

**ANGELES UBALDE PUIG, ET AL., PLAINTIFFS AND APPELLANTS, VS. ESTELA MAGBANUA PEÑAFLORIDA, ET AL., DEFENDANTS AND APPELLANTS.**

*G.R. No. 15939 (With Resolution of January 31, 1966). November 29, 1965*

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

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

Direct appeal to this Court from a decision of March 23, 1959, issued by the Court of First Instance of Iloilo, in its Civil Case No. 2892, declaring null and void certain deeds of donation executed by the late Cartnen Ubalde Vda. de Parcon.

The facts were stipulated in the court below, to the effect that on April 10, 1953, Carmen Ubalde Vda. de Parcon died in the City of Iloilo, without forced heirs, leaving certain properties in the City and province of Iloilo. She left a will and was survived by nephew and nieces, children of her predeceased brother, Catalmo Ubalde, and sister, Luisa Ubalde, married to Ariston Magbanua.

It also appears that besides her will, the deceased had executed two notarial deeds of donation. One, entitled DONACION mortis causa, was executed on November 24, 1948, in favor of her niece, Estela Magbanua, married to Mariano Peñaflorida, purporting to convey to the donee the properties covered by Transfer Certificates of Title Nos. 2338 and 18951 of the Registry of Deeds of Iloilo, subject to the following stipulations:

"Que por y en consideracion al efecto, amor y cariño que la Donante guarda para con la Donataria y tambien por motivo de la lealtad y atencion y servicios fieles que la ultima ha rendido. como sigue aun rendiendo, a favor de la primera, dicha Donante, Por la presente, CEDE Y TRANSFIERE, en concepto de donacion mortis causa, a favor de la antedicha Donataria, las parcelas de terreno arriba descritas con las mejoras existenses en ellas, bajo las siguientes condiciones:

1. Que la Donante se reserva el derecho de hipotecar y aun vender las propiedades objeto de esta escritura de donacion mortis causa, cuando y si necesita fondos para satisfacer sus propias necesidades, sin que para ello tenga que intervenir la Donataria, pues su consentimiento se sobreentiende aqui, aparte de que la donacion que aqui se hace es mortis causa, es decir que la donacion surtira sus efectos a la muerte de la donante;
2. Que la Donataria sufragara todos los gastos necesarios para los tratamientos medicos, gastos de hospital y/o entierro de la Donante a menos que dicha Donante tenga propios fondos depositados en un banco o bancos o qua haya cosecha levantada o recogida, en cual caso dichos recursos responderan portales gastos a disposicion y direccion de la Donataria;
3. Que la cesion y transferencia aqui provista surtira efecto al fallecer la Donante; y
4. Que si la Donataria muere antes de la Donante esta donacion surtira efecto a favor de los hijos o descendientes de la primera, pero su marido, el actual Gobernador de la provincia de Iloilo Hon. Mariano B. Peñaflorida asumira las obligaciones que asume en esta escritura de donacion la Donataria Doña Estela Magbanua, especialmente la de atender a los gastos de ultima enfermedad y entierro de la Donante.

5. Que esta escritura de donacion no se presentara al Registrador de Titulos de Iloilo sino despues de la muerte la donante. Que la Donataria, por la presente, acepta la donacion a qui hecha de las tres (3) parcelas de terreno arriba, descritas, con los mejoras existentes en ellas, en las o bajo las condiciones y/o estipulaaiones arriba expresadas, y al mismo tiempo da su mas expresivo y sineero aprecio y gratitud para con la Donante y expresa su imperecedero agradecimiento por la benevolencia y generosidad demostrada por dicha Donante en este acto.

Que Don Mariano B. Peñaflorida, marido de la Donataria, asume las obligaciones contenidas en el parrafo 4.0 de las condiciones de esta escritura de donacion."

