

HEIRS OF RAYMUNDO C. BAÑAS, NAMELY, TRINIDAD VECINO VDA. DE BAÑAS, LUIS V. BAÑAS, JOSE V. BAÑAS, CONRADO V. BAÑAS, ESTER V. BAÑAS, CELIA V. BAÑAS, AND ANTONIO DE GUZMAN, PLAINTI...*G.R. No. L-25715. January 31, 1985*

Ponente: MAKASIAR, J.

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This is an appeal from the decision dated January 5, 1966 of the then Court of First Instance of Manila, Branch II, in Civil Case No. 59859, which dismissed plaintiffs-appellants' complaint for partition or recovery of hereditary share, fruits and damages.

Plaintiffs-appellants, in their complaint filed on February 12, 1965, alleged that the late Raymundo Bañas, their predecessor-in-interest, was the acknowledged natural son of the late Bibiano Bañas, defendants-appellees' predecessor-in-interest; that therefore, they are, by descent, entitled to a share in the estate of the late Bibiano Bañas.

Defendants-appellees, in answer to the complaint, denied that Raymundo Bañas was the natural son of the late Bibiano Bañas, nor was he ever acknowledged by the latter and his family as such; and by way of special and/or affirmative defenses alleged that the use of the surname Bañas by Raymundo was justified on an alleged kinship of Raymundo Bañas with Pedro Bañas, brother of Bibiano Bañas.

The following antecedent facts culled from the records are not disputed, to wit:

The late Raymundo Bañas was a natural child being born out of wedlock on March 15, 1894, in Sampaloc, Manila, of Dolores Castillo and of an unknown father (p. 103, CFI rec.). During this time, Bibiano Bañas was still single (pp. 38-39, CFI rec.). When Raymundo was of school age, he studied at the Colegio de San Beda. It was Bibiano Bañas who shouldered Raymundo's school expenses. Raymundo pursued his studies until he became a public school teacher (pp.70-88, CFI rec.). At this juncture, the records are completely bereft of any evidence to show whether or not Bibiano Bañas lived with Raymundo and his mother. At any rate, the records show that by the year 1922, Ray-mundo Bañas used to go to the place of Bibiano Bañas once or twice a week, and it was in one of his visits, sometime between 1922 and 1923, that he met Trinidad Vecino, a niece of Faustina Vecino Bañas, the wife of Bibiano Bañas (pp. 379-381, CFI rec.). Trinidad Vecino lived with the family of Bibiano Bañas and took care of his children ever since she was a young girl, sometime in 1909 (p. 391, CFI rec.).

On October 9, 1926, Raymundo married Trinidad Vecino. In their marriage certificate (Exh. "H"), the name of the father of Raymundo was stated to be Bibiano Bañas. Pedro Bañas' name appeared in the marriage certificate as one of the sponsors (p. 66, CFI rec.).

After their marriage, Raymundo and Trinidad resided at Gastambide St., Sampaloc, Manila. Dolores Castillo, mother of Raymundo, lived with the couple until she died on December 27, 1940 (p. 363, CFI rec.). From Gastambide St., they transferred to Sigay St., Quiapo, Manila, where they were sometimes visited by Bibiano

Bañas and his wife Faustina (pp. 373 & 358, CFI rec.).

On December 1, 1928, Raymundo Bañas and Pedro Bañas executed sworn statements before Atty. Andres Faustino wherein Raymundo Bañas declared that he was the natural son of Dolores Castillo and of an unknown father as it appeared in his baptismal certificate; that in due time, he came to know that his natural father was Pedro Bañas; that he had realized that in his marriage certificate, dated October 9, 1926, an error had been committed in that the name of his father stated therein was Bibiano Bañas, brother of his said father Pedro Bañas; and that he is executing that sworn statement to put things in their proper place. This was recorded in the notarial book of Notary Public Andres R. Faustino as Document No. 153, series of 1928 (p. 103, CFI rec.).

Pedro Bañas, in his sworn statement, declared that he has a natural son named Raymundo Bañas whom he had with Dolores Castillo, and whom he recognized as such; that he came to know that in the marriage certificate of his aforesaid son an error had been committed in that the name of the father of Raymundo Bañas appeared therein to be Bibiano Bañas instead of Pedro Bañas; that he was executing that document to put things in the right place, and also to ask for the correction from the Justice of the Peace of the Municipality of Pasay, Rizal, of the aforesaid error committed in the marriage certificate of his son Raymundo Bañas and Trinidad Vecino. This was recorded in the notarial book of Notary Public Andres R. Faustino as Document No. 154, series of 1928 (p. 113, CFI rec.).

These sworn statements of Raymundo Bañas and Pedro Bañas were filed with the Office of Justice of the Peace Ed. Aenlle of Pasay, Rizal, before whom the marriage of Raymundo Bañas and Trinidad Vecino was solemnized. Accordingly, Justice of the Peace Ed. Aenlle issued the following constancia:

"En esta fecha se han presentado en esta Oficina una declaracion suscrita y jurada ante el Notario Publico de Manila, Andres R. Faustino, el dia 1.o del actual, por Raymundo Bañas que contrajo matrimonio con Trinidad Vecino, segun el presente certificado de matrimonio, haciendo constar que el verdadero nombre de su padre es PEDRO BAÑAS, y no BIBIANO BAÑAS, como erroneamente se puso en dicho certificado; y otra declaracion suscrita y jurada en dicha fecha y ante el mismo Notario Publico, por Pedro Bañas haciendo constar que el es el padre de dicho con-trayente Raymundo Bañas, y no Bibiano Bañas, coma equivocadamente se consigno en dicho certificado; quedando archivadas y unidas dichas declaracion juradas al referido certificado para los efectos consiguientes, las cuales se han transferido al Secretario Municipal de este Municipio juntamente con esta constancia. Y para que conste extendiendo la pre-sente constancia en Pasay, Rizal, hoy a 7 de Diciembre de 1928.

"Ed. Aenlle, Juez de Paz"

(Exh. '2', p. 104, CFI rec.).

At the bottom of this constancia there appears a handwritten notation marked Exhibit "2-a", which reads as follows:

"El original de esta timbre del juzgado se llevo Trinidad Vesino.

Consequently, in the certified copy of the marriage contract of Raymundo Bañas and Trinidad Vecino, Exhibit "H", the following remark appears:

"Segun declaracion adjunta en el certificado de matrimonio de Raymundo Bañas el padre de este es Pedro Bañas y no Bibiano Bañas" (Exh. '4', p. 66, CFI rec.).

On June 30, 1930, Pedro Bañas wrote to "M.R.P. Juez del Arzobispado de Manila" wherein he reiterated that he had recognized his natural son born of Dolores Castillo and baptized on March 25, 1894 as Raymondo Castillo; that according to the medical certificate issued by Dr. M. Mallare, Dolores Castillo suffers from mental

deficiency; that he was submitting therewith copies of the declaraciones juradas executed by him and his aforesaid son on December 1, 1928 before Notary Public Andres R. Faustino; and that he was requesting that the necessary correction in the certificate of baptism of Raymundo Bañas, as well as those of the latter's children, Luis and Jose, be made by indicating that the father of said Raymundo, and the paternal grandfather of said Luis and Jose, is Pedro Bañas and not Bibiano Bañas (p. 116, CFI rec.; Exh. "9").

On July 1, 1930, Bibiano Bañas executed a sworn statement stating therein that Pedro Bañas had a child, Raymundo Bañas, with Dolores Castillo. This was recorded in the notarial book of Notary Public Vicente Larna as Document No. 1078, series of 1930 (p. 115, CFI rec.).

Sometime in January, 1931, Raymundo and his family moved to 1444 Kalimbas St., Santa Cruz, Manila. The property in Kalimbas St. belonged to Bibiano Bañas and was transferred to Raymundo's name on August 4, 1936 by virtue of a Deed of Sale executed by Bibiano Bañas in favor of Raymundo Bañas for the sum of one thousand pesos (P1,000.00) [Exhs. "11" & "11-a"; p. 120, CFI rec.].

On April 25, 1954, Bibiano Bañas died survived by his wife and children, the defendants-appellees herein (p. 105, CFI rec.).

In May, 1955, Raymundo Bañas wrote two letters (Exhs. "J" & "J-1") to Atty. Andres Faustino in which he complained bitterly about the alleged injustices done to him by Faustina Vecino vda. de Bañas, at the same time stating that he would know what to do at the proper time. Pertinent portions of said letters read as follows:

"Upang makapanloko, ginawa ni Gg. Bañas ang lahat ng kan-yang abilidad o paraan [metodo o sistema] upang sa huling pana-hon ako -- isang maliit na inapi at dinaya -- ay mawalan ng lakas o katibayan na makapaghabol [sa mana]. Subali't ang Diyos po ay marunong. Tinutulungan Niya ang isang taong inaapi. Ako po ay mayroong KATIBAYAN [BUHAY]" (pp. 68-69, CFI rec.).

On June 24, 1955, more than a year after the death of Bibiano Bañas, his heirs, the defendants-appellees herein, extra-judicially settled his estate by means of a deed of extra-judicial settlement among themselves. The deed of extra-judicial settlement was notarized by Atty. Angel Vecino, brother of Trinidad Vecino (pp. 105-111, CFI rec.).

On November 7, 1955, the spouses Raymundo Bañas and Trinidad Vecino executed a mortgage over their house and lot in 1444 Kalimbas St., Sta. Cruz, Manila, in favor of herein defendant-appellee Angel V. Bañas for the sum of seventeen thousand pesos (P17,000.00). The mortgage contract was also prepared by Atty. Angel Vecino (p. 423, CFI rec.). After the spouses had paid, more or less, twelve thousand pesos (P12,000.00), the mortgage was cancelled by Angel V. Bañas (pp. 425, 432, CFI rec.).

