

IN RE GUARDIANSHIP OF THE INCOMPETENT JOSE R. DE INCHAUSTI. CONSUELO RICO VDA. DE INCHAUSTI, PETITIONER AND APPELLEE, VS. J. R. DE INCHAUSTI, OPPONENT AND APPELLANT.

G.R. No: 14383. November 29, 1919

Ponente: TORRES, J.

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TORRES, J.:

This case was instituted in the Court of First Instance of the city of Manila thru a petition filed by attorneys Crossfield and O'Brien in behalf of the petitioner, Consuelo Rico viuda de Inchausti. On January 11, 1911, said petition (without date) was verified before the notary public, C. W. O'Brien, by A. S. Crossfield and was signed by the law firm of Crossfield & O'Brien.

Said petition alleges that Jose R. de Inchausti's mother is Maria de Consolacion Rico, viuda de Inchausti; that Jose R. de Inchausti has become temporarily insane; that he is now confined in San Lazaro Hospital; that he has considerable real and personal property; that he is about to receive an inheritance from the partition of the estate of Rafael de Inchausti ; that he is not competent to receive said inheritance that he requires a guardian for his person and property; that his inheritance, represented primarily iby an interest in the mercantile firm of Inchausti & Co. and secondarily by real estate, is approximately one hundred seventy five thousand pesos (P175,000). Wherefore the petitioner prays that, having fulfilled the requirement of law, she be appointed guardian of the person and property of her said son, Jose R. de Inchausti, after proceedings as required by law.

With the purpose of hearing said petition the trial court issued an order whose dispositive and pertinent parts are:

"It is ordered, in accordance with section 559 of the Code of Civil Procedure, that in this court the petition be heard at 10 o'clock in the forenoon of the 18th day of January, 1915.

"It is ordered also that on the day and at the hour above named the Director of the San Lazaro Hospital appear before this court and if possible produce the said Jose R. de Inchausti.

"Let this order be made known immediately.

(Sgd.) "JAMES A. OSTRAND,
"Judge.

"Received copy of the foregoing notice, Manila, P. I., January 12, 1915.

(Sgd.)"F. S. BECK.

(Sgd.) "CROSSFIELD & O'BRIEN,

"Attorneys for Maria de la Consolation Rico y Medina.

(Sgd.) "A. S. CROSSFIELD as next friend of
Jose R. de Inchausti."

By an order of January 18, 1915, the court declared that the petitioner, Da. Maria de la Consolacion Rico y Medina viuda de Inchausti (accompanied by Mr. Crossfield, her counsel, and Dr. A. P. Goff), appeared at said hearing; that she duly proved the petition; that she was appointed guardian of the demented Jose R. de Inchausti; and that she was put under bond for one hundred thousand pesos (P100,000).

The said guardian C. R. de Inchausti and Dr. Goff of San Lazaro Hospital were notified of this decree, and all the requisites for the filing of a bond as well as for the oath of office and letters of guardianship were duly complied with.

On November 18, 1915, the Spanish Consul in Manila forwarded to the Court of First Instance of this city a requisitory letter (exhorto) together with a copy of the judgment from the judge of the Court of First Instance of the Northern District of Barcelona, (Spain). According to said judgment, in a Suit of Jose R. de Inchausti against Consolacion Medina, involving considerable property, Jose R. de Inchausti was held mentally sound (being restrained neither by insanity nor mental perturbation) and therefore possessed of his juridical personality, of his civil capacity and of the free administration of his property. Whei efore the court declared that Consolacion Rico was no longer guardian; that she should deliver to him his property; that as guardian she should present her accounts; and that she should abstain from all administrative acts over said property.

In said requisitory letter the judge of the Court of First Instance of Barcelona requests fulfillment in this capital of the foregoing judgment, subject to the provisions of article 11 of the Treaty of Peace of December 10, 1898, between Spain and the United Sates; of article 6 of the Treaty of July 3, 1902; and of sections 304 and 311 of the Code of Civil Procedure. However, said court in Manila refused in an order of April 15, 1916 (fol. 43), and for the reasons therein assigned, the aforementioned request of the judge of Barcelona.

The aforementioned guardian presented first her accounts (fol. 65) and next her resignation. Both were duly approved. Afterwards another guardian was appointed but presented his resignation shortly after assuming the duties of his office. Having also approved this resignation, the court reinstated the petitioner, who then filed a supplementary petition (fol. 74) as follows: That said Inchausti & Co.'s refusal to deliver to her predecessor the part of the funds pertaining to Jose R. de Inchausti was because the guardianship proceedings were unlawful, the aforementioned Jose R. de Inchausti never having been notified of the hearing of the petition for the appointment of a guardian; that this reason is groundless because on January 12, 1915, Dr. Goff, the Director of San Lazaro Hospital, received notice of the date of the hearing of the aforesaid petition, because on that same day Dr. Goff informed Jose R. de Inchausti of said notice, and because on the following day, January 13, 1915, Jose R. de Inchausti being visited by A. S. Crossfield, informed and discussed with this friend said notification; that in the beginning Jose R. de Inchausti had opposed the appointment of a guardian but, learning the appointment was necessary for the proper administration of his property, had consented and requested his mother be appointed; that as Jose R. de Inchausti's representative said A. S. Crossfield is a member of the lawfirm Crossfield & O'Brien; and that for these reasons the record should show the notification to Jose R. de Inchausti and the proceedings had were regular and in accordance with law.

Before the hearing of the supplementary petition counsel for Jose R. de Inchausti prayed the court to declare all the proceedings null and Maria de la Consolacion's petition of January 11, 1915, void as, the court having acquired no right or jurisdiction over Jose R. de Inchausti, his property can not be considered in "custodiae legis."

The court overruled this motion by order of May 9, 1918, (p. 83, bill of exceptions). Jose R. de Inchausti's counsel excepted thereto, and, on May 14, 1918, appealed to his High Court alleging that the lower court erred:

- On March 26, 1918, in overruling the motion of the supposed incompetent praying the proceedings had be declared null and void, and the original petition dismissed.

- In not declaring null and void all of said proceedings and in not dismissing the original petition giving rise to this controversy.
- In not reciting in said order the facts duly proven whereon the decision was based.

Said assignment is based on the fact that appellant was neither notified of the first order issued by the lower court fixing the hearing of the petition, nor of the others affecting directly his person and property; that the order of June 16, 1917, was the first that the court had command be forthwith notified to the appellant; that the appealed order partakes of the nature of a definite judgment; that in same the court ought to have recited facts considered proven and a base for his conclusions; and that by not having so done, the court rendered said order defective and revocable.

In his turn the appellee alleges that Dr. Goff, Director of the San Lazaro Hospital, being notified of the aforesaid order and following the custom in said hospital, transmitted said notification through its employees to Jose R. de Inchausti. This allegation is corroborated both by Dr. Goff's certificate (page 130, record) stating that, according to his true belief Jose R. de Inchausti was notified in accordance with the custom of the hospital in analogous cases, and by an affidavit (page 132, record) of A. S. Crossfield who testified to having visited Jose R. de Inchausti in San Lazaro Hospital on January 13, 1915; to being told by Dr. Goff that said Jose R. de Inchausti had been notified of the order of January 18, 1915, fixing the hearing of the petition for the appointment of a guardian, and to Jose R. de Inchausti himself having acknowledged the receipt of said notice.