On December 28, 1949, the deceased executed another deed of donation, also entitled ESCRITURA DE DONACION mortis causa, in favor of the same donee, Estela Magbanua Peñaflorida, conveying to her three parcels of land covered by Transfer Certificates of Title Nos. 925, 927 and 11042 of the Register of Deeds of Iloilo, stipulating as follows:

"Que la DONANTE, en consideration a los servicios prestados a la tiene, por la presente cedo y traspaso a la DONATARIA, en concepto de una DONACION MORTIS CAUSA, (1) la totalidad del Lote No. 2054 del Catastro de Pototan, arriba descrito, y cubierto por el Certificado de Transferencia de Titulo No. 926 expedido a su favor por el Registrador de Titulos de la provincia de Iloilo, con todas las mejoras existentes en ella; (2) la totalidad de la porcion secana y alta que no sea dedicada a la siembra y cultivo de palay del Lote No. 2053 de Catastro de Pototan, y cubierto por el certificado de Transferencia de Titulo No. 927, expedido a su favor por el Registrado de Titulos de Iloilo, con todas la mejoras existentes en ella; (3) y la mitad de Lote No. 8 del Catastro de Pototan, Iloilo, y cubierto por et certificado de Transferencia de Titulo No. 11942, expedido a su favor po el Registrador de Titulos de Iloilo, contodas las mejoras existentes en ellas, cuya mitad de Lote No, 58 es la que colinda con los lotes Nos. 61, 62 y 63 del Catastro del Pototan, Iloilo, y cuyas tres lotes Nos. 2053, 2055, y 58 estan mas detalladamente diescritos en el parrafo anterior, bajo las condiciones siguientes:

Que si en la fecha de su muerte no haya DONANTE traspasado VENDIDO o credido a otras terceras personas o entidades la mitad de dichos lotes No. 58 del Catastro del Pototan, Iloilo la aqui DONATARIA se compromete y se obliga a pagar a Caridad Ubalde, casada con Tomas Pedrola, y residente en el municipio de Pototan, Iloilo, la cantidad de SEIS CIENTOS PESOS (600.00), y el pago de esta cantidad se verificara en la fecha en que la aqui DONATARIA tome posesion de la mitad de dicho lote No. 58;

Que antes de su muerte, la DONANTE, podra enajenar, vender, traspasar o hipotecar a cualesquier personas o entidades los bienes aqui donados a favor de la DONATARIA en concepto de una donacion mortis causa;

Que esta eacritura de donacion mortis causa no se Registrara en la officiana del Registrador de Titulos de Iloilo sino despues del fallecimiento de la DONANTE; y

Que la DONATARIA acepta la presente donacion bajo las condiciones ariba consignadas y hace constar publicamente su agradecimiento a la DONANTE por su generosidad y liberalidad."

Both donations were recorded in the corresponding Registry of Deeds after the death of the donor.

The will, executed by the deceased on March 26, 1961, was submitted to the Court of First Instance of Iloilo in Special Proceedings No. 991; and because the Executor and Special Administrator, Mariano B. Peñaflorida, would not attack the validity of the donations above-referred to, the nephews and nieces of the late Carmen Ubalde, children of her predeceased brother, Catalino Ubalde, filed the present suit against their cousins Magbanua, seeking to have the two deeds of donation set aside for lack of testamentary formalities; and alter issue joined and by decision of March 23, 1959 the Court of First Instance rendered judgment, with a dispositive portion reading as follows:

"IN VIEW OR THE FOREGOING, the Court hereby renders judgment –

(a) Declaring the aforementioned two deeds of donation mortis causa, executed in favor of the defendant Estela Magbanua Peñaflorida without the testamentary formalities prescribed by law invalid and of no effect;

(b) Declaring that the disposition mortis causa in favor of Estela Magbanua Peñaflorida of the portion of Lot No. 2053 of the Cadastral Survey of Pototan, Hollo, covered by T.C.T. No. 927 of the Register of Deeds of Iloilo, described as la porcion secana y alta que no esta dedicada al cultivo y siembra de palay contained in the void deed of donation mortis causa dated December 26, 1949, was validated by paragraph ten of the will subsequently executed by Carmen Ubalde on March 26, 1951;

(c) Ordering the defendant Estela Magbanua Peñaflorida to forthwith deliver to the administrator or executor of the estate of the deceased Carmen Ubalde Vda. de Parcon the parcels of land covered by T.C.T. Nos. 2338, 18951, 925 and 11042 of the Register of Deeds of Iloilo for proper distribution among the lawful heirs and the parcel of land covered by T.C.T. No. 927 of the Register of Deeds of Iloilo for adjudication in accordance with the aforesaid will; and

(d) Dismissing the case with respect to the defendants Mariano B. Peñaflorida, Isabel Magbanua Velasco, Neri Magbanua and Efrain Magbanua

without pronouncement as to costs. So ordered.