On February 25, 1962, Raymundo C. Bañas died survived by his wife and children, the plaintiffs-appellants herein (p. 93, CFI rec.; Exh. "N").

On February 12, 1965, almost three years after the death of Raymundo Bañas, his heirs, the plaintiffs-appellants herein, filed the instant complaint for partition or recovery of hereditary share, fruits and damages against the heirs of the late Bibiano Bañas Sr., herein defendants-appellees.

In support of their claim, plaintiffs-appellants presented Trinidad Vecino vda. de Bañas, who testified that after the death of her husband in 1962, she discovered certain documents in his aparador which established his filiation. Plaintiffs-appellants presented these documents as evidence of their contention that the late Raymundo Bañas was the acknowledged natural son of the late Bibiano Bañas, to wit:

(1) Exhibit "A" -- a handwritten note preserved in a glass frame which reads:

"Mundo hoy a las 10 y 45. Tu no estas en casa. No quieres tu obedecer lo que tedi je que en estas horas estudiar, descansar y ayudar con su madre. Que no veo mas otraves asi.

23/5/7

Su Padre (Sgd.) B. Bañas."

(2) Exhibit "B" -- a directory and homecoming souvenir program of the San Beda Alumni Association dated 1956 wherein this entry is found: "Bañas, R. -- CS '06" (p. 202, CFI rec.).

(3) Exhibits "C" & "C-1" -- two original copies of receipts of pay-ments for matriculation, dated June 13, and November 1 of the year 1905 (p. 64, CFI Rec.).

(4) Exhibits "D" & "E" --- the 1904 and 1905 matriculation certificates of Raymundo Bañas in San Beda College wherein it is stated that Raymundo Bañas is "hijo de Bibiano Bañas" (p. 63, CFI rec.).'

(5) Exhibits "F", "F-1", "G" and "G-1" -- the 1910 and 1911 report cards of Raymundo Bañas for the fifth and sixth grades of the Sampaloc Intermediate School. Exhibit "F-1" is the space at the back of the report card for the signatures of the parent or guardian. The signa-tures in this space had been erased, although not thoroughly, so that it can still be seen at close examination that the signatures appear to be that of Bibiano Bañas. Plaintiff-appellants have not offered any explanation for these erasures. Exhibit "G-1" con-tains the following entries:

"B. of E. Form No. 137 PUPIL'S RECORD CARD Name Bañas, Raymundo Age 17 on March 15, 1911. Home Address 62 Progreso Province Manila Int. Quiapo Parent or Guardian Bibiano Bañas Occupation Reg. Practitioner" (p. 65, CFI rec.).

(6) Exhibit "I" -- a type-written statement of Raymundo Bañas dated Oct. 6, 1958 setting forth his alleged personal circumstances (p. 67, CFI rec.).

(7) Exhibits "J", "J-1" and "J-2" -- the carbon copies of the typewritten letters sent by Raymundo Bañas to Atty. Andres Faustino (pp. 68-69, CFI rec.).

(8) Exhibits "K" & "L" -- the autobiographies of Raymundo Bañas. Exhibit "L" is typewritten and contains intercalations, altera-tions and spoliations (pp. 70 & 123, CFI rec.).

Plaintiffs-appellants also presented the marriage certificate of Raymundo Bañas and Trinidad Vecino as evidence and was marked as Exhibit "H".

Defendants-appellees, on the other hand, presented defendant-appellee Bibiano Bañas Jr., who testified that after the death of Bibiano Bañas Sr. in 1954, the following documents were found in the latter's safe:

(1) Duplicate original copies of the "Declaracion Jurada" of Raymundo Bañas and Pedro Bañas executed on December 1, 1928, before Notary Public Andres R. Faustino (pp. 103 & 114, CFI rec.; Exhs. "1" & "7").

(2) Duplicate original copy of the "Declaracion Jurada" of Bibiano Bañas dated July 1, 1930, executed before Notary Public Vicente Larna (p. 115, CFI rec.; Exh. "8").

(3) Duplicate original copy of the letter of Pedro Bañas dated June 30, 1930, to the "M.R.P. Juez Provisor del Arzobispado de Manila" (pp. 116-118, CFI rec.; Exh. "9").

(4) The envelope wherein the aforesaid documents were contained when found in the safe of Bibiano Bañas Sr., on which there appears a type-written annotation on its face which reads:

"Asunto Civil de Raymundo No. 10953 en Diciembre de 1913, en contra mia Sobresaido.

"2 Copias para el Sr. Arsobispo de Manila reconociendo que Pedro Bañas es padre de Ray-mundo a Dolores Castillo 30 de Junio de 1930. Aprobado.

"Apidavit de D. Pedro Bañas, Bibiano y Reymundo a 1 de Julio de 1930.

"UN APUNTED DE Resumen de Raymundo Que hasindio un total de TRESMIL SEIS CIENTOS UNO PESOS tomados a mi estudio con mis firmas las fechas de tomas 8 de Enero de 1922" (p. 119, CFI rec.; Exhs. "10" & "10-a")

It is not disputed that Raymundo Bañas had the status of a natural child. What is being disputed is whether or not he was an acknowledged natural son of Bibiano Bañas.

The case was tried and on January 5, 1966, the trial court rendered a decision dismissing plaintiffs-appellants' complaint mainly on the following grounds:

"(1) that the evidence presented by the plaintiffs-appellants were not sufficient to prove their claim that Raymundo Bañas was the acknowledged natural child of the late Bibiano Bañas;

"(2) that 'considering the lack of express recognition, the sworn declaration of Pedro Bañas, Exhibit 7, that Raymundo Bañas was his son, together with the express acknowledgment made by Raymundo Bañas in the sworn statement, Exhibit 1, that his father was Pedro Bañas and not Bibiano Bañas, entirely negates the idea that Raymundo was the son of Bibiano Bañas;

"(3) that since the note (Exh. 'a'), addressed to Mundo with the complimentary ending 'Su Padre, B. Bañas' invoked by the plaintiffs-appellants as their principal evidence was executed in 1907, under the regime of the Spanish Civil Code, therefore the question of whether or not Exhibit 'A' is a valid form of voluntary recognition should be decided according to the old Civil Code; and in accordance with Art. 131 thereof such document does not constitute a valid voluntary recognition;

"(4) that 'Raymundo Bañas was the son of Pedro Bañas, Bibiano Bañas' brother, but since the evidence shows that Pedro Bañas was unable to support himself and his wife, it could very well be that Bibiano Bañas had sort of adopted or considered Raymundo, the son of his brother, to be his own son and had taken pa-ternal solicitude for him';

"(5) that '(T)he failure of Raymundo Bañas to take any legal action to enforce his alleged rights, or to make any written demand upon the defendants herein, are all confirmatory of the sworn statement, Exhibit 1, in which he declared that his father was Pedro Bañas';

"(6) that 'his failure to enforce his rights for a period of over eight years is indicative of the lack of merit of plaintiffs' claim'" (pp. 45-54, CFI rec.).

Plaintiffs-appellants now come before this Court with the following assignment of errors:

"I. The trial court erred in not holding that the fifty-nine (59) year old note of Doctor Bibiano Bañas to his natural child, Raymundo C. Bañas (Exh. 'A', page 25, Record on Appeal), being an authentic writing, is a sufficient form of voluntary recognition under articles 278 and 2260 of the New Civil Code, which entitle the plaintiffs, as heirs of Raymundo C. Bañas, to claim successional rights in the estate of Doctor Bañas, who died in 1954.

"II. The trial court erred in not finding that Raymundo C. Bañas was the voluntarily acknowledged natural child of Doctor Bibiano Bañas, as proven not only by Exhibit 'A', but also by the records of San Beda College (Exh. B to E) and by the records of the Sampaloc Intermediate School (Exh. F and G) and the marriage certificate (Exh. H).

"III. The trial court erred (a) in giving probative value to the affidavits, Exhibits 1 and 7, both dated December

1, 1928, executed by Raymundo C. Bañas and Pedro Bañas and stating that Raymundo was the natural son of Pedro Bañas; (b) in not holding that said affidavits were nullified by the subsequent documents, namely, the 1930 'Genealogy' in the handwriting of Raymundo C. Bañas (Exh. K), and his type-written autobiography (Exh. L), wherein Raymundo clarified that his father was Bibiano Bañas, and (c) in not holding that said affidavits could not revoke nor affect the status of Raymundo as a voluntarily acknowledged natural child of Bibiano Bañas by virtue of Exhibit 'A'.

"IV. The trial court erred in not holding that the entry in 1926 marriage certificate of Raymundo C. Bañas and Trinidad Vecino (Exh. H), that Bibiano Bañas was the father of Raymundo, cannot be corrected nor nullified by the 1928 affidavits, Exhibits 1 and 7, which state that Pedro Bañas was Raymundo's father, nor can such entry be the subject matter of the constancia of Justice of the Peace Ed. Aenlle of Pasay (Exh. 2), a document which was erroneously admitted as evidence by the trial court.

"V. The trial court erred in not holding that the affidavits, Exhibits 1 and 7, stating that Raymundo C. Bañas was the natural son of Pedro Bañas, were part and parcel of an illegal and fraudulent compromise on the civil status of Raymundo C. Bañas, whose principal objective was to induce him to make a void renunciation of his hereditary rights in the estate of his natural father, Bibiano Bañas.