The first and principal question that arises from all these allegations is whether, if the officer of the court, charged with the notification of all order and decrees, had failed to notify personally Jose-R. de Inchausti, this fact does or does not constitute sufficient ground for declaring null and void all the proceedings had in this cause, in spite of the fact that the appellant, as an insane patient, was, in accordance with custom, notified by the director of said government institution, San Lazaro Hospital.

Section 559 of the Code of Civil Procedure reads:

"When it is represented to a Court of First Instance, or a judge thereof, by petition verified by oath of any relative or friend, that any person who is an inhabitant or resident of the province, is insane or is a spendthrift, incompetent to manage his estate, praying that a guardian may be appointed for such person, such court or judge must cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the petition, not less than five days before the time so appointed; and such person, if able to attend, must be produced on the hearing."

According to this statutory provision, the notice of time and place of hearing ought to be given personally to the supposed demented or spendthrift, so, for example, in the case of *Yangco vs. Court of First Instance of Manila* and *Yangco* (29 Phil. Rep., 183), the court declared null and void all the proceedings had in said case for the reason that said notice was not given personally to the person alleged to be a spendthrift and incompetent to manage his property.

However, in order to resolve definitely the present suit, it is necessary to examine the provision of Act No. 2122, which establishes another procedure, whereby a person may be declared insane, ordered confined in a hospital or an institution for the insane and provided with guardian of his person.

Section 4 of the foregoing Act No. 2122 provides:

"The Director of Health, in all cases where in his opinion it is for the public welfare or for the welfare of any person who in his judgment is insane, and when such person or the person having charge of the patient is opposed to his being taken to a hospital or other place for the insane, shall present, or cause to be presented, a

petition to the Court of First Instance of the district wherein the person alleged to be insane is found, alleging that such person is insane, that it is for the welfare of the public or of the patient that he be taken to a suitable place for treatment, and praying the court to commit such person to a hospital or other place for the insane.

"The judge of the Court of First Instance shall cause not less than five days' notice to be given of the date of the hearing of the petition to such alleged insane person or to the person having care of such alleged insane person, and to such of his relatives residing in the province or the city of Manila as the judge may deem proper, and shall order the sheriff to produce the alleged insane person if able to attend on the hearing. If the judge finds, after due hearing, that the person in question is insane, and that his relatives are unable for any reason to take proper custody and care of the patient, he shall order his commitment to such hospital or other place for the insane as may be recommended by the Director of Health, and when it appears necessary or convenient he may appoint a guardian for him as provided in section five hundred and sixty of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands.'" * * *

According to the provisions of the foregoing section an individual may be declared insane and a guardian for his person and property may be appointed without service of personal notice of the date of hearing of the petition for a judicial declaration of juridical incapacity and for the appointment of a guardian of his person and property, as the aforesaid law provides for notice to the person having care of such alleged insane person, thereby considering same sufficient. Whereas, according to section 559 of the Code of Civil Procedure, such notice must be served personally upon the alleged insane person, thereby considering as insufficient null and void all other proceedings outside.

Act No. 2122 was enacted after the Code of Civil Procedure for it was approved on February 1, 1912, and if these laws are incompatible, Act No. 2122 must necessarily be followed.

Said Act No. 2122 does not absolutely and expressly repeal section 559 of the Code of Civil Procedure, but, regarding the transmittal of notice to a supposed demented, these two Acts are clearly and manifestly incompatible and contradictory. While section 559 of Act No. 190 requires the service of a personal notice upon the insane, section 4 of Act No. 2122 requires the service of a personal notice either upon the insane person or upon the person having charge of such incompetent insane.

The Director of Health's intervention in the case of the demented who requires an urgent and quick administrative action may be preliminary but is entirely independent and forms no part of the judicial proceedings in Chapter XXVII of said Act No. 190 modified, as far as guardians of insane persons are concerned, by the aforementioned Act No. 2122. (See sections 1043 to 1050 of the Administrative Code of 1917.)

On account of the urgency of the case—Jose R. de Inchausti having been attacked so suddenly by insanity—his mother had no time to call upon the Director of Health and she had even difficulty in securing the assistance of the Director of San Lazaro Hospital for the care of her son who was in need of immediate vigilance for his own welfare and for the benefit of her family and of the public. However, in the Court of First Instance her counsel filed a petition setting forth that which had taken place and praying the appointment of a guardian for the incompetent. The court, after hearing said petition, issued the order of January 18, 1915, which was served upon Dr. A. P. Goff, director of the aforesaid hospital, and the mother-guardian.

If, according to section 4 of Act No. 2122 {supra}, service of notice upon the person in charge of the insane is sufficient and if the aforementioned order of January 18 was duly served upon the Director of the San Lazaro Hospital where Inchausti was confined, then clearly the motion to declare null and void all proceedings had, upon the ground of the trial judge having acted without his jurisdiction, has no legal foundation. Act No. 2122, amending (by implication) section 559 of Act No. 190, does not require absolutely the personal service of notice

to the insane, but either to the insane or to the person in charge of him.

The case of Yangco vs. Court of First Instance of Manila and Yang-co (29 Phil. Rep., 183) above mentioned deals with the appointment of a guardian for an alleged spendthrift, a proposition, quite different from the appointment of a guardian for an alleged insane person who in the ordinary course of human events cannot possibly be given a notice. True, the mere fact that a person is alleged insane is not conclusive of insanity. However, if this principle be observed in theory for effecting judicial intervention, in many instances, to follow same in practice would be impossible, useless, prejudicial and even dangerous. On the other hand, the right of the insane is not prejudiced by service of notice upon either the person or relative having in charge. When section 559 of Act No. 190 was amended by Act No. 2122, establishing a different practice for service upon an incompetent, the legislator had this in mind. Therefore, the service upon the Director of the San Lazaro Hospital of the notice of the order appointing a guardian for Jose R. de Inchausti is beyond a doubt sufficient, and the provisions of the law now in force was thereby complied with, and the trial judge acquired jurisdiction in the premises.

In fact it appears in the record, admitted by the appellant, that the order, fixing the date of the hearing of the petition giving rise to this suit, was served upon the Director of the San Lazaro Hospital wherein Jose R. de Inchausti was then confined suffering from insanity. It also appears from said Director's certificate and Attorney Crossfield's affidavit, at no time impugned by the appellant, that the aforementioned notice immediately delivered to said appellant who made no effort to deny or contradict it. The Director of San Lazaro Hospital being the person having charge of the appellant, then it is obvious that the law was duly complied with.

Nevertheless, the appellant alleges that the petition, being verified by Attorney A. S. Crossfield and not by a relative or a friend, was not verified by oath as required by law. But in same oath of A. S. Crossfield it appears that he is a friend of the appellant alleged to be incompetent just what is required by the provision of section 559 of the Code of Civil Procedure. Therefore, the lower court acquired jurisdiction over, the appellant's person and committed no error both in dismissing the motion to declare null and void all proceedings had and in declaring of no effect said petition, the origin of this suit.