Both parties, plaintiff and defendant, appealed.

Two issues are propounded in the appeal, which are:

(1) Are the two donations, previously described, inter vivos or mortis causa? It being admitted that in the latter event the donations are void for not being executed with testamentary formalities.

(2) Was the donation of a portion of Lot 2053 of the Pototan Cadastre, covered by T.G.T. No. 927 of the Registry of Deeds of Iloilo, validated by par. 10 of the last will and testament of the decedent, which reads as follows:

“DECIMO. Lego a Doña Angeles Ubalde, casada con Don Francisco Puig, toda la porcion palayera del Lote No. 2053 del catastro de Pototan, Iloilo, y cubierta por el certificado de Transferencia de Titulo No. 927 expedido a mi favor por el Registrador de Titulos de Iloilo, y en relacion con este lote, hage constar que he cedido y traspasado, en concepto de una donacion mortis causa, a Doña Estela Magbanua, casada con Don Mariano B. Peñaflorida, la porcion alta y secana que no este dedicada al cultivo y siembra fie palay de este mismo Lote No. 2053, segun documento que he firmado a su favor.”

With regard to the character of the donations, it is well to recall here that the jurisprudence of this Court has established the following rules:

(1) That the donation mortis causa of the Roman Law and the Spanish pre-codall legislation has been eliminated as a juridical entity from and after the enactment of the Spanish Civil Code of 1889 (Art. 620) as well as the Civil Code of the Philippines (Art. 728), which admit only gratuitous transfers of title or real rights to property either by way of donations inter vivos or else by way of last will and testament, executed with the requisite legal formalities. In the first case, the act is immediately operative, even if the actual execution may be deferred until the death of the donor; in the second, nothing is conveyed to the grantee and nothing is acquired by the latter, until the death of the grantor-testator, the disposition being until then ambulatory and not final (*Bonsato vs. Court of Appeals*, 95 Phil. 481).

(2) That an essential characteristics of disposition mortis causa is that the conveyance or alienation should be (expressly or by necessary implication) revocable ad nutum, \* \* \*, at the discretion of the grantor or so-called "donor", simply because the latter has changed his mind (*Bautista vs. Sabiniano*, 92 Phil. 244; *Bonsato vs. Court of Appeals*, 95 Phil. 481).

(3) That, in consequence, the specification in a deed of the causes whereby the act may be revoked by the donor indicates that the donation is inter vivos, rather than a disposition mortis causa (*Zapanta vs. Posadas*, 52 Phil. 557).

(4) That the designation of the donation as mortis causa, or a provision in the deed to the effect that the donations to take effect at the death of the donor are not controlling criteria (*Laureta vs. Mata*, 44 Phil. 668; *Concepcion vs. Concepcion*, 91 Phil. 823; *Cuevas vs. Cuevas*, Phil. 68); such statements are to be construed together with the rest of the instrument, in order to give effect to the real intent of the transferor (*Concepcion vs. Concepcion*, supra; *Bonsato vs. Court of Appeals*, supra).

(5) That a conveyance for onerous consideration is governed by the rules of contracts and not by those of donation of testament (*Carlos vs. Ramil*, 20 Phil. 183; *Manalo vs. de Mesa*, 29 Phil. 495).

(6) That in case of doubt, the conveyance should be deemed donation inter vivos rather than mortis causa, in order to avoid uncertainty as to the ownership of the property subject of the deed.

Tested by the foregoing principles, the donation of November 24, 1948, while somewhat ambiguous, should be held inter vivos in character. Admittedly, it is designated as mortis causa, and specifies that it will take effect upon the death of the donor; but, as previously stated, these expressions are not controlling, and, in the instance before us, are contradicted by other provisions indicating a contrary intent. Thus,

(a) The conveyance of the properties described in the deed (Annex A, amended complaint) appears made in consideration of the undertaking of the donee, Estela Magbanua, to bear all expenses for medical treatment, hospital expenses and/or burial of the Donor, without limiting the time when such expenses are to be incurred. In fact, the use of the words "y/o entierro" (and/or burial) strongly suggests that the illness and hospitalization expenditures to be borne by the donee may or may not be connected with the donor's last illness.