"VI. The trial court erred in assuming that Raymundo C. Bañas consulted his insane mother with respect to the execution of Exhibits 1 and 7.

"VII. The trial court erred in surmising that Bibiano Bañas had sort of adopted or considered Raymundo, the son of his brother, to be his own and had taken paternal solicitude in him.

"VIII. The trial court erred in holding that the failure of Raymundo C. Bañas to enforce his claim within the eight-year period from 1954, when Bibiano Bañas died, to 1962, when Raymundo died, shows that his claim had no merit.

"IX. The trial court erred in dismissing the complaint and in not ordering the defendants, as successors-in-interest of Doctor Bañas, to deliver to the plaintiffs the hereditary share in the properties in litigation of Raymundo C. Bañas as a voluntarily acknowledged natural child of Doctor Bañas, plus his share of the fruits thereof and damages" (pp. a-d, Brief for the Plaintiffs-Appellants, p. 19, rec.).

I

The decisive issue to be resolved herein is whether or not Bibiano Bañas had voluntarily acknowledged Raymundo Bañas as his natural son.

WE hold that there was no voluntary recognition in the instant case.

Plaintiffs-appellants rest their claim on Article 278 of the New Civil Code which provides:

"ART. 278 -- Recognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing."

WE have ruled that Article 278 should be given retroactive effect (*Moscoso vs. CA, et al.*, L-46439, April 24, 1984).

Plaintiffs-appellants admit that the main basis of their action is Exhibit "A" (Brief for the Plaintiffs-Appellants, p. 2; p. 19, rec.). Exhibit "A" is again quoted hereunder:

"Mundo hoy a las 10 y 45. Tu no estas en casa no quieres to obedecer loque to dije, que en estas horas estudiar, descansar y ayudar con su madre. Que no veo mas otraves asi.

Su padre 23/5/7 B. Bañas"

(p. 170, CFI rec.).

Trinidad Vecino vda. de Bañas, widow of the late Raymundo Bañas and plaintiff- appellant herein, testified that this note is in the handwriting of Bibiano Bañas. In this regard, the observation of the trial court should be noted, and We quote:

"She said that she is familiar with the handwriting of Bibiano Bañas since she had often seen him write. This testimony, however, must be considered as very much strained for Exhibit 'A' is dated '23/5/7' or 23 May 1907. While according to Trinidad Vecino, she saw Bibiano Bañas write only as early as 1917. Considering the long lapse of time, which was around 10 years, any testimony that the writing is the hand-writing of a person on the ground that the witness is familiar with the handwriting must be considered unreliable" (p. 49, CFI rec.).

Nevertheless, Exhibit "A" was admitted by the trial court on the ground that it is an ancient document, the authenticity of which need not be proven.

Assuming that plaintiffs-appellants' Exhibit "A" is an authentic document as contemplated by Article 278 of the New Civil Code, We find that the same does not constitute a sufficient proof of a valid voluntary recognition.

"Voluntary recognition of a natural child to be effective under the law (Art. 278), must be made expressly by the recognizing parent, either in the record of birth, in a will, in a statement before a court of record, or in any authentic writing" (Vol. 1-A, Padilla, Civil Law, 1975 ed., p. 83).

The formalities of voluntary recognition under Article 278 of the New Civil Code is that recognition shall be express and made either in the record of birth, in a will, in a statement in a court of record, or in any authentic writing (Justice J.B.L. Reyes, Civil Law, Vol. 1, p. 262).

In the case of Intestate Estate of Pareja vs. Pareja (95 Phil. 171, 172), Justice Labrador quoted Sanchez Roman who said that recognition of natural children must be precise, express, and solemn, thus:

"54. En cuanto a los elementos formales del reconocimiento de hijos naturales, o sean las formas legales de llevarlo a cabo, las establecidas por el Codigo son de caracter taxativo, expreso y solemne.

"Lo primero, porque, segun el art. 131 y sus complementarios, 132, 133, solo puede tener lugar dicho reconocimiento en el acta de nacimiento, en testamento o en otro documento publico, y en este ultimo caso, cuando el reconocimiento sea de un menor, con la aprobacion judicial y audiencia del Ministerio fiscal, asi como cuando es de un mayor, siempre con su consentimiento, segun ya se ha dicho (1).

"Lo segundo, porque de este mismo criterio legal taxativo y de los medios unicos que establece el articulo 131, se deduce una vez mas, que el Codigo, apartandose del sentido declarado por la jurisprudencia del Derecho anterior, no acepta la doctrina del reconocimiento tacito, ni siquiera la de la libertad para acreditarlo por cualquiera de los medios de prueba establecidos en Derecho, cuando del reconocimiento voluntario propiamente tal se trate, siendo, a lo sumo, aquellos medios, elementos para fundar la demanda del llamado reconocimiento forzoso, a que se refieren los articulos 135 y 136 (2), siempre que concurran las circunstancias especificas, en cuanto a la prueba de la filiacion natural, que los mis-mos enumeran.

"Lo tercero, porque todas las formas de llevar a cabo el reconocimiento, taxativamente expresadas en el articulo 131 y complementadas para algun caso en el segundo parrafo del 133, son de caracter solemne, segun lo revelan sus distintas especies, y hasta la mas generica que expresa de documento publico, cuyo valor legal se establece por el articulo 1.216 (3) del Codigo; y para este efecto, como tal, debe considerarse el acta de conciliacion, calificada de documento publico y solemne por la ley de Enjuiciamiento civil (4). Tampoco cabe negar tal caracter a la forma especial del testamento olografo, no obstante la condicion privada de su otorgamiento, puesto que la cualidad de documento publico la adquiere desde el momento en que es protocolado (5). [Tomo 5, Vol. 2, Sanchez Roman, p. 1043]" (underlining supplied).

The same concept still holds under the new law since Article 278 of the New Civil Code was taken from Article 131 of the Old Civil Code, except that the present Code adds "statement before a court of record" as a new means of recognition, and changes "public document" in the old Code to "authentic writing."

Consequently, the trial court was correct when it said:

"The question to determine is whether Exhibit 'A' is a document sufficient to constitute a recognition of Raymundo Bañas by Bibiano Bañas. The note is addressed to Mundo and ends with the complimentary ending 'Su padre, B. Bañas.' Are the words 'Su padre, B. Bañas' a sufficient recognition of Raymundo by Bibiano? This question must be decided on the strength of Exhibit 'A' alone and not by the other evidence submitted by the plaintiff. If the Court had allowed the submission of evidence to show that Raymundo Bañas was the son of Bibiano Bañas, it was only for the purpose of showing that Mundo, the person addressed to in Exhibit 'A', was Raymundo Bañas. The words 'Su Padre,' considering the evidence for the defendants, are in the opinion of the Court not sufficient to constitute an intent to recognize.

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"There is nothing in Exhibit 'A', outside of the complimentary ending, that Raymundo Bañas is the son of Bibiano Bañas" (p. 50, CFI rec. underlining supplied).

"The complimentary ending, "Su padre," taking into consideration the context of the entire letter (Exh. "A"), is not an indubitable acknowledgment of paternity. It is a mere indication of paternal solicitude.

The Filipinos are known for having very close family ties. Extended families are a common set-up among them, sometimes to the extent that strangers are also considered as part of the family. In addition, Filipinos are generally fond of children, so that children of relatives or even of strangers are supported if their parents are not capable to do so. This is a manifestation of the fact that Filipinos are still living in a patriarchal society (see opinion of then C. A. Justice Castro quoted by Chief Justice Bengzon in *Gustilo vs. Gustilo*, 14 SCRA 154).

Thus, in the case of *Gustilo vs. Gustilo*, supra, penned by Chief Justice Bengzon, analogous to the case at bar, wherein the evidence submitted as proof of voluntary recognition does not only include a letter written by the alleged father to the natural child which also ends with the complimentary ending "x x x tu padre," but other stronger evidence tending to show voluntary recognition, this Court held that such evidence does not prove express recognition. Pertinent portions of the decision reads as follows:

"The pertinent facts of the case were accurately described in the decision of Mr. Justice Castro of the Court of Appeals:

"At the trial, she (Rosa) was allowed, over the objection of the defendants to introduce evidence tending to show that she was begotten in 1898, out of wedlock by Calixto Gustilo and Teodora Soqueño (both deceased) who, at the time of her conception, could marry each other without legal impediment; that from her birth until the age of 7, she was under the custody of her mother who was supported by Calixto Gustilo; that in 1902, Calixto Gustilo married Martina Poblador; and that at the age of seven she was taken into the custody of the said spouses with whom she lived for almost fifteen years. The evidence for the plaintiff further shows that in the year 1902, she studied at the Zarraga public school while she was staying with the mother of Martina at the poblacion of Zarraga; that she later enrolled at the Colegio de San Jose and at the Colegio de Santa Ana together with her sister Josefa, and all her expenses were borne by Calixto; that all along she was considered as a member of the family and addressed by her father as "Inday" and at times "Rosa," and was introduced in public gatherings by Calixto as his daughter; and that she received the same treatment from her brothers and sisters and her foster mother Martina Poblador.

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"The items of documentary evidence introduced by the plaintiff are the following:

“(1) Exh. A -- a marriage certificate which states that on the 8th day of October, 1922, Juan Sumagaysay, 26 years of age, the son of Rufino Sumagaysay and Gre-goria Sebusa, resident of Leganes, Iloilo, was married to Rosa Gustilo, 23 years of age, the daughter of Calixto Gustilo and Teodora Soqueño.