True, the facts and conclusion upon which the court's decision was based do not appear in the order of May 9, 1918. But we have considered just the recital in this opinion of what said court failed to do, in order to show the legality of the decree appealed from, because said order, a resolution of a motion, has in effect judicially decided all the proceedings had in this case, the previous decrees and orders of January 18 and July 6, 1915, of April 15, 1916, and on February 16, 1918. Further, if a return to the court of origin for the amendment of said judicial decree so as to recite the facts and conclusions upon which same was based, were made, this case, begun in January, 1915, would be unduly and unnecessarily prolonged; the amended decree would be written upon the same consideration; and a decree, whose dispositive parts are in harmony with the merits of the case and of the law similar to the one now appealed, would result.

For the foregoing reasons, the order of May 9, 1918, is hereby affirmed with costs.

Street, Malcolm, Avanceña, and Moir, JJ., concur.

DISSENTING

ARAUULLO, J., with whom concurs JOHNSON, J.,

We do not agree to the foregoing decision, affirming the order of May 9, 1918, of the Court of First Instance of the city of Manila, whereby the motion of the attorney of the opponent, Jose R. de Inchausti, that all the proceedings had in this case be annulled, was dismissed.

The basis of said motion was that the Court of First Instance had no jurisdiction over the person of Jose R. de Inchausti, and that the property of the latter could not fully be considered in custodia legis. Appellant's principal assignment of error in his brief, with reference to this order, is to the effect that the first order of the court issued in these proceedings, by virtue of the petition of Consolacion Rico Viuda de Inchausti, praying that she be appointed as guardian over the person and over the property of her son, Jose R. de Inchausti, on the ground that he was insane, and setting a day for the hearing thereof, was never served upon the said Jose R. de Inchausti, nor was he served with the later orders that had direct bearing upon his person and property, excepting that of June 16, 1917, of which we shall speak later, all of which constitute a manifest violation of the provision of section 559 of the Code of Civil Procedure.

This section reads:

"APPOINTMENT OF GUARDIANS OF PERSONS OF UNSOUND MIND.—When it is represented to a Court of First Instance, or a judge thereof, by petition verified by oath of any relative or friend, that any person who is an inhabitant or resident of the province, is insane or is a spendthrift, incompetent to manage his estate, praying that a guardian may be appointed for such person, such court or judge must cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the petition, not less than five days before the time so appointed; and such person, if able to attend, must be produced on the hearing."

In the foregoing decision the majority of the court acknowledges that, according to this section, the notice of the time and place of hearing of the petition, in cases where this section is applicable, must be given personally to the supposed insane or spendthrift, and because of non-compliance with this requisite in the case of Yangco vs. Court of First Instance of Manila and Yangco (29 Phil. Rep., 183) all the proceedings had in said case were declared null and void; however, invoking section 4 of Act No. 2122, the majority hold, in the instant case, that the requisite of the service of the notice to the supposed insane person, Jose R. de Inchausti, was complied with, and that, therefore, there is no reason for sustaining the petition of counsel for J. R. de Inchausti that the proceedings had in this case be declared null and void.

Section 4 of Act No. 2122 reads :

"The Director of Health, in all cases where in his opinion it is for the public welfare or for the welfare of any person who in his judgment is insane, and when such person or the person having charge of the patient is opposed to his being taken to a hospital or other place for the insane, shall present, or cause to be presented, a petition to the Court of First Instance of the district wherein the person alleged to be insane is found, alleging that such person is insane, that it is for the welfare of the public or of the patient that he be taken to a suitable place for treatment, and praying the court to commit such person to a hospital or other place for the insane. The judge of the Court of First Instance shall cause not less than five days notice to be given of the date of the hearing of the petition to such alleged insane person or to the person having care of such alleged insane person, and to such of his relatives residing in the province or the city of Manila as the judge may deem proper, and shall order the sheriff to produce the alleged insane person if able to attend on the hearing. If the judge finds, after due hearing, that the person in question is insane, and that his relatives are unable for any reason to take proper custody and care of the patient, he shall order his commitment to such hospital or other place for the insane as may be recommended by the Director of Health, and when it appears necessary or convenient he may appoint a guardian for him as provided in section five hundred and sixty of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands.' " * * *

It is true, as the majority say that the above provision of law was enacted subsequent to Act No. 190, that is, the Code of Civil Procedure, but in our opinion said provision cannot in any manner be considered as modifying or amending in part the aforesaid section 559 of the said Code of Procedure, as the majority hold.

Each of these two statutory provisions refers to cases distinct from each other. The first, that is, section 4 of Act No. 2122, fixes the duty of the Director of Health in all cases where in his opinion it is for the public welfare or for the welfare of any person who, in his judgment, is insane, and when such person or the person having charge of the patient is opposed to his being taken to a hospital or other place for the insane, to cause to be presented to the court of first instance of the district a petition praying said person be committed to a hospital or other place for the insane. The said section also prescribes, in view of this petition, the procedure to be followed in the court of first instance, in order that the supposed insane may be committed to a hospital or asylum recommended by the Director of Health, as well as for the appointment by the court of a guardian for the insane person, should it appear necessary or convenient. The second, that is, section 559 of the Code of Civil Procedure, refers to the case where a relative or friend of the supposed insane prays for the appointment of a guardian for him, in other words, where a private person interested in the welfare of the supposed insane, should appear in court praying for the appointment of a guardian for the administration of his property. This same section prescribes the procedure in court upon presentation of said petition. It is not possible to confuse one case with the other; neither is it possible to confuse the procedure of one with the other, in order that the proper declaration and judicial order issue on the petition.

Wherefore, the majority could not help but acknowledge that "both of these legal provisions, dealing concretely with insane or demented persons, are clearly and manifestly incompatible and contradictory. Section 559 of Act No. 190 requires service of a personal notice upon the insane person; section 4 of Act No. 2122 requires service of a personal notice either upon the insane person or upon the person having care of same." The majority ought to have begun by declaring that there is a clear and manifest difference in the first parts of both statutory provisions; i. e., with reference to the petition, the object of the corresponding law, which, in either case, may be filed subject to the procedure outlined in the court of first instance, according to their nature. This being so, it is evident that, if the object of the legislator was to fix a specified procedure that should be followed according as to whether the petition was filed in court by the Director of Health in compliance with his duty to cause the commitment of the alleged insane in a hospital or in an asylum, or by a person interested in the welfare of the supposed insane, praying for the appointment of a guardian to administer his property, the procedure prescribed by the law in each of these two different cases must be followed in the manner provided and no portion of one of said statutory provisions can be substituted with a portion of another different from the former, thereby forming a heterogeneous whole, without cohesion and relation. In a word, there is no similarity between the petition of the Director of Health to commit an alleged insane person to an asylum and to secure for him a guardian to administer his property, should it appear necessary, and the petition of a mere private individual for the appointment of a guardian for a friend or a relative alleged to be insane and incompetent to manage his estate. The procedures prescribed by law in each case must necessarily be very distinct. Upon this matter no extended discussion is necessary. The text of section 4 of Act No. 2122 clearly gives this interpretation because after dealing with the procedure to be followed in the case of the petition of the Director of Health for the commitment of an alleged insane to an asylum or hospital, said section then provides that the judge shall order the commitment of the supposed insane person to such hospital or place recommended by the Director of Health, and, when it should appear necessary and convenient, may appoint a guardian as provided for in section 560 of Act No. 190, or the Code of Civil Procedure; i. e., that the procedure laid down in section 559 will be observed, namely, the procedure that when the petition is filed by a relative or a friend of the alleged insane to obtain the appointment of a guardian, which is not for the purpose of committing the alleged insane to a hospital or an insane asylum to which section 4 of Act No. 2122 refers and for which it provides a procedure distinct from that established in said section 559. There is, therefore, no way or manner whatsoever by which to harmonize the first part of section 4 of Act No. 2122, relative to the petition of the Director of Health for the commitment of an alleged insane to a hospital or asylum with section 559 of the Code of Civil Procedure, which refers only to the petition of a relative

