Policarpio de Castro, have not contested the will, though they lived with the testator, probably because they realized the intention of their deceased brother. The circumstances surrounding this case lead us to conclude that if the testator only favored his sisters in his will, it must have been due to the fact he considered them as less prepared than his brothers to succeed in the struggle for securing the means necessary for maintaining a licit and decent livelihood.

Wherefore, and in consideration of all the foregoing, We hereby reversed the Resolution appealed from and allow the will Exhibit C to probate with costs against oppositors-appellees. So it is ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.