“(2) Exh. B -- a letter of Calixto Gustilo addressed to Rosa, and dated February 12, 1917, pertinent part of which reads: 'Señorita Rosa Gustilo y su hermana Josefa, Queridas hija: x x x Conservamas buenas que es siempre el desee de tu padre (Fdo.) CALIXTO GUSTILO.'

“(3) Exh. C -- a letter of Augusto Gustilo to Rosa Gustilo dated September 5, 1918 which in part says: 'Senorita Rosa Gustilo, Colegio Santa Ana, Molo, Iloilo, Islas Filipinas, Mis muy queridas Hermanas: x x x Vuestro hermano que es quiere (Fdo.) AUGUSTO GUSTILO'

“(4) Exh. D -- a letter of Augusto Gustilo to Rosa dated February 1, 1920, which in part says: 'Señorita Rosa Gustilo, Zarraga, Iloilo, Islas Filipinas, Mi querida hermana: x x xx Tu hermano que te qui-re. (Fdo.) AUGUSTO GUSTILO.'

“(5) Exh. E -- a motion filed by Augusto Gustilo with the Court in behalf of Rosa dated December 10, 1945, which in part reads: 'Rosa Gustilo, my sister, is the registered owner of Lot 9500 of the Cadastral Survey of Santa Barbara, now Zarraga. xx (fdo.) AUGUSTO GUSTILO.'

“(6) Exh. F -- a deed of donation executed by Calixto Gustilo himself in favor of Rosa in a public document, duly accepted by the latter in the same document, which states in substance that in consideration of the donation the donee will renounce her participation in his estate after his death.'

"Under the facts set out in the first paragraph above quoted, Rosa Gustilo could conceivably have filed an action for compulsory recognition under Art. 283 of the New Civil Code alleging continuous possession of the status of a natural child of Calixto Gustilo by direct acts of the latter or of his family; but as she did not file such action before his death, she is now precluded from bringing it, inasmuch as she was already mature (54) when Calixto died; and as she did not claim (nor prove) to have discovered after his death some document actually recognizing her.

"Therefore, this action may not be entertained as an action to compel recognition. It must be regarded as an action by a recognized natural child to enforce her rights as such. As the Court of Appeals has stated, the only provision of law upon which Rosa may now rest her claim is Art. 278 of the New Civil Code, which reads as follows:

"Art. x x x x

"Admittedly, plaintiff has not been recognized in a record of birth, nor in a will; but she rests her claim to filiation on the strength of either a statement before a court of record or statements in an authentic writing. It must be obvious that such statement, to be effective, must be one made by Calixto himself; and that the writing must be the writing of Calixto.

"Let us now examine the documents presented.

"Exh. A -- the certificate of marriage of Rosa Gustilo with Juan Sumagaysay, stating she was the daughter of Calixto Gustilo and Teodora Soqueño.

"As it does not appear that this has been signed by Calixto -- it is enough.

"On this same ground, the other papers, Exhs. C, D and E all signed by Augusto Gustilo must be discarded.

"Exh. B -- is a letter signed by Calixto addressed to 'Rosa Gustilo y su hermana Josefa.' It says: 'Queridas hijas: x xx Conservamas buenas que es siempre el desee de tu padre.'

"The Court of Appeals deemed this letter to be insufficient for it contends no unequivocal avowal that Rosa was Calixto's child. Indeed, it was addressed also to Josefa who was admittedly his own child. It should specially be noted that the letter spoke of 'tu padre' referring to his wife Martina who was the mother of Josefa -- not of Rosa. At any rate there is much sense in Justice Castro's observation that 'it is not uncommon in many Filipino homes that a child who is a perfect stranger to the family but who was taken under similar circumstances, is regarded as a member of the family and called "hija" or "hijo" by the head thereof. This view follows and coincides with the line of thought expressed by Manresa in that portion of his commentaries, quoted with approval in *Joaquin v. Joaquin*, 60 Phil. 399 where-in adverting to written acknowledgments of paternity of a natural child, he explained:

"En cuanto al otro requisito de ser expreso el reconocimiento x x x el escrito, aunque contenga otros particulares, como sucede en los testamentos, ha de tener por objeto el reconocimiento deliberado y expreso del hijo natural. No Ilena, pues, ese objeto la manifestacion que incidentalmente haga el padre de ser hijo natural suyo la persona a quien se refiera, y mucho mas el dar a una persona el titulo y tratamiento de hijo en ciertas familiares' (Manresa, *Commentarios alCodigo Civil*, Tomo 1, pag. 580, 3a ed.)

"Needless to add, Manresa's above opinion was written as a comment to Art. 131 of the Spanish Civil Code which is exactly the same as Art. 278 of the New Civil Code, except that 'in some other public document' has been substituted with 'in any authentic writing.'

"This letter -- to recall our previous indications -- could probably be material evidence in a suit to compel recognition. However, it is not by itself a voluntary act of recognition, such as is contemplated in Art. 278, which act must be precise and express (*Pareja v. Pareja*, L-6823, May 31, 1954). For as *Gitt v. Gitt* exemplifies, there may be direct acts of the father which though not constituting voluntary acknowledgment of a natural child, may be used to 'compel' recognition as such" (underlining supplied).

A FORTIORI, plaintiffs-appellants' argument that 'Exhibit A's complimentary clause "su padre," is a categorical admission by Bibiano Bañas that he was the father of "Mundo" or Raymundo Bañas, must necessarily fail.

II

Plaintiffs-appellants argued that under the rule of incidental acknowledgment, Exhibit "A" is a sufficient form of recognition (p. 19, rec., Brief for the Plaintiffs-appellants, p. 40). To support their contention, plaintiffs-appellants cited the case of *Donado vs. Menendez Donado* (55 Phil. 861, 872), and quoted therefrom the following:

"xx xx xx.

"The terms in which the acknowledgment is made are immaterial, and Goyena's opinion is admissible that, with reference to article 124 of the bill of 1851, the law inclines favorably to an acknowledgment made incidentally or in any terms, so long as the intention to acknowledge sufficiently appears. "It is enough," he adds, "that the testator mention the legatee as his natural child," who may thenceforth demand his rights as a natural child, even if the will is revoked.'

"According to the cases cited above and Manresa's opinion, acknowledgment made in a public or private document need not be direct, but may even incidentally admit that the person whose name appears in the document in question is the subscriber's child" (p. 19, rec., p. 41, Brief for the Plaintiffs-appellants, underscoring supplied).

Plaintiffs-appellants went on further to cite the cases of *Javelona vs. Monteclaro* (74 Phil. 393), *Apacible vs. Castillo* (74 Phil.589), and *Cosio vs. Pili* (10 Phil. 72). They alleged that based on the above-mentioned quotation and cited cases, the rule of incidental acknowledgment applies to Exhibit "A" which, therefore, constitutes a sufficient and valid voluntary recognition of Raymundo Bañas by Bibiano Bañas.

WE do not agree. Plaintiffs-appellants have erroneously applied the rule of incidental acknowledgment. They have completely failed to note that all of the authorities they cited endorse incidental acknowledgment, in cases of voluntary recognition, if the alleged voluntary recognition were made in a public document. The reason for this is quite simple. Nowhere in these cited cases can be found any statement that incidental voluntary acknowledgment may be made in a private writing, simply because all of these cited cases were decided long before the adoption of the New Civil Code. Under the regime of the Old Civil Code, a voluntary recognition can only be made in a record of birth, will or other public document (Art. 131). A private writing or document, under the Old Civil Code, may be considered as an "indubitable writing" which is a ground for compulsory recognition according to Art. 135 thereof.

Justice Villa-Real, in the case of *Donado vs. Menendez Donado* (55 Phil. 861), cited by the plaintiffs-appellants, was referring to both Articles 131 and 135 of the Spanish Civil Code of 1889, or the Old Civil Code, when he said that, an "acknowledgment made in a public or private document need not be direct, but may even incidentally admit that the person whose name appears in the document in question is the subscriber's child." This statement of Justice Villa-Real was clarified by Justice Bocobo in the case of *Javelona, et al. vs. Monteclaro, et al.* (74 Phil. 393, 398, 400) -- also cited by the plaintiffs-appellants -- when he clearly laid down the ratio legis of the doctrine of incidental acknowledgment under Article 131 of the Old Civil Code, thus:

"Upon the second point, whether a voluntary acknowledgment may be done incidentally in a public document, a distinction must be made between the two kinds of acknowledgment: (1) voluntary, and (2) compulsory. In the former, recognition may be incidental, but in the latter, it must be direct and express.

"xx xx xx.

"We adopted the same rule as to article 131 in the case of *Donado vs. Menendez Donado*, 55 Phil. 861, 872, when we held that an acknowledgment in a document need not be direct, but may even incidentally admit that the person whose name appears in the document is the subscriber's child.

"The reasons for the above distinction between express recognition in article 135 and incidental acknowledgment according to article 131 are not far to seek. In the first place, a voluntary recognition is made in a public document (Art.131) whereas the indubitable writing under article 135 is a private document (Manresa, vol. 1, p. 579). The father would ordinarily be more careful about what he says in a public document than in a private writing, so that even an incidental mention of the child as his in a public document deserves full faith and credit. x x x x.

"In the second place, in an action on Article 131 (voluntary recognition) the natural child merely asks for a share in the inheritance in virtue of his having been acknowledged as such, and is not trying to compel the father or his heirs to make the acknowledgment, whereas the action based on Article 135 is to compel the father or his heirs to recognize the child. In the former case, acknowledgment has been formally and legally accomplished because the public character of the document makes judicial pronouncement unnecessary, while in the latter case, recognition is yet to be ordered by the courts because a private writing, lacking the stronger guaranty and higher authenticity of a public document, is not self-executory. x x x x" (Ibid, pp. 398, 400, under-lining supplied).