or friend of the alleged insane or incompetent to manage his property for the appointment of his guardian. If there be any connection at all between the provision of the aforementioned section 4 of Act No. 2122 and the provision of the said Code of Civil Procedure concerning guardianship of persons of unsound mind, it is only in regard to the appointment of a guardian for the supposed insane person after the latter had already been committed to the hospital or asylum at the Director of Health's petition and recommendation, in which case that same section of the law expressly provides that the appointment of a guardian must be in accordance with the provision of section 560 of the Code of Civil Procedure—a proviso which, taken in connection with the absence in said section 4 of said Act No. 2122 of any reference with section 559, clearly shows that the aforementioned Act did not take into account this section of the Code when it imposed upon the Director of Health the duty of petitioning the court, for the public welfare or for the good of a person, whom he regards as insane, the commitment or placing of such person in a hospital or asylum when such insane person or the persons in charge of him is opposed to such commitment. And this silence is understood simply because it is not the same that a public officer, like the Director of Health, should in the discharge of his duties, petition the commitment or the placing of an alleged insane person in a hospital or asylum, as when any other person should ask the appointment of a guardian for one of his relatives or friends who may be in such sad status as to be incompetent to manage his own person and property. As we have said, and it is imperative and necessary to say it again, these are two different and distinct cases to which it is not possible, nor did the statute attempt, to apply one and the same procedure.

The fact that, as stated in the majority opinion of the court, the intervention of the Director of Health in the case of any insane person who by his status and condition urgently requires quick administrative action, is completely independent of and is not included in the judicial proceedings embraced in the chapter relative to the guardianship of insane persons of the Code of Civil Procedure (Act No. 190), constitutes the most convincing proof that the judicial proceedings comprised in the said chapter, which treats of the guardianship of insane persons, cannot be understood as having been modified by said Act No. 2122 in so far as the latter law requires the intervention of the Director of Health in the form of a petition that he must file with the court for the commitment to a hospital or an asylum of the person of an alleged insane. The logical and inescapable consequence of the foregoing is that the aforesaid section 569 of the Code of Civil Procedure has no bearing whatever with such intervention of the Director of Health and cannot either be considered, as having been modified in any manner by said section 4 of Act No. 2122.

What is more, said section 4, or better said, Act No. 2122 itself is administrative in character. According to its title, its objects is "for the confinement of insane persons in Government hospitals or other institutions for the insane, and for the appointment of a board of physicians to inquire into the mental condition of persons alleged to be insane, when the evidence presented is not satisfactory to the court, or when there exists a reasonable doubt as to the condition of any patient confined in a hospital for the insane." The provisions of this Act relative to the confinement of insane persons are found in sections 1043 to 1050 of the Administrative Code of 1917, cited in the majority opinion with reference to the modification by the aforesaid Act No. 2122, according to the majority, of the judicial proceedings regarding guardians comprehended in the Code of Civil Procedure. These sections 1043 to 1050 of the Administrative Code form part of article XIII—"Government hospitals for insane"—one of the several articles in Chapter 37, "Philippine Health Service," of the said Administrative Code, and the matter of said chapter comprehended within articles one to sixteen, which includes said article 13, constitutes the Public Health Law, according to section 396 of the same chapter. The said section 1043 is entitled "Judicial proceedings for commitment of insane persons," and is a reproduction of that part of section 4 of Act No. 2122 relative to the commitment petition which the Director of Health must file with the court of first instance for the confinement of an alleged insane person. But section 1043, *supra*, does not speak what in section 4 of Act No. 2122 appears in the following term:

"The judge of the Court of First Instance shall cause not less than five days' notice to be given of the hearing of the petition to such alleged insane person or to the person having care of such alleged insane person and to such of his relatives residing in the province or the city of Manila as the judge may deem proper, and shall order the sheriff to produce the alleged insane person if able to attend on the hearing" * * *.

Said section (1043, Adm. Code) limits itself to saying:

"If the judge shall find, after due hearing, that the person in question is insane, and that his relatives are unable for any reason to take proper custody and care of the patient, he shall order his commitment to such hospital or other place for the insane as may be recommended by the Director of Health" * * *.

The omission in said section 1043 of the provision that not less than five days' notice of the hearing of the Director of Health's petition shall be given either to such insane or the person in charge of him shows that said judicial proceedings apply only to the case mentioned in said section 1043, which is administrative in character as is section 4 of Act No. 2122. Otherwise, said section 1043 would have stated in detail the court's procedure to be followed upon presentation of the Director of Health's petition. At all events, there being no special provision in the Code of Civil Procedure and special proceedings to be followed when the Director of Health files a petition in the Court of First Instance for the commitment of an alleged insane person (in accordance with section 4 of Act No. 2122 as well as section 1043 of the Administrative Code) it follows, in our opinion, that it is useless and unjustifiable to invoke said first section and in connection therewith the second sections in order to maintain that section 559 of the Code of Civil Procedure has been modified relative to the guardianship of persons of unsound mind. And this is untenable inasmuch as in the second part of section 4 of Act No. 2122 as well as in section 1044 of the Administrative Code mention is made of the appointment of a guardian for the insane that the court must make when it should appear convenient or necessary or when his confinement involves the care of his estate or property, because, as already said in the first of said sections, it is clearly stated that said appointment of a guardian, after the commitment of the alleged insane to a hospital or asylum at the recommendation of the Director of Health, must be made by the court, as provided in section 560 of the same Code of Civil Procedure and accordingly it goes without saying that the petition filed for the appointment of a guardian must follow the procedure established in the foregoing section 559; i. e., that the petition for the appointment of a guardian must be filed in accordance with the provision of the preceding section 559. In the second case, that is to say under section 1044 of the Administrative Code, it is also expressly ordered that the municipal president at the request of the provincial fiscal, or in the city of Manila the chief of police at the request of the fiscal of the city of Manila, shall take charge of the property of the alleged insane in confinement pending the court's appointment of a guardian, following as it should, although the section does not so state, the procedure laid down by the present Code of Civil Procedure.