(b) Emphasizing the onerous character of the transaction is the requirement that if the donee should predecease the donor, Governor Peñaflorida shall assume the obligations of the donee, especialmente (but not exclusively) los gastos de ultima enfermedad y entierro de la donante' (par. 4), and this undertaking was assumed even if the properties donated would not go to Peñaflorida but to the donee's children and descendants (par. 3). It was evidently because of this liability, unconnected with the conveyance that Peñaflorida had to sign the document together with the donee. It is easy to see that unless the conveyance were to be effective before the death of the donor, the obligations assumed by the donee and Governor Peñaflorida (her husband) would be without consideration (causa). In a very similar case (*Manalo vs. De Mesa*, 29 Phil. 495), this Court ruled:

"There can be no doubt that the donation in question was made for a valuable consideration, since the donors made it conditional upon the donees' bearing the expenses that might be occasioned by the death and burial of the donor Placida Manalo, a condition and obligation which the donee Gregorio de Mesa carried out on his own behalf and for his wife Leoncia Manalo; therefore, in order to determine whether or not said donation is valid and effective it should be sufficient to demonstrate that, as a contract, it embraces the conditions the law requires and is valid and effective, although not recorded in a public instrument." (*Manalo vs. de Mesa*, 29 Phil. 495, 500)

Such conditions (consent, subject matter, causa or consideration and observance of the formalities or solemnities required by law) are all present in the deed of November 24, 1948.

(c) Again, while there is a clause that the donor reserved her right to mortgage or even sell the donated property, when and if she should need funds to meet her own needs, this last sentence of the stipulation appears incompatible with the grantor's freedom to revoke a true conveyance mortis causa, a faculty that is essentially absolute and discretionary, whether its purpose should be to supply her needs or to make a profit, or have no other

reason than a chance of volition on the part of the grantor-testator. If the late Carmen Ubalde Vda. de Parcon wished or intended to retain the right to change the destination of her property at her sole will and discretion, there was no reason for her to specify the causes for which she could sell or encumber the property covered by her bounty.

It is, illuminating, in this respect, to compare the provision above discussed with the corresponding paragraph of the second deed of donation dated December 28, 1949. The latter recites as follows:

Que antes de su muerte, la Donante podra enajenar vender traspasar o hipotecar a cualesquier personas o entidades los bienes aqui donados a favor de la Donataria, en concepto de una donacion mortis causa.

(Annex B, Rec. App., pp. 24-25)

Here is an unlimited power to indirectly avoid the alleged donation any time the donor should choose to do so, and which leaves no doubt as to the mortis causa nature of the conveyance; unlike the prior donation, where the power to indirectly revoke is hedged in by the specification that the donor could dispose of the property only to satisfy her needs, thereby impliedly rejecting alienations for any other purpose. Hence, following the rule of *Zapanta vs. Josadas*, 52 Phil. 557, the donation of November 24, 1948 must be held to partake of the nature of a conveyance inter vivos

(d) Finally, it is no objection to our view that the donation of November 24, 1948 should provide that it is not to be recorded until after the donor's death (par. 5), since the absence of registration would affect only subsequent purchasers, without denying the validity and obligatory effects of the conveyance as between the parties thereto.

We, therefore, conclude, and so hold, that the court below erred in adjudging the deed of November 24, 1948 to be null and void. The same is valid and operative as a donation inter vivos.

Turning now to the deed of donation (also labelled mortis causa executed by and between the same parties on December 28, 1949, the text thereof (quoted ante, pp. 4-5) is clear that no proprietary right was intended to pass to the alleged donee prior to the donor's death, and that the same was a true conveyance mortis causa, which by is invalid because it was not executed with the testamentary-formalities required by the statutes in force at the time. Here, unlike in the previous donation, the designation as donation mortis causa is confirmed by the fact that no signs contradict or limit the unqualified and unrestricted right of the donor to alienate the conveyed property in favor of other persons of her choice at any time that she should wish to do so. It is so expressed in the deed, and it indirectly recognizes the donor's power to nullify the conveyance to the alleged donee whenever the donor wished to do so, for any reason or for no particular reason at all. As we have seen, this faculty is characteristic of conveyances post mortem or mortis causa: for the right of the transferor to alienate the donated property to someone else necessarily imports that the conveyance to the donee will not become final and definite in favor of the latter until the death of the donor should exclude every possibility that the property may be alienated to some other person.