It is therefore clear that the rule of incidental acknowledgment does not apply to plaintiffs-appellants' Exhibit "A" since it is not a public document where a father would ordinarily be more careful about what he says. In fact, Exhibit "A" is merely a short note whereby a 13-year old boy is being admonished for staying out late and not staying at home studying his school lessons or helping his mother.

Moreover, in Manresa's opinion invoked by the plaintiffs-appellants, it is emphasized therein that while the terminology in which the acknowledgment is made is immaterial, the sine qua non is that the act of recognition

must be "con tal que de ellos aparezca suficientemente la intencion de hacerlo". In other words, the intent to recognize must be sufficiently apparent in the document. And, as WE have earlier indicated, the complimentary ending "Su padre", taking into consideration the context of the entire letter (Exh. "A"), is not an indubitable acknowledgment of paternity, but merely an indication of the paternal concern of one for the well-being of the natural son of his brother who could not support or rear the boy. The intent to recognize, therefore, is not apparent in Exhibit "A".

III

Plaintiffs-appellants also presented the school records (Exhs. "B" to "F") of Raymundo Bañas and a certified copy of his marriage certificate (Exh. "H"), to further support their claim. However, these school records could not be said to be confirmative of any intention on the part of Bibiano Bañas to recognize Raymundo as his natural son since school records are prepared, not by Bibiano, but by the school authorities concerned. The same can also be said of the marriage certificate of Raymundo Bañas and Trinidad Vecino which was prepared by the church authorities concerned. In addition to this, the records in the case at bar are completely bereft of any evidence to show that Bibiano Bañas furnished the statements therein or that he had any participation in securing the enrollment and the marriage certificate of Raymundo nor made representations in connection therewith.

This Court held that the authentic writing upon which the claim to filiation rests must, to be effective, be one made by the putative father himself and that the writing must be the writing of the said alleged father (*Gustilo vs. Gustilo*, 14 SCRA 149; *Malonda vs. Malonda*, 81 Phil. 149; *Adriano vs. de Jesus*, 23 Phil. 350).

Likewise, in the case of *Cid vs. Brunaman* (24 SCRA 439), this Court held that a birth certificate does "not constitute a sufficient act of acknowledgment, since the latter must be executed by the child's father or mother, and the parish priest can not acknowledge in their stead (*Canales vs. Arrogante*, 91 Phil. 6)."

In the case of Exhibit "F", although Bibiano Bañas' signatures appeared at the back of the report card of Raymundo Bañas, on the space provided for the signatures of the parent or guardian, still it does not constitute a sufficient act of recognition for it could very well be that Bibiano Baas affixed his signatures on the report card of Raymundo as a guardian and not as parent of the latter. As pointed out by the trial court: The evidence shows that Pedro Bañas, even during his marriage, had always lived with the spouses Bibiano Bañas and Faustina Vecino. It would appear, therefore, that Pedro Bañas was unable to support himself and his wife, and it could very well be that Bibiano Bañas had sort of adopted de facto - not legally - or considered Raymundo, the son of his brother, to be his own "ampon" ' in Tagalog or Filipino, and had taken paternal solicitude for him (p. 50, CFI rec.). Furthermore, since the signatures of Bibiano Bañas appearing in Raymundo's report card may be construed as the signature of a mere guardian, the recognition, if there is any, cannot be said to be precise and express as required by Article 278. WE must not also fail to mention the fact that Exhibit "F" contains erasures for which plaintiffs-appellants have not offered any explanation. The signatures of Bibiano Bañas appearing therein can hardly be read except on close examination.

IV

Plaintiffs-appellants' claim of voluntary recognition on the part of Bibiano Bañas runs counter to the established facts of the case. The sworn statement - a public document - (Exh. "8", p. 115, CFI rec.), executed by Bibiano Bañas on July 1, 1930, before Notary Public Vicente Larna, wherein Bibiano declared that Raymundo was the son of his brother, Pedro Bañas, clearly shows that he had no intention whatsoever to recognize Raymundo as his natural son, nor had he ever treated Raymundo as such.

Consequently, even if the evidence presented by the plaintiffs-appellants constitute a sufficient proof of a voluntary recognition, still their complaint will not prosper since it is evident that if there was acknowledgment on

the part of Bibiano, he had rectified or repudiated the same by his sworn statement (Exh. "8").

Accordingly, "(T)he recognition of a child as a natural child by any means required by law may be subsequently corrected by the person who made the acknowledgment. There is no provision in any of the laws now in force which prohibits the father or the mother who recognized a person as their natural or their legitimate child, to make, by any of the means prescribed or recognized by law, such a rectification, that is, to deny to said person the previously acknowledged status of the child. Neither is it necessary in order that a rectification of this nature be made, that there be a legal provision to authorize it, for the reason that the law cannot foresee the cases where, by reason of the ineluctable dictates of conscience of the necessity of safeguarding some right, such a rectification may be necessary and just. Nevertheless, such rectification must not be arbitrary and its purpose must be to show that the acknowledged child does not have the conditions that the law requires in order that he may be so acknowledged, or that he has not the absolute condition of being the child of the person who acknowledged him, or that such person could not have begotten him, or that the child is the child of a third person" (Francisco, Civil Law, Bk. I, pp. 734, 735, citing the case of *Remigio v. Ortega*, 33 Phil. 614, underlining supplied).

Corollary to this, Raymundo and Pedro Bañas had acknowledged the paternal relationship between them when they executed sworn statements (Exhs. 1 and 7, pp. 103, 113, CFI rec.) on December 1, 1928, before Atty. Andres Faustino, whereby Raymundo declared that he was the natural son of Dolores Castillo and of an unknown father as it appeared in his baptismal certificate; that in due time, he came to know that his natural father was Pedro Bañas. Pedro Bañas, in his sworn statement, declared that he has a natural son named Raymundo Bañas whom he begot with Dolores Castillo, and whom he recognized as such.

The reason given by the affiants, Raymundo and Pedro Bañas, why they were executing their sworn statements, is to put on record the true state of things; because they had realized that in the marriage certificate of Raymundo and Trinidad Vecino, dated October 9, 1926, an error had been committed in that the name of Raymundo's father stated therein was Bibiano Bañas, brother of his father, Pedro Bañas. And that, therefore, they are asking for the correction of the aforesaid error in the marriage certificate from the Justice of the Peace Ed Aenlle of Pasay, Rizal, before whom the marriage of Raymundo and Trinidad was solemnized. To OUR mind, this is a valid and sufficient reason for Raymundo and Pedro Bañas to execute their sworn statements.

Plaintiff-appellant Trinidad Vecino Vda. de Bañas claims that the sworn statement of Raymundo was allegedly executed by the latter in consideration of Bibiano Bañas' promise to give them an additional lot. But, as the trial court correctly observed, "(T)he, Trinidad Vecino vaguely declared that the sworn statement was executed by Raymundo Bañas because of the promise to give them another lot in addition to the Kalimbas lot. But this testimony must fail in the face of her insistent testimony that she came to know of the sworn statement, Exhibit 1, only after the death of Raymundo Bañas in 1962" (p. 49, CFI rec.). In other words, how can Trinidad Vecino Vda. de Bañas be believed in her testimony that Exhibit 1 was executed in consideration of said promise, since Exhibit 1 was executed without her knowledge way back in 1928.

Moreover, the sworn statement of Raymundo Bañas was executed on December 1, 1928, or almost two years before Raymundo and his family moved to the Kalimbas lot, and more than six years before the said property was transferred to Raymundo's name. Under these premises, how can plaintiff-appellant Trinidad Vecino Vda. de Bañas now validly claim that Raymundo executed that sworn statement in consideration of Bibiano Bañas' promise of an additional lot when in fact Raymundo had not received any lot from Bibiano Bañas when he executed such sworn statement. On the other hand, as it appears in the records, the Kalimbas property was sold and not given or donated by Bibiano Bañas to Raymundo Bañas. Obviously, plaintiffs-appellants' arguments on this point are completely unfounded.

It is evident from the records that Raymundo Bañas had recognized the truth of his declaration in Exhibit "1". As correctly pointed out by the counsel for the defendants-appellees, "Raymundo had all the opportunity to nullify or to formally declare as untrue his aforesaid sworn statement. The fact that he never did, is cogent proof of his own acknowledgment of the truth of the contents of the same" (p. 22, rec., Brief for the defendants-appellees, p. 50).

Raymundo's recognition of the truth of his statement in Exhibit "1" is reflected in the alleged copies of his letter (Exhs. "J" and "J-2"), to Atty. Andres Faustino. Nowhere in the said letters bristling with unconcealed bitterness, did he say that he had a claim against the estate of Bibiano Bañas as the latter's acknowledged natural son. Not only did Raymundo fail to categorically state that he is Bibiano's acknowledged natural son, he also did not make any reference to Exhibit "1" which he executed before Atty. Andres Faustino.

Thus:

"x x x. Where a party has the means in his power of rebutting and explaining the evidence adduced against him, if it does not tend to the truth, the omission to do so furnishes a strong inference against him" (Broom's Legal Maxims, 10th Ed. by R. H. Kersley, p. 638).

V

The records show that Raymundo Bañas, obviously bitter and discontented because he was not given a share in the estate of Bibiano Bañas, failed to file a formal claim or demand during the eight-year period between the death of Bibiano Bañas in 1954 and his own in 1962.