Furthermore, it can be explained perfectly why there is and ought to be a difference between the procedure which, according to section 4 of Act No. 2122, must be followed in the given, case where, in compliance with his duty, the Director of Health asks the court of first instance to commit an alleged insane and that which, according to section 559 of the Code of Civil Procedure, must be followed where a relative or a friend asks the court's appointment of a guardian for the administration of said person's estate. In the first case the Director of Health's petition must be presented or caused to be presented in the court for the sake of the public welfare or of the person whom he considers insane; and when such person or the person having charge of the patient is opposed to his being taken to a hospital or an insane asylum, that is to say before said petition may be filed, it is necessary that the patient or the person having him in charge be opposed to said commitment wherefore it is necessary that a previous notice of the hearing be given at least to the person having charge of the patient, if it cannot be given to the patient himself, and to such of his relatives as reside in the province or in the city of Manila, once their opposition is known. In the second case, however, when the petition is filed by a relative or a friend of the alleged

insane in order that a guardian be appointed for the administration of his property, though this petition be presumed beneficial for the patient, it may happen to be prejudicial to him as it might deprive him of the administration of his property upon the false and unjustifiable ground of his incompetency to manage it and, for this reason, the law requires that the supposed insane be notified thereof personally so as to give him an opportunity to oppose said petition. And in both cases it is expressly required that, if possible, the alleged insane person shall be produced in person to the end that the judge himself may ascertain whether or not the facts upon which the petition is founded are true.

Coming now to an examination of the proceedings, as appear in the printed record on appeal filed with this court for the determination of this appeal, we find that the provision of section 4 of Act No. 2122 as well as that of section 559 of the Code of Civil Procedure have not been complied with and that both provisions have been disregarded.

In fact, these proceedings were commenced upon a petition filed with the Court of First Instance of this city by Attorneys Crossfield and O'Brien in behalf of Senora Maria de la Consolacion Rico viuda de Inchausti, in which, after alleging that her son Jose R. de Inchausti of unsound mind and confined temporarily in San Lazaro Hospital was incompetent to take charge of considerable property valued approximately at P175,000 about to be delivered to him, which was his share of an inheritance from Rafael Inchausti, prayed that, after fulfilling the proceedings required by law, she be appointed guardian of the person and property of said insane. Said petition, which bears no date, was not verified by petitioner's oath but by that of A. S. Crossfield, (a member of the law firm of Crossfield & O'Brien) on January 11, 1915. On presentation of said petition, the court issued an order on the following day, (January 12) by which in consideration of said petition, it ordered, that, in accordance with section 559 of the Code of Civil Procedure, the petition be heard at 10 o'clock a. m. of the 18th of January, 1915; and also that the Director of the San Lazaro Hospital for the insane appear in court on the day and hour aforesaid and produce the body of the said Jose R. de Inchausti, if possible, and finally that said order be forthwith notified to interested parties. Appearing at the bottom of said order, are found the signatures of F. S. Beck, Crossfield and O'Brien as attorneys for the petitioner, and A. S. Crossfield as next friend of Jose R. de Inchausti acknowledging receipt of copies thereof. It does not appear in the record who was he that received a copy of the order and signed F. S. Beck, although it is very probable that he was an employee of the San Lazaro Hospital, an assistant or representative of Dr. A. P. Goff, the hospital director. But it should be noted that the alleged insane does not appear to have been notified either of the order or of the hearing of said petition as expressly required by the aforementioned section 559, although on the other hand it appears that a copy was received by A. S. Crossfield, (who called himself next friend of the alleged insane Jose R. de Inchausti), doubtless because he was the one who swore to the petition stating that he was one of the counsel for the petitioner and the next friend of Jose R. de Inchausti. But, as will be readily understood, this can in no way justify the failure of personal service upon the supposed insane Jose R. de Inchausti, for whose person and property the appointment of a guardian was asked upon allegation that he was insane, because the provision of section 559 is definite: it gives for granted that the petition for the appointment of a guardian should be filed by a relative or a friend of the alleged insane and provides that the judge shall order same to be notified to the supposed insane * * * for the same reason, as already said, that such a petition, although presented presumably for his benefit by a relative or friend, may be prejudicial by attempting to dispossess him of his property and of its free use and management. Moreover, in proceedings of this nature, as can be plainly deduced from the provisions of the aforementioned section 559, the supposed insane can and ought to be considered as the party against whom said petition is filed and, for this reason, ought to be notified of same and its hearing, in order that he may be heard and given an opportunity to defend himself duly before an adjudication, affecting in such an essential and important manner his rights and interests, is made against him. Wherefore the express provision of section 559 has been infringed.

The hearing of the aforementioned petition having been had on the said 18th day of January, 1915, at 10 a. m., the court issued a decree on the same date, wherein he set forth (1) that Senora Consolacion Rico viuda de Inchausti had petitioned that she be appointed guardian of Jose R. de Inchausti on the ground that he was suffering a mental derangement and was incompetent to administer his property ; that accompanied by Dr. A. P. Goff and her counsel Mr. Crossfield the petitioner appeared in the day and hour set for said hearing; (2) that from Dr. A. P. Goff's testimony at the hearing and from the two medical certificates presented as evidence and attached to the record as Exhibits A and B, (the former from Drs. A. P. Goff himself and J. W. Smith, chief of the prison sanitation division and a member of the committee for the insane, the latter from Drs. W. E. Musgrave and C. Fitzpatrick) it appears that Jose R. de Inchausti was then confined in the department for the insane in San Lazaro Hospital suffering from a mental derangement of such a state that his release would prove dangerous; that it had been proven to the court's satisfaction that the said Jose R. de Inchausti could not in any way manage his property, wherefore that the said petitioner was appointed guardian of the said Jose R. de Inchausti with bond in the sum of P100,000 satisfactory to the court. According to the certificate of the assistant clerk of court this decree was served on the following day (January 19) upon the aforementioned guardian, Consolacion Rico viuda de Inchausti and upon Dr. A. P. Goff of the San Lazaro Hospital, and, according to another certificate of this same assistant clerk, dated January 18, 1915, the guardian herein had furnished the said personal bond and having taken oath in order to qualify herself for the office, the clerk of the Court of First Instance issued to her the letters of administration on the same day. The decree in question, however, was not served upon the alleged insane Jose R. de Inchausti nor upon any person representing him in these proceedings, nor does it appear that same was served upon him through the Director of the San Lazaro Hospital wherein he was then confined. But, beside this omission which is very material, it should be observed also, as far as the appearance of Jose R. de Inchausti at the hearing of the petition is concerned, that it has not been shown, either before said hearing, or in the order of the court appointing his guardian, or by any effort made afterwards, that Jose R. de Inchausti's non-appearance at said hearing was due to an impossibility. In his testimony at the hearing, in answer to the several questions propounded to him concerning Jose R. de Inchausti's condition then on that date (January 18) at the hospital, Dr. Goff said he was still in the ward for the insane, suffering from a mental derangement, and that it was dangerous to let him loose. At this hearing the two medical certificates, mentioned above, were also presented in evidence. But Dr. Goff was not asked nor did he say anything to the effect that Jose R. de Inchausti could not be produced on that occasion because his presence in court would be dangerous or because his removal from the hospital, in order to be present during the hearing, would be injurious to him. Thus, the presence of the alleged insane Jose R. de Inchausti at the hearing was absolutely disregarded. No effort whatever was made to justify his non-appearance or absence at the hearing. Not one of those then present—his mother, the petitioner Consolacion Rico viuda de Inchausti, her counsel Mr. Crossfield, and Dr. Goff the only persons present according to the court's own order—made the slightest mention that Jose R. de Inchausti's absence was due either to insanity or to danger to public order and security. Furthermore, in Dr. Goff's testimony at the hearing the last question put to him by attorney Crossfield was whether he had answered in writing the order of the court, and Dr. Goff replied, "No, Sir." Therefore, Dr. Goff not only failed to answer in writing the order of the court requiring if possible the production in person of Jose R. de Inchausti at the hearing—an answer which he ought to have given in writing as implied by the petitioner's own counsel and the alleged insane's friend, Mr. Crossfield, in asking that question—but he even failed to answer said order verbally; i. e., he did not obey the court's order to produce in person Jose R. de Inchausti at the hearing, nor give any reason for not obeying it, the result being that trial was had in the absence of Jose R. de Inchausti, an evident violation not only of section 559 of the present Code of Civil Procedure but also of section 4 of Act No. 2122, cited by the majority as basis for affirming the order appealed from and in holding that all the proceedings had in this cause are not null and void. So evident is this violation, so notorious this silence, this carelessness and this neglect regarding the unfortunate Jose R. de Inchausti, committed with or