Defendant-appellant Estela Magbanua Peñaflorida contends that this second deed of December 28, 1949 is also a donation inter vivos; and she argues that the stipulated power of the grantor to encumber or alienate the property to persons, other than the donee, at any time before the grantor dies, should be viewed as a mere resolutive condition that does not contradict but confirms the immediate effectivity of the donation. This ingenious argument is not legally tenable, since it ignores the circumstance that the so called resolutive condition is one purely dependent upon the exclusive will of the grantor, and is proof that the deed, as executed, is not obligatory at all (Civ. Code of 1889, Art. 1116; Civil Code of the Philippines, Art. 1182). Confirming the rule, both the old and the new Civil Codes prescribe that the effectivity, compliance, or binding effect of contracts can not be left to the sole will of one of the parties (Art. 1256, Civ. Code of 1889; Art. 1308, Civil Code of the Philippines).

It is also argued that the stipulation empowering the donor to alienate the property elsewhere would be unnecessary if the donation were mortis causa. The flaw in this reasoning is that it loses sight of the fact that the clause in question proves that there is no donation at all, since it shows that the alleged donor, Carmen Ubalde, did not wish to be bound, and did not want to lose her title to, nor her control over, the property during her own lifetime. There was, therefore, no conveyance inter vivos, since none was intended; and no donation mortis causa because, as already pointed out, acts intended to be effective after the death of the grantor must be executed in the form of a last will and testament, or else they will not be legally valid.

The nullity of the donation of December 28, 1949, has an exception: the conveyance therein of la porcion alta y secana que no esta dedicada al cultivo y siembra de palay of Lot 2053 of the Pototan (Hoik) Cadastre was correctly held by the appealed decision to have been confirmed and validated by the late Carmen Ubalde in clause 10 of her last will and testament executed on March 26, 1951 (Stip. of Facts, Annex Rec. on Appeal, pp. 52-68), when she solemnly declared that she had conveyed said portion to defendant-appellant Estela Magbanua by donation mortis causa. While made by way of reference, we are satisfied that this portion of the will's tenth clause (previously quoted in page 7 of this decision) is valid as an independent testamentary legacy, as it is apparent and indubitable that the decedent had intended to bequeath the described portion of Lot 2053 to the defendant-appellant. That it should be expressed in the past tense is irrelevant: technicalities should not be allowed to enervate the manifest will of the testatrix, clearly expressed in a valid testament, or unavoidably inferred therefrom.

In view of the foregoing, the appealed decisions of the Court of First Instance of Iloilo should be and is modified by declaring, as we hereby rule, that the deed of Donation executed by the late Carmen Ubalde in favor of Estela Magbanua Peñaflorida on November 24, 1948 is a valid and effective conveyance by way of donation inter vivos, duly accepted by the donee.

In all other respects, the appealed decision is affirmed. Without costs in this instance.

Let the records be returned to the Court of origin for further proceedings in conformity with this opinion.

Bengzon, C. J., Bautista Angelo, Concepción, Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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## RESOLUTION

January 31, 1966

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

Defendants-appellants Estela Magbanua Peñaflorida, et al., insist that the reservation by the donor of the right to dispose of the property during her lifetime in the deed of December 28, 1949 indicates that title had passed to the donee in her lifetime; otherwise, it is argued, the reservation would be superfluous, and they cite American authorities in support. This thesis would be plausible if the reservation of the power to dispose were the only indication to be considered in deciding whether the donation of December 28, 1949 was mortis causa or inter vivos. But such is not the case. The Court in its decision took into account not only the foregoing circumstance but also the fact that the deceased expressly and consistently declared her conveyance to be one of donation mortis causa, and further forbade the registration of the deed until after her death. All these features concordantly indicated that the conveyance was not intended to produce any definitive effects, nor to finally pass any interest to the grantee, except from and after the death of the grantor.

We see nothing in the deed itself to indicate that any right, title or interest in the properties described was meant to

be transferred to Doña Estela Magbanua prior to the death of the grantor, Carmen Ubalde Vela, de Parcon. Not ownership, certainly, for the stipulation:

“Que esta escritura de donacion mortis causa no se registrars en la oficina del Registrador de Titulos de Iloilo sino despues del fallechniento de la Donante”.

necessarily meant, according to section 50 of the Land Registration Act, that the deed in question should not take effect as a conveyance nor bind the land until after the death of the “donor.”