Human nature normally dictates that Raymundo should establish his filiation to Bibiano, especially if such action can benefit him and his family. The urgency of such action is heightened in the case of Raymundo since it can be deduced that they were having financial difficulties from the mortgage executed by the spouses Raymundo and Trinidad over their own house and lot in favor of Angel V. Bañas, a legitimate son of Bibiano Bañas and defendant-appellee herein, on November 7, 1955, a few months after the settlement of Bibiano's estate. As correctly observed by the trial court, "his (Raymundo's) failure to enforce his rights for a period of over eight years is indicative of the lack of merit of plaintiffs' claim" (p. 52, CFI rec.).

VI

Finally, that Raymundo Bañas was not an acknowledged natural son of Bibiano Bañas is further shown by the fact that plaintiffs-appellants' allegation that the documents tending to prove Raymundo's filiation were only discovered after the latter's death defies belief.

Included in those documents allegedly discovered were the letters of Raymundo to Atty. Andres Faustino wherein he complained bitterly about the alleged injustices done to him by Faustina Vecino vda. de Bañas. He even adverted in the said letters that he had in his possession proofs of his claim and that he would know what to do when the proper time comes. These letters, to Our mind, could not have been written without the knowledge of Trinidad since it is only natural for Raymundo, as a husband, to share his sentiments with Trinidad, his wife. Raymundo was naturally expected to share with his wife Trinidad his bitterness, more especially since Trinidad is definitely not a stranger to the family of Bibiano Bañas. It must be noted that Trinidad once stayed with and served the family of Bibiano Bañas, aside from being the niece of Faustina, Bibiano's wife. Thus, it is highly improbable that Raymundo will hide from his wife whatever proofs he has in his possession to support his claim to a share in the estate of Bibiano Bañas.

Furthermore, anything of sentimental value, such as old school records, autobiographies, letters, etc., is normally shared between husband and wife. Hence, it is likewise not normal for Trinidad not to have seen before Raymundo's death, mementos which tend to establish his filiation to Bibiano.

The conflicting testimonies of Trinidad Vecino vda. de Bañas on this point lend credence to Our view that the documents presented as evidence by the plaintiffs- appellants to support their claim, were already known to the plaintiffs-appellants long before Raymundo's death.

When asked, on cross-examination, whether she and her husband, Raymundo, discussed matters pertaining to Raymundo's claim in the estate of Bibiano Bañas after the latter's death in 1954, she answered in the negative (p. 426, CFI rec.). However, upon re-cross--examination, she answered in the following manner:

"ATTY. REGALADO

"Q.

Testifying on Exhibit 'J', do you happen to know, Mrs. Bañas, whether the original of this letter allegedly prepared by Raymundo Bañas addressed to Atty. Andres Faustino was ever sent to Atty. Faustino?

"A.

I do not know, sir.

"Q.

And after you read this paragraph here which had been marked Exhibit 'J-1,' you state that what you understood therefrom was the fact that he was not given the additional lot allegedly promised by Dr. Bibiano Bañas. How did you come to that conclusion? Was it because during the period of his lifetime or after the death of Bibiano Bañas you discussed with our husband the matter of your claim against his estate?

"A.

Yes sir.

"Q.

In other words, after the death of Dr. Bibiano Bañas and before the death of Raymundo Bañas you were already discussing the matter of your claim against the estate and that he had a feeling that he was going to be defrauded. Is that not correct?

"A.

We were waiting for their willingness or voluntariness in giving whatever share we would be given.

"Q.

But my question, Mrs. Bañas, was during that period -the 8-year period, after the death of your husband from the years from 1954 to 1962, you were actually discussing with your husband the matter of making a claim

against the estate of Dr. Bañas and you were fearing that you might be defrauded from your due participation. Is that not true?

"A.

Yes, sir. One time I visited my aunt, Mrs. Faustina Bañas, and I asked her how she was and I reminded her about the promise to give us one more lot and she said, 'I am not greedy; I will take care of you.'

"Q.

And on that occasion did you tell her that you were asking for the share of Raymundo specifically as the son of Dr. Bañas, or as a matter of gratification by reason of the services that you tendered to the children of Dr. Bañas by rearing them in their child-hood?

"A.

What pertains to Raymundo Bañas would pertain to him. What is mine is different.

"COURT.

"Q.

So in this occasion when you were asking the widow about that one lot were you asking her as gratification or compensation for your services?

"A.

As far as I am concerned, what they would give me.

"Q.

But did you ask for the share they would give you.

"A.

Yes, sir. That was what I told them -- what they were giving to Raymundo.

"ATTY. REGALADO

'Q.

You told Mrs. Faustina Bañas that you are there claiming in behalf of Raymundo Bañas as the son of Bibiano Bañas, and, therefore, you wanted the share of Raymundo Bañas, is that what you told your aunt?

"A.

Yes, sir.

"Q.

Why did you go there by your-self? Why did you not ask Raymundo Bañas himself to go there and claim since he was the son?

"A.

Before that, both of us went to see my aunt, but later on I went by myself because my husband was in class.

"Q.

When did you go there together with your husband to demand the matter of his participation as the alleged son of Dr. Bibiano Bañas?

"A.

More or less in 1955.

"Q.

After the death of Bibiano Bañas?

"A.

Yes, sir.

"Q.

You said so to your aunt, Faustina. And you made it plain to them that you were claiming the property of Raymundo as the son of Dr. Bibiano Bañas?

"A.

Yes, sir.

"Q.

You said so to your aunt, Faustina vda. de Bañas?

"A.

Yes, sir.

"Q.

And what did she say, if she said anything?

"A.

She said, 'Yes, you just wait later on.'

"Q.

On that occasion you did not hesitate nor were you embarrassed to make that demand even if you believed that in Cavite you are not supposed to 'mangamangalawa' in the matter of claims to inheritance?

"A.

Yes, sir.

"Q.

And that was long before you even discovered these alleged documents, Exhibits 'A' to 'L'?

"A.

Yes, sir, because these documents were discovered in 1962" (pp. 439-441, CFI rec.; underlining supplied).

It is patent from the above that the testimony given by Trinidad Vecino vda. de Bañas cannot be considered reliable. Inasmuch as she is the plaintiffs-appellants' principal witness, their claim is rendered groundless.

Moreover, this casts doubt on the other evidence presented by the plaintiffs-appellants, such as Exhibit "I", the alleged typewritten statement of Raymundo Bañas, dated October 6, 1958, setting forth his personal circumstances. This statement was made at a time when Raymundo had already made known through his letters to Atty. Andres Faustino of his discontent over the settlement of the estate of the late Bibiano Bañas. Therefore, the possibility that Raymundo might have some hidden motives, aside from merely establishing his filiation, cannot be ignored. The same can also be said of Exhibits "K" and "L", the alleged autobiographies of Raymundo Bañas. This is especially true of Exhibit "L", which not only is typewritten, but also contains intercalations and spoliations.

VII

Raymundo should and could have filed an action for compulsory recognition during Bibiano's lifetime, alleging continuous possession of the status of a natural child by direct acts of Bibiano or of his family, and that he has in his favor proof that Bibiano is his father.

Considering that Raymundo was born in 1894, and was already of majority age in 1915, long before Bibiano's death in 1954, he should and could have filed such action either under Article 135 of the Old Civil Code, or Article 283 of the New Civil Code. Article 135 of the Old Civil Code and Article 283 of the New Civil Code read as follows:

"ART. 135. The father may be compelled to acknowledge his natural child in the following cases:

"1. When an indubitable writing of his exists in which he expressly acknowledges his paternity;

"2. When the child is in the uninterrupted possession of the status of a natural child of the defendant father, justified by the conduct of the father himself or that of his family; xx xx" (underscoring supplied).

"ART. 283. In any of the following cases, the father is obliged to recognize the child as his natural child:

xx xx xx

"2. When the child is in continuous possession of the status of a child of the alleged father by the direct acts of the latter or of his family;

"3. When the child was conceived during the time when the mother cohabited with the supposed father;

"4. When the child has in his favor any evidence or proof that the defendant is his father" (underlining supplied).

Raymundo's failure to institute an action for compulsory recognition during Bibiano's lifetime under either of the above-cited law, militates against plaintiffs-appellants' complaint for partition or recovery of hereditary share, fruits and damages.

Article 137 of the Old Civil Code and Article 285 of the New Civil Code provide that the action of the natural child for compulsory recognition prescribes, if not taken during the lifetime of the alleged parents, unless the case falls within the exceptions which allow the filing of such action even after the death of the alleged parents; thus:

"ART. 137 -- Actions for the acknowledgment of natural children may be commenced only during the lifetime of the putative parents except in the following cases:

"1. If the father or mother dies during the minority of the child, in which case the latter may commence the action within the four years next following the attainment of its majority;

"2. If, after the death of the father or mother, some document, before unknown should be discovered in which the child is expressly acknowledged;

"In this case the action must be commenced within six months next following the discovery of such document" (Old Civil Code).

"ART. 285. -- The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

"1. If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;

"2. If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

"In this case, the action must be commenced within four years from the finding of the document" (New Civil Code; underscoring supplied).

It is obvious that under the above-cited law, after the death of Bibiano Bañas, Raymundo was precluded from filing an action for compulsory recognition against Bibiano's heirs.

Raymundo was already 60 years old when Bibiano died in 1954. This rules out the first exception. The alleged documents which established Raymundo's filiation to Bibiano were not unknown to Raymundo during the latter's lifetime. And, as we have pointed out, these documents could not even have been unknown to his wife, Trinidad Vecino.