without reason to San Lazaro Hospital as insane, and still so great the heedlessness of the provisions of the statute that in the same order of the court of January 18, 1915, there is not a word to show that the court was then informed by Dr. Goff or by any one else that, for some justifiable cause, Jose R. de Inchausti could not be produced in person on that occasion nor that the court had taken this into consideration in appointing the petitioner guardian of the alleged incompetent. To be convinced of this, it is enough to read the aforesaid decree reciting that, according to the evidence adduced, it appears that Jose R. de Inchausti was then confined in the ward for the insane in San Lazaro Hospital on account of a mental derangement of such a state that his release would be dangerous and that it had been proven to the court's satisfaction that he could not, in any way, administer his property; but it was not further stated, as it ought and could have been if, in compliance with the order served upon him, Dr. Goff had stated that Jose R. de Inchausti could not be produced that the latter in spite of said order, had not appeared at the hearing for the reason already given. There was no difficulty whatever in having this inserted in said order if Dr. Goff had made any statement to that effect at the hearing. But, unfortunately, none of those in this case said to be interested in the welfare of Jose R. de Inchausti, not even Dr. Goff, has made an effort to comply with the law. Everything appears to have been done to please the petitioner and her counsel and managers, in open violation of the law, disregarding the lawful rights granted to Jose R. de Inchausti and depriving him of his right to discuss and to impugn the certificates of Dr. Goff and the two other physicians declaring him mentally deranged, to cross-examine the said Dr. Goff and to oppose, by means of evidence which he might have been able to adduce, to his deprivation of liberty, and not be confined as insane in the San Lazaro Hospital, thus dispossessing him of the free disposition and administration of his property.

The proceedings in this case followed their course, there having been issued, since the order of January 18, 1915, several other orders and decrees concerning the fixing of a monthly pension for the alleged incompetent, the approval of the accounts presented by the guardian, the appointment of a new guardian, Don Antonio Ma. Barretto, the approval of the final accounts presented by the old guardian, and the reduction of the pension previously approved. But none of these orders and decrees have been served upon the aforementioned Jose R. de Inchausti, nor was there any attempt to notify or acquaint him with them, in spite of the fact that the court, in fixing the date of the hearing of the guardian's petition which gave rise to these proceedings, said in each: "Let the interested parties be notified forthwith of this order"—notification which was served in every case only upon Crossfield & O'Brien, counsel for the guardian.

Things went on in this manner until October 1916 when Messrs. Inchausti & Co., who had possession of the inheritance of the alleged incompetent from his father, refused to deliver to the guardian Antonio Ma. Barretto the monthly pension fixed by the court, upon the ground that the proceedings in guardianship were unlawful as Jose R. de Inchausti did not appear to have ever been notified of the hearing for the appointment of a guardian, as required by law. Said Antonio Barretto, upon his own motion, was relieved as guardian and the mother of the alleged insane was reinstated as such guardian and on May 23, 1917, she presented to the court a petition signed by her, wherein, after reciting Messrs. Inchausti & Co's refusal to deliver the monthly pensions for the reasons already mentioned and alleging several facts connected with the proceedings had for her appointment as guardian, she prayed that the record be corrected so as to show now, as before, that the aforementioned insane had been duly notified of the date of the hearing of the petition and that the proceedings had were regular and in accordance with law. In view of this petition the court issued an order fixing the 10th of November of the same year, 1917, as the date of the hearing, and ordering sent by registered mail to Jose R. de Inchausti a copy of the petition and of all the papers presented therewith and also expressly ordered that, if possible, another copy of said petition and papers be handed personally to said demented, notifying him likewise of said order for hearing. This was the only order of the court which was served upon the alleged insane Jose R. de Inchausti who was then in Barcelona, Spain; the hearing having been continued until February 16, 1918, when it was again postponed to April 8, 1918.

The court ordered the guardian on the date first mentioned to notify Jose R. de Inchausti by cablegram of the postponement and of the date on which the hearing would take place. But, Jose R. de Inchausti sent a cablegram to the Court of First Instance through the American Consul General at Barcelona, stating that in the following month of March his attorney in fact with full powers to represent him would arrive in this city, and on the 26th of the same month of March, attorneys Gutierrez Repide y Socias appeared in this case in behalf of Jose R. de Inchausti and filed a motion (mentioned in the beginning hereof) to declare null and void all the proceedings had in this case and to dismiss the petition filed by Maria Consolacion Rico Viuda de Inchausti, mother of Jose R. de Inchausti, praying appointment as guardian of her son. The court after hearing said motion, without stating any ground other than that after due consideration he found that it ought to be denied, did deny by the aforementioned order of May 9, 1918, an appeal from which by counsel for Jose R. de Inchausti has been decided in the majority opinion to which we have been referring and from which we dissent.

As appears from the foregoing, two years and four months had passed after the hearing of the petition of Maria Consolacion Rico viuda de Inchausti's appointment as guardian of the person and property of her son, Jose R. de Inchausti, alleged to be insane, and after the Court of First Instance of this city had issued the order of January 18, 1915, granting same by appointing her as guardian, and because Messrs. Inchausti & Co., believing the guardianship proceedings illegal refused to deliver the pension and necessary funds for the maintenance of her ward, the supposed insane, said guardian tried to show the legality of said proceedings and asked for the amendment thereof so as to make it appear of record. In order to accomplish this object said guardian filed, with her petition of May 23, 1917, a certificate from Dr. A. P. Goff, Director of the San Lazaro Hospital, dated April 26, 1917, and A. S. Crossfield's affidavit of April 27, of the same year 1917.

In his certificate, after stating that Jose R. de Inchausti was confined in the San Lazaro Hospital in January 1915, because of mental derangement; that as Director of said Hospital, on the 12th of the same month of January he received an order signed by J. A. Ostrand, judge of the Court of First Instance of Manila, which stated that a petition had been filed with the court alleging that the aforementioned Jose R. de Inchausti was of unsound mind, that, therefore, in accordance with section 559 of the Code of Civil Procedure, said petition would be heard at 10 a. m. January 18, 1915, and that he was ordered to appear before said court at said day and hour and to produce if possible the person of said Jose R. de Inchausti, Dr. Goff went on saying that following the practice in the hospital in such cases according to his firm belief, the aforesaid Jose R. de Inchausti was informed immediately, of said order; that, as aforesaid, on the day set for the hearing he appeared as ordered but he did not produce the person of said Jose R. de Inchausti, not deeming it wise on account of his mental condition; and that he believed that he had so informed the court at the hearing.