Neither did the document operate to vest possession upon Dona Estela Magbanua, in view of the express condition that (paragraph 3) if at the date of her death the donor had not transferred, sold, or conveyed one-half of lot 58 of the Pototan Cadastre to other persons' or entities, the donee would be bound to pay to Caridad Ubalde, married to Tomas Pedrola, the amount of P600.00, and such payment was to be made on the date the donee took possession of Lot No. 58. As the obligation to pay the legacy to Caridad Ubalde would not definitely arise until after the death of the donor, because only by then would it become certain that the donor could not transfer the property to someone else, and such payment must precede the taking possession of the property donated it necessarily follows that the donee's taking of possession could not occur before the death of the donor.

It being thus clear that the disposition contained in the deed is one that produces no effect until the death of the grantor, we are clearly faced by an act mortis causa of the Roman and Spanish law. We thus see no need of resorting to American authorities as to the import of the reservation of the donor's right to dispose of the donated property, for the Spanish authorities are very clear on this point:

"Desde el momento en quela muerte del donante es la que determina la adquisicion ó el derecho a las bienes; desde momento en que la disposicion puede ser revocada voluntariamente, se salva line divisoria entre unos y otros actos: la donacion equivale a un legado; mas aun que esto: es un legado en realidad." (Manresa 5th Ed., p. 107)

"Ahora bien: si el mal llama do donante no solo dilata la fecha de la ejecucón para el momento de su muerte sino que ademas se reserva la facultad de revocar a su arbitrio la disposicion, entonces el acto no su valido bajo la forma de contrato; hay en realidad una disposicion mortis causa que exige las solemnidades del testamento." (V Manresa, 5th Ed., p. 109) (Italics supplied)

The presence of an acceptance is but a consequence of the erroneous concept of the true nature of the juridical act, and does not indicate that the same is a true donation inter vivos.

Appellant Magbanua further argues that the reserved power of the donor to convey the donated property to other parties during her lifetime is but a resolutory condition (albeit a potestative one) that confirms the passing of the title to the donee. In reality, this argument is a veritable petitie principii; it takes for granted what has to be proved, i.e., that some proprietary right has passed under the terms of the deed, which, as we have shown, is not true until the donor has died.

It is highly illuminating to compare the condition imposed in the deed of donation of December 28, 1949 with that established in the contract dealt with in *Taylor vs. Uy Tieng Piao & Tan Liuan*, 43 Phil. 874, invoked by appellants. In the alleged deed of donation of December 28, 1949, the late Doña Carmen Ubalde imposed expressly that:

"Que antes de su muerte, la Donante podra enajenar vender, traspasar é hipotecar a cualesquiera personas o entidades los bienes aqui donados a favor de la Donataria en conceptio de Donacion mortis causa."

In the *Taylor vs. Vy Tieng Piao* case, on the other hand, the condition read:

“It is understood and agreed that should the machinery to be installed in said factory fail, for any reason, to arrive, in the City of Manila within the period of six months from date hereof, this contract may be cancelled by the party of the second part at its option, such cancellation, however not to occur before the expiration of such six months.” (pp. 874, 875, cas. cit.).

In the *Uy Tieng Piao* case the contract could only be cancelled after six months, so that there could be no doubt that it was in force at least for that long, and the optional cancellation can be viewed as a resolutive condition (or more properly, a non-retroactive revocatory one); but no such restriction limited the power of the donor, Doña Carmen Ubalde, to set at naught the alleged conveyance in favor of Doña Estela Magbanua by conveying the property to other parties at any time, even at the very next instant after executing the donation, if she so chose. It requires no argument to demonstrate that the power, as reserved in the deed, was a power to destroy the donation at any time, and that it meant that the transfer is not binding on the grantor until her death made it impossible to channel the property elsewhere. Which, in the last analysis, as held in our main decision, signifies that the liberality is testamentary in nature, and must appear with the solemnities required of last wills and testaments in order to be legally valid.

Wherefore, the motion to reconsider is denied.

Bengzon, C. J., Concepción, Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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