Furthermore, in the second exception, the document discovered after the death of the alleged parents, should be one in which the natural child is expressly acknowledged by either or both parents. In the documents presented and relied on by the plaintiffs-appellants, there is no express acknowledgment by Bibiano Bañas of Raymundo as his natural child.

Granting that, after the death of Bibiano Bañas, Raymundo could file an action for compulsory recognition against Bibiano's heirs, still plaintiffs-appellants cannot invoke Raymundo's right to file such action, because it is not transmissible to the natural child's heirs; the right is purely a personal one to the natural child (Paras, Civil Code Annotated, 1971 ed., p. 654). As held by this Court in the case of Conde vs. Abaya (13 Phil. 249), "such action for the acknowledgment of a natural child can only be exercised by him. It cannot be transmitted to his descendants, or to his ascendants." The reason advanced by this Court, through Chief Justice Arellano, is as follows:

"It is most illogical and contrary to every rule of correct interpretation that the right of action to secure acknowledgment by the natural child should be presumed to be transmitted, independently, as a rule, to his heirs, while the right to claim legitimacy from his predecessor is not, as a rule, conceded to the heirs of the legitimate child, but only relatively and as an exception. Consequently, the pretention that the right of action on the part of the child to obtain the acknowledgment of his natural filiation is transmitted to his descendants is altogether unfounded. No legal provision exists to sustain such pretention, nor can an argument of presumption be based on the lesser claim when there is no basis for the greater one, and when it is only given as an exception in well-defined cases. It is placing the heirs of the natural child on a better footing than the heirs of the legitimate one, when, as a matter of fact, the position of natural child is not better than, nor even equal to, that of a legitimate child"(p. 256).

As earlier indicated, the evidence presented by the plaintiffs-appellants does not constitute a sufficient act of voluntary recognition, but, may be a ground for compulsory recognition under Article 135 of the Old Civil Code, or Article 283 of the New Civil Code. And since, as discussed above, the right to compel acknowledgment solely belongs to the natural child and cannot be inherited and exercised by his heirs, plaintiffs-appellants have no personality to file such action, it follows that their complaint is totally baseless.

WHEREFORE, THE DECISION APPEALED FROM BEING IN CONFORMITY WITH THE FACTS AND THE LAW, THE SAME IS HEREBY AFFIRMED. COSTS AGAINST PLAINTIFFS-APPELLANTS.

SO ORDERED.

Concepcion, Jr., Escolin, and De la Fuente, JJ., concur.

Fernando, C.J., on official leave.

Teehankee, Acting C.J., Abad Santos, Plana, and Relova, JJ., in the result.

Melencio-Herrera, see separate concurring opinion.

Aquino, Gutierrez, Jr., Cuevas, and, Alampay, JJ., no part.

CONCURRING OPINION

MELENCIO-HERRERA, J.,

The facts of this case, which I believe to be relevant, may be briefly stated thus:

1. Raymundo C. Banas (the Child, for brevity) was born on March 15, 1894, the son of Dolores Castillo, single.
2. On May 23, 1907, when the Child was thirteen (13) years old. Dr. Bibiano Banas, a surgeon (hereinafter called Decedent), allegedly sent him a handwritten letter (the Note, for short) as follows:
"Mundo, hoy a las 10 y 45. Tu no estas en casa no quieres tu obedecer lo que te dije, que en estas horas estudiar, descansar y ayudar con su madre. Que no veo mas otravez asi.

Su padre
(Sgd.) B. Banas

23/5/7"

It would appear that, on March 15, 1894, Decedent was also single.

3. On December 1, 1928, the Child, then thirty four (34) years of, age and married, executed an affidavit (Exhibit "1") wherein he' averred that he was the son of Pedro B. Banas, a brother of Decedent. On the same date of December 1, 1928, Pedro B. Banas also executed an affidavit (Exhibit "7") wherein he confirmed that the Child was. his son. Both affidavits were sworn to by them before the Notary. Pedro Banas died in 1939.
4. On July 1, 1930, Decedent executed an affidavit to the effect that the Child is the son of his brother Pedro (Exhibit "8").
5. In 1930, the Child allegedlywrote an autobiography wherein, the following entry appears:

"My Early School Life

My parents love education. This is proven by the letter of my father, a surgeon, who because of work at the Farmacia de San Fernando owned by Juan Jimenez, would only come home once or twice a week. The day when he arrived home one morning, I was out playing. So before he departed, he wrote a short note which he left to my mother for me. When I returned home, she let me read the letter, which is as follows: (the Note is quoted) x x ".

No mention was made of his affidavit. Exhibit "1" , declaring that he was the son of Pedro.

6. The Decedent died intestate on .April 25V 1954, survived by a widow (Decedent's Spouse) and legitimate children (hereinafter referred to as the Legitimate Heirs).
7. On June 24, 1955, the Legitimate Heirs extrajudicially partitioned the estate of Decedent (Exhibit "3"),which was acknowledged before notary public Angel Vecino.
8. On February 25, 1962, the Child died, survived by a widow (Child's Spouse) and legitimate children (hereinafter called Child's Heirs). The Child's Spouse was a sister of Angel Vecino.
9. Three years thereafter, or on February 12, 1965, the Child's Heirs filed a' complaint against the Legitimate Heirs and their family corporation, B. Banas & Sons, Inc., in Civil Case No. 55859 (Case Below) of the Court of First Instance of Manila (the Lower Court),asking for participation in the estate of the Decedent, alleging that the

Child was a voluntarily acknowledged natural child of Decedent and that, as heirs of the Child, they are entitled to the Child's inheritance from Decedent.

10. On January 5, 1966, the Lower Court dismissed the complaint of the Child's Heirs, and the latter have appealed to this instance.

The principal legal issue to be determined in this case may be formulated as follows: Assuming that the Note executed by Decedent on May 23, 1907 was an "authentic writing" within the meaning of Article 278 of our Civil Code, which Note was found by the Child's Heirs after 1962, when both Decedent and Child had already passed away, can said Note be considered as an effective voluntary acknowledgment made by Decedent that the Child was his natural child such that the Child's Heirs can participate in the estate left by the Decedent after the same had already been partitioned? Before discussing that particular legal issue, I would like to express certain preliminary thoughts on the matter.

A. THE PERSONAL RELATIONSHIPS. - The following relationships may be stated. Decedent had married Faustina Vecino, whose brother was the father of the Child's Spouse and her brother Angel Vecino. Decedent had a brother, Pedro, who had been living with him. If the Child were the son of Decedent, he would be the half-blood brother . of the children of Decedent's Spouse. If he were the son of Pedro, the Child would be the first cousin of the children of Decedent's Spouse. In that possibility, it would not have been unusual for the children of Decedent's Spouse to call the Child "kuya". With Pedro living with Decedent, and the latter having several children, neither would it have been unusual for the Child to call Decedent "papa", following the lead of the legitimate children of Decedent. Perhaps, even the Child's Spouse may have called him "papa".

B. THE CODAL PROVISIONS. - For ready reference, codal provisions in both the Spanish Civil Code of 1889 and the New Civil Code, which may be taken into account in regards to this case, are being transcribed hereunder:

SPANISH 1889 CODE

NEW CIVIL CODE

ARTICULO 115 - La filiacion de los hijos legitimos se prueba por el acta de nacimiento extendida en el Registro civil, o por documento autentico o sentencia firme en los casos a que se ref ieren los arts. 110 al 113 del capitulo anterior. (English translation)

ART. 265 - The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment.

ART. 115. - The filiation of legitimate children is proved by the record of birth entered in the civil Registry, or by an authentic instrument or final judgment in the cases to which Articles 110 to 113 of the preceding chapter refer.

' ARTICULO 131 - El reconocimiento de un hijp natural debera hacerse en

ART. 278. - Recognition shall be made in

el acta de nacimiento - - - the record of birth

en testamento o - - - a will

x x x x x x x x a statement before a of record, or

en otro documento publico (English translation) - - in any authentic writing

ART. 131-The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document.

ARTICULO 135 - El padre esta obligado a reconocer al hi jo natural en los casos siguientes: ART. 283 - In any of the following cases, the father is obliged to recognize the child as his natural child:

1. Cuando exista escrito suyo indubitado en que expresamente reconozca su paternidad. x x x x x (English translation)

(4) When the child has in his favor any evidence or proof that the defendant is his father.

ART. 135 - The father is obligated to acknowledge his natural child in the following case:

1. When there exists an indubitable writ- , ing of his in which he expressly acknowledges his paternity. x x x x x

C. USE OF "DOCUMENTO", "DOCUMENT", "INSTRUMENT and "WRITING". Article 115 of the Spanish Code uses the word "documento autentico". The English translation was made to read "authentic instrument"; that is, "documento" was translated as "instrument".

ARTICLE 131 of the Spanish Code uses the word "documento publico". The English translation thereof was "public document".

ARTICLE 135 of the Spanish Code uses the clause "escrito suyo indubitado". The English translation thereof was "indubitable writing". "Escrito" and "writing" were equated. Manresa has equated "escrito" with "documento". He has said: "El escrito en que el padre reconozca su paternidad ha de ser un documento privado" (Vol. 1, 7th Ed., p. 750). Scaevola has also equated "documento" with escritura. "El articulo habla del reconocimiento voluntario que ha de hacerse en el acta de nacimiento, en testamento o en otro documento publico (escritura, acta, etc.) y su disposicion es clara" (3 Scaevola, 5th Ed., p. 376).

A reasonable conclusion should be that, in Article 278 of the New Code, the word "writing" can be equated with "escritura" or "document", such that, "authentic writing" in said Article 278 can be construed as "authentic

document", words also used in Article 265 of the New Code.