In his affidavit, after alleging that he is an attorney at law practising in this city and has been Jose R. de Inchausti's legal adviser from the end of 1904 to the beginning of 1915; that Jose R. de Inchausti being so mentally deranged as to be incompetent to handle his inheritance from his father, Rafael de Inchausti, a guardian was necessary and as a friend and counselor, he filed the said petition with the Court of First Instance; which issued an order fixing January 18, 1915, for the hearing, A. S. Crossfield added that on the 13th of the same month, he, the affiant, visited, as a friend, Jose R. de Inchausti confined as insane, in the San Lazaro Hospital; that Dr. Goff, then the Director of said hospital, had mentioned the receipt of an order to appear personally at the hearing for guardianship and the notification to the said Jose R. de Inchausti of this order; that in the course of conversation later with the affiant, Jose mentioned of his having been notified of said petition and hearing, saying they were not necessary as he could attend to his own business; but that, some time afterwards, having proved to him the necessity of his mother being his guardian, Jose said that accompanied by a friend who was then in the hospital he would go with his mother to Spain and requested the affiant to represent him as his next friend and brother mason in all that concerned the partition of the estate and the guardianship proceedings; that on this and

other occasions before the hearing Jose R. de Inchausti talked rationally about some things, and incoherently about others; that he (the affiant) appeared at said hearing as Jose's friend; and that as the fact of the notification to the said incompetent had been confirmed both by Dr. Goff and the incapacitated himself he, the affiant, acknowledged receipt thereof as it appeared in the record.

If the object of Jose R. de Inchausti's guardian, as can be gathered from her motion of May 23, 1917, presented, as we have said, two years and several months after the hearing of her petition for appointment as such guardian and after the court's order granting said petition, was to prove that the provision of section 559 of the Code of Civil Procedure has been complied with in said hearing and said appointment, such an object she has not obtained.

In the first place, everything set forth by A. S. Crossfield in his affidavit, relating to the order and to the personal appearance of the insane Jose R. de Inchausti at the hearing, is hearsay from the Director of the San Lazaro Hospital, Dr. A. P. Goff, who, in his certificate, did not affirm positively and certainly Jose R. de Inchausti's personal notification, merely stating that according to his best knowledge Jose R. de Inchausti was immediately notified of said order in accordance with the custom observed in the hospital in such cases. This certainly is not affirming that said notification was carried out for the simple reason that, founded as Dr. Goff's belief was on the custom observed at the hospital in such cases, it cannot infer from this that in this case such custom necessarily was followed. Undoubtedly Dr. Goff wished to tell and told the whole truth and, that he might not falsify, neither affirmed nor certified that he, as Director of the Hospital, had notified Jose R. de Inchausti of the order in question, having merely taken for granted that same had been done; but without even expressing who had served said notice upon his word. This, in connection with the fact that the copy of the order fixing the date of the hearing of the petition (as already said) appears to have been received by F. S. Beck—it not appearing who this person may be nor if he belong to the San Lazaro Hospital, there being no mention of this, nor of the position said F. S. Beck held in said hospital—makes more vague and uncertain Dr. Goff's certification regarding this point in question and, consequently, it is of no use to the petitioner in establishing her object in the aforementioned motion.

In the second place, regarding the said order of the court of January 12, 1915, requiring the Director of the San Lazaro Hospital for the insane to produce the person of Jose R. de Inchausti at the hearing, if possible, the said Dr. Goff, in his certificate, confined himself to saying he did not produce the person of said Jose R. de Inchausti because, taking into consideration his mental condition, he did not believe it convenient and added that he believed this was what he had testified in court at the hearing; i. e., Dr. Goff did not assure, because he wanted, to tell the whole truth, that he made such testimony before the court at the hearing upon his failure to produce in person said Jose R. de Inchausti in compliance with said order. He only said that he believed he so testified, a statement which does not make certain that he so did. That which Dr. Goff has so stated noticeably contradicts that which the guardian said in her aforesaid motion of May 23, 1917, wherein she stated that Dr. Goff testified at said hearing that the aforesaid Jose R. de Inchausti must not be brought in court at the trial on account of his mental condition. Thus said guardian has affirmed what Dr. Goff himself did not attempt to affirm, because he only believed he stated before the court the impossibility to produce on that occasion the person of Jose R. de Inchausti, as had been ordered. It should be noted too that Dr. Goff himself in his certificate states that the order of the court, signed by Judge Ostrand, mentioned that the petition for the appointment of a guardian would be heard in accordance with section 559 of the Code of Civil Procedure, and that in fact is what said order states.. Wherefore appears more clear Dr. Goff's intention to say no more than the pure truth and not to affirm, as a certain and positive fact, that which he did not personally know to have been done and that which he was not sure he had stated before the court at the hearing.

In the third place, in addition to the fact, as we have already said, that everything stated by A. S. Crossfield in his

affidavit relative to the notification of said order is hearsay from Dr. Goff, said A. S. Crossfield declares in the same affidavit that, in conversation, said Jose R. de Inchausti said he had been notified of the petition for the appointment of a guardian and of the hearing thereof; that, afterwards he said such an appointment was unnecessary for he (Inchausti) could manage his own business, but that when he (Crossfield) explained the necessity for appointing his mother as guardian, he said he (Inchausti) would go to Spain with his mother; and requested the affiant to represent him as his friend and brother-in-law in all the guardianship proceedings as well as in the partition of his state. This conversation must have taken place after the 13th but before the 18th of the same month of January, 1915, the date of the hearing; and it is evident, from what Jose R. de Inchausti himself has said, according to the affiant A. S. Crossfield, that he was not in such a condition as to be unable to make similar statement in court, and that his mental condition was not of such a character as to have rendered him incompetent to talk about, and look after, his own affairs and, certainly, this is not what would have been said by a mad man whose presence in court would have been a danger to public order and security. Furthermore, it is rather queer that what the alleged insane Jose R. de Inchausti said to Crossfield concerning the appointment of his mother as guardian and his request that Crossfield appear for him in the guardianship proceedings had not been expressed by Jose R. de Inchausti to Dr. Goff with whom he was constantly in contact. This would have been one of the reasons which Dr. Goff could have alleged before the court for his failure to produce the person of Jose R. de Inchausti as he had been ordered. Furthermore, it does not appear elsewhere, except in A. S. Crossfield's own testimony, that he as friend was authorized to appear for the aforesaid Jose R. de Inchausti in this guardianship proceedings, and although as friend, it appears that on January 12, 1915, A. S. Crossfield received a copy of the aforementioned order fixing the date of hearing of the petition for the appointment of a guardian, it should be observed, on the one hand, that the same A. S. Crossfield was a member of the lawfirm Crossfield & O'Brien, counsel for the petitioner Maria Consolacion Rico viuda de Inchausti who signed said petition and that he was also the person who verified the petition, as a member of the said lawfirm, and as the best friend of Jose R. de Inchausti. These facts ought to be considered as legal impediments against Crossfield's appearing in the guardianship proceedings for the person against whom said petition was filed, though apparently for the welfare and best interest of such person. On the other hand, the text of section 559 of the Code of Procedure in Civil Actions and Special Proceedings, many times cited in this opinion, is very definite; it orders that the supposed insane be notified five days before the date fixed of the time and place of hearing of the petition for the appointment of a guardian when said petition is filed by any relative or friend and it also orders that, if possible, said person must be produced. Therefore, the supposed insane person, for whom a guardian is to be appointed, is placed and considered not as on the side of the relative or friend who filed the petition, but (graphically speaking) as opposed to said relative or friend, which simply means that the same relative or friend who has petitioned for the appointment of a guardian cannot represent nor appear at the hearing of said petition or in the guardianship proceeding in behalf of said insane and incompetent person. In a word, A. S. Crossfield, being one of the counsel for the petitioner and calling himself friend of Jose R. de Inchausti as he has so stated in verifying the petition made a part of these proceedings, could not and should not have represented Jose R. de Inchausti as friend in the proceedings for the appointment of guardian, because this is equivalent to simultaneously representing two opposing parties, defending different and antagonistic interests. Therefore, the fact that A. S. Crossfield, who called himself Jose R. de Inchausti's friend, had received, as such friend a copy of said order and had been present at the hearing is of no consequence whatever; nor should it be taken into consideration at all in determining whether the supposed insane person was previously notified of the order fixing the date of the hearing and of the petition for the appointment of his guardian and whether he was duly represented at the hearing and is in these proceedings, since said Crossfield was also counsel for the petitioner and since, as he stated in his affidavit, he pretended to be the representative of said Jose R. de Inchausti in these proceedings. And this is perfectly understood because if A. S. Crossfield is one of the counsel who signed the guardian's petition, verified it and

appeared at the hearing as petitioner's counsel, according to His Honor Judge Ostrand himself, in the aforementioned order of January 18, 1915, he (Crossfield) would not have opposed or impugned said petition nor would he have tried that Jose R. de Inchausti was not suffering from insanity and indeed was competent to take care of his person and property, but, on the contrary, as counsel for the petitioner, he would have maintained at the hearing what was claimed by his said client, as in fact he did by examining Dr. Goff, who was present as a witness for said petitioner, regarding Jose R. de Inchausti's mental condition and at the same time presenting the two certificates Exhibits A and B aforementioned, the first of Dr. Goff's and the second of Drs. Musgrave and Fitzpatrick.

Finally, in so far as concerned his relations with Jose R. de Inchausti for whom, as a demented incapable of administering his property, a guardian was asked, A. S. Crossfield was in the same state and situation as Maria Consolacion herself, viuda de Inchausti and mother of said Jose R. de Inchausti, for as such friend of his and petitioner's counsel, he verified said petition, wherefore he could not legally have represented him either at the hearing or in the guardianship proceedings for the same reason that the mother herself, the nearest relative of the alleged insane, could not represent him, she being the person who, on the ground of the incompetency of her son to administer his property, asked to be appointed as his guardian.

In conclusion, after a careful study of the proceedings, the irregularities, the anomalies and the violations of the law committed in this case stand out in bold relief, and the petitioner's efforts, two years and four months afterwards, to show compliance with the law had been unfruitful. The very claim of the guardian-petitioner, that the record be corrected so as to show Jose R. de Inchausti as having been duly notified of the hearing of her petition, is an implied admission that same did not appear in the proceedings and, consequently, that said notice had not been fulfilled. Regarding the presentation of the person of Jose R. de Inchausti (then in San Lazaro Hospital) by the director of said hospital, expressly ordered by the court on January 12, 1915, in accordance with section 559 of the Code of Civil Procedure—a production also required by section 4 of Act No. 2122 invoked in the majority opinion—it is evident that the correction of the record, asked by the guardian, regarding this particular point, far from being carried out or being considered as corrected through Dr. Goff's certificate and A. S. Crossfield's affidavit, already mentioned, has once more proven and confirmed the fact that in these proceedings the precepts of the aforementioned statutory provisions have been openly infringed.

In view of this result, we do not believe it necessary to go further into the legal consideration of the consequences of said infraction. Enough for our purpose to recall and reproduce herein what was said and decreed by this High Court in the case of *Yangco vs. Court of First Instance of Manila* and *Yangco* (29 Phil. Rep., 183), wherein petitioner Luis R. Yangco, adjudge a spendthrift by an order of said judge, prayed that the proceedings had be declared null and void upon the ground that the court had acted without jurisdiction in the premises, as the proceedings were had and the decree entered without notice to the petitioner.

In one of the paragraphs of the said decision of this High Court, it was said, citing cases and doctrines pertinent to the case:

"To declare a person of full age to be incompetent to manage his affairs and thereby deprive him of the possession of and right to hold and manage his property is a serious thing. It takes from him one of the greatest privileges of life in contravention of those fundamental rights which all men naturally have to possess, control, manage, and enjoy their own property. It is for this reason that the courts generally hold that the statute permitting a declaration of incompetency and the appointment of guardians for the property of incompetents must be strictly followed, and any material departure therefrom, especially with respect to notice, results in a loss of jurisdiction. So careful was the Legislature to see to it that no one should be declared an incompetent and deprived of his property without full opportunity to be heard that, in framing section 559 of the Code of Civil Procedure, it not only required personal notice to the alleged incompetent but also provided that he shall

be present in court during the proceedings, if he be able to attend; and the ability to attend does not, in our judgment, relate to absence but to physical condition. * * *

And in the syllabus of that decision it was declared:

"Where, in a proceeding to have the court declare that the person against whom the proceeding is directed is a spendthrift and incompetent to manage his property, the statute provides that on presentation, of a petition, duly verified, alleging that a given person is a spendthrift and incompetent to manage his estate, the court or judge must cause notice to be given to the alleged incompetent of the time and place of the hearing on the petition, not less than 5 days before the time set for the hearing, and further requiring that such person must be produced on the hearing if he is able to attend, such notice is jurisdictional and the failure to give such notice deprives the court or judge of power to make a valid decree affecting the interest of the alleged incompetent.

"Where the statute in such a proceeding requires personal notice and there is no provision for other notice, notice to a person other than the alleged incompetent, although it may be a near relative or friend, does not comply with the statute and confers no jurisdiction on the court or judge.

"Persons cannot be deprived without due process of law of the right to hold and manage their own property"

It is very clear that everything said about a spendthrift in the aforementioned decision of this court is also applicable to the case of an alleged insane for whom the appointment of a guardian is asked by a relative or a friend, because section 559 of the Code of Civil Procedure prescribes, as is well known, the same procedure to be followed where the petition is filed for one case or the other.

Therefore, all the proceedings had in this case, since the decree of January 18, 1915, whereby Maria Consolacion Rico viuda de Inehausti was appointed guardian of her son, the supposed insane Jose R. de Inehausti, are null and void, and it should have been so held, and the decree of May 9, 1918, appealed from, should have been reserved. Such is our opinion.

Order affirmed.

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