D. MEANING OF "AUTHENTIC WRITING" - In the revision from "documento publico" in Article 131 of the Spanish Civil Code to "authentic writing" in the new Code, a change in the rule was obviously intended. An "authentic writing" does not have to be a public document. A public document can be an authentic writing, although not every authentic writing is necessarily a public document. "Authentic" is used in the senses of being genuine or indubitable even if it be only a private document, as distinguished from the "documento publico" required by the Spanish Civil Code. The purpose of the change was evidently to liberalize voluntary recognition. (Report of the Code Commission, page 87). However, authenticity also requires the signature of the alleged parent (*Madri-dejo vs. de Leon*, 55 Phil. 1 [1930]; TS Feb. 13, 1907).

The writing must not only be mere evidence of paternity and filiation. It must indicate intent to confer status on a child. In the former, a suit to compel recognition is further needed. In the latter, it is a self-executory act with no further action being required except as provided by law.

"A private writing admitted by the father or mother to be his or hers, or a baptismal certificate duly signed by the father or mother, with the express statement that the child is his, or hers may be regarded as an authentic writing" (I Padilla, Civil Law, "61 ed., pp. 701-702).

E. EXRSSS AND TACIT RECOGNITION. - (1) Under the Spanish Code, tacit recognition, whether voluntary or obligatory, is not allowable. In respect of obligatory recognition, Manresa has said:

"En cuanto al otro requisito de ser expreso el reconocimiento, tengase presente que no basta hacerlo por inxndencia; es indispensable que se consigne en el escrito la voluntad indubitada, clara y terminaiite del padre, de ". reconccer por suyo al hijo, deliberadamente expresada con este fin, como se ordena en la base 5. a antes citada, de las aprobadas por la ley le 11 de mayo de 1888; de suerte que el escrito, aunque contenga otros particulares, como sucede en los testamentos, ha de tener por objeto el reconocimiento deliberado y expreso del hijo natural." (Vol. 1, 7th Ed. p. 750).

The requirement for express recognition in voluntary recognition' cannot be gainsaid.

"Como vemos, con arreglo al derecho antiguo, o, mejor dicho, a su interpretacion por la jurisprudencia, bastaba el reconocimiento tacito de los hijos y su prueba por cualquier medio legal; conforme al nuevo, el reconocimiento ha de ser expreso, constar en alguno de los docu-mentos que enunera en este articulo (reconocimiento voluntario), o por lo menos, y en el caso del 135, por escrito indubitado del padre o por la presuncion constante de estado de hijo natural (reconocimiento forzoso). Entre uno y otro existe esta diferencia: el reconocimiento anterior alCodigo revestia caracter de generalidad, puesto que podia ser expreso o tacito y justificarse por cualquier med Lo probatorio de derecho, en tanto que el exigido por elCodigo tiene el de la especialidad, porque debe ser expreso' y acreditarse por pruebas especiales y determinadas." (Scaevola, Tomo III, 5 a edicion, p. 376)

(2) Under Ley 11 de Toro, voluntary recognition could be express or tacit.

"x x x el reconocimiento del padre exigido por ley 11 de Toro para que el hijo sea tenido como natural, no es necesario que sea expreso, bastando para los efectos de dicha ley que aquel reconocimiento se acredite por alguno de los medios de prueba establecidos en derecho, de manera que no de lugar a duda sobre la certeza de semejante hecho. x x x " (ibid., p. 375).

That was changed, however under the Spanish Code.

"La ley no obliga a los padres a reconccer sus hijos naturales, pero cuando estos quieran cunplir con acto tan jus to como humano, han de hacerlo con determinada solemnidad, en documento publico (art. 131). Por eso, el reconocimiento exigido hoy en elCodigo reúne los carac-teres de especial y expreso, en oposicion al

establecido en el derecho derogado, general y tacito, por bastar constase por cualquier medio de prueba legal." (ibid., p.364).

Of Article 131 of the Spanish Code, which. limits voluntary recognition to express recognition, Manresa has further said: "La limitacion delCodigo no puede responder mas que al deseo de no promover litigios y de que conste con toda claridad la voluntad de lcs padres o del padre que reconoce" (Vol. I, 7th Ed., p. 734). That internment should also apply to Article 278 of the New Code.

3) "Tacit" recognition under Article 278 of the New Code should be ruled out. Article 278 states the manner by which recognition must be expressed: in a record of birth, in a will, in a Court statement or in an authentic writing. Tacit recognition can easily engender controversy. Although it be conceded that an indubitable writing "tacitly" recognizes a natural child, the writing should not be deemed a voluntary recognition. It can serve as evidence for obligatory recognition in a proceeding where it can be determined whether or not "a "tacit" recognition has in fact been made.

F. CHILD'S CONSENT - Article 13 3 of the Spanish Code specifically provided that "el hijo mayor de edad no podra ser reconocido sin su consentimiento" . It will be noted that consent is positively necessary. According to Manresa "este articulo exige el consentimiento del hijo para ser reconocido como natural solamente" (Vol. 1, 7th Ed., p. 739). Scaevola is more explicit. He has said that:

"Para la validez absoluta del reconocimiento de un hijo no basta el acto del que reconoce confesando su paternidad o maternidad; es menester el consent imiento del reconocido. Asi si el hijo es mayor de edad, el reconocimiento no puede tener lugar sin su voluntad expresa" (Vol. 3, Scaevola, 5th Ed., pp. 380-381).

Article 133 of the Spanish Code has been carried into New Code as Article 281, which states that "a child of age cannot be recognized without his consent" . Accordingly, to give validity to a voluntary recognition of a natural child of age under Article 278 of the New Code, "no basta el acto del que reconoce" "es menester el consent imiento del reconocido" "el reconocimiento no puede tener lugar sin su voluntad expresa".

There is no indication in the record that the Child had given his express consent to his recognition by Decedent, on the contrary, he had repudiated it through his affidavit (Exhibit "1") executed in 1928 wherein he categorically stated that Pedro Banas was his father.

G. INTENDMENT OF ARTICLE 260. -Article 2260 presupposes the following situation:

- (i) A natural child was born prior to August 30, 1950, the date of the effectivity of the New Code.
- (ii) The natural child was not voluntarily recognized under the Spanish Code.

Article 2260 was incorporated into the New Code because the code-maker possibly was foreseeing that a claim could be made that a natural child born prior to August 30, 1950 has to be recognized under the Spanish code, the legislation in force at the time of his birth. It was to preclude such possible claim being litigated at all that. Article' 2260 was formulated. The law governing the act of voluntary recognition is the law in force at the time of such voluntary recognition.

(H) NON-MENTION OF ARTICLE 278 IN ARTICLE 2266. - Arti-cle 2266(3) of the New Code expressly gives retroactive effect to Articles 283, 284 and 289. The omission of Article 278 is clearly a deliberate omission, and can give no conclusion other than that the codemaker did not intend that said Article 278 shall have retroactive effect.

(I) CONCLUSIONS. - (1) The Note executed by Decedent on May 23, 1907 is not an "authentic writing" within the meaning of Article 278 of the New Code. This Article refers to self-executory acts intended to confer status, in

contrast to Article 283 of the same Code which do not refer to self- executory acts of recognition.

(2) Even if the Note be an "authentic writing" within the meaning of Article 278 of the New code, it cannot be deemed a document of voluntary recognition under said Article as it was executed before the effectivity of the New Code and, at the time of execution, was not a document of voluntary recognition. Article 278 of the New Code cannot be given retroactive effect.

(3) Even if the Note be deemed an "authentic writing", it cannot be considered a document of voluntary recognition but merely evidence for compulsory recognition.

(4) Under Article 281 of the New Code, the Note is ineffective as a voluntary recognition because "el reconocimiento no puede tener lugar sin (la) voluntad expresa" of the Child. Whatever consent is alleged has been negated or repudiated by the Child's own act.

(J) A LAST CONSIDERATION. - I disagree with the lower Court's ruling that the Note was an ancient document and that proof of its due execution could be dispensed with. "To be admissible as an ancient document, a paper must be free from suspicion and have the appearance of genuineness" (32A CJS 43). Moreover, where there is no corroborating evidence, an ancient document "should receive the closest scrutiny - especially if it has been produced to benefit those in whose custody it is found" (3 Jones on Evidence, 5th Ed. p. 1102). The Note can be a suspicious writing in the light of the following considerations:

(1) Although alleged to have been in the possession of the Child up to his death in 1962, he did not produce the same immediately after the Decedent passed away in 1954, not even to his uncle Angel Vecino, who took charge of the extrajudicial partition of Decedent's estate. In his letter. Exhibit "7", dated May 11, 1955, he had threatened to "ipagtanggol ang aking karapatan at katuwiran"

(2) The complementary 'fendxng' of the ffiote used the, format adjective "su", instead of the familiar "tu".. Writing to a son only 13 years of age, the Decedent would not have used "su", especially after he had already used "tu" and "te" in the body of the Note. That incongruity throws doubt as to Decedent 's authorship of the Note. As a surgeon who had studied, the medical course in Spanish, he was not expected to refer to himself as "su" padre in writing to his son.

(3) Exhibit "F-1", which was supposed to be signed by the parent of the Child, has been in Jtiis possession. Why were the signatures of the parent therein erased? The possibility exists that the signatures were erased to evade proof of the Decedent's handwriting. Also, it could be that the several signatures erased were signed by different persons.

It is in view of the foregoing that I concur in the affirmance of the appealed judgment.

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