

MANUEL TORRES, PETITIONER AND APPELLANT, AND LUZ LOPEZ DE BUENO, APPELLANT, VS.. MARGARITA LOPEZ, OPPONENT AND APPELLEE.

G.R. No. 24569, February 26, 1926

Ponente: MALCOLM, J.

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MALCOLM, J.:

This case concerns the probate of the alleged will of the late Tomas Rodriguez y Lopez.

Tomas Rodriguez died in the City of Manila, Philippine Islands, on February 25, 1924, leaving a considerable estate. Shortly thereafter, Manuel Torres, one of the executors named in the will, asked that the will of Rodriguez be allowed. Opposition was entered by Margarita Lopez, the first cousin of the deceased, on the grounds: (1) That the testator lacked mental capacity because at the time of the execution of the supposed will he was suffering from senile dementia and was under guardianship; (2) that undue influence had been exercised by the persons benefited in the document in conjunction with others who acted in their behalf; and (3) that the signature of Tomas Rodriguez to the document was obtained through fraud and deceit. After a prolonged trial, judgment was rendered denying the legalization of the will. In the decision of the trial judge appeared, among others, these findings:

"All this evidence taken together with the circumstance that before, and at, the time Tomas Rodriguez was caused to sign the supposed will, Exhibit A, and the copies thereof, there already existed a final judgment as to his mental condition, wherein he was declared physically and mentally incapacitated to take care of himself and manage his estate, shows in a clear and conclusive manner that at the time of signing the supposed will, Tomas Rodriguez did not possess such mental capacity as was necessary to enable him to dispose of his property by the supposed will.

"But even supposing, as contended by petitioner's counsel, that Tomas Rodriguez was at the time of executing the will, competent to make a will, the court is of the opinion that the will cannot be probated, for it appears from the declaration of the attesting witness Elias Bonoan that when the legatee Luz Lopez presented the supposed will, Exhibit A, to Tomas Rodriguez, she told him to sign said Exhibit A because it was a document relative to the complaint against one Castito, which is Exhibit 4, then pending in the justice of the peace court, and for the further reason that said Tomas Rodriguez was then under guardianship, due to his being mentally and physically incapacitated, and therefore unable to manage his property and take care of himself. It must also be taken into account that Tomas Rodriguez was an old man 76 years of age, and was sick in the hospital when his signature to the supposed will was obtained. All of this shows that the signature of Tomas Rodriguez appearing in the will was obtained through fraudulent and deceitful representations of those who were interested in it." (Record on Appeal, p. 23.)

From the decision and judgment above-mentioned, the proponents have appealed. Two errors are specified, viz: (1) The court below erred in holding that at the time of signing his will, Tomas Rodriguez did not possess the mental capacity necessary to make the same; and (2) the court below erred in holding that the signatures of Tomas Rodriguez to the will were obtained through fraudulent and deceitful representations, made by persons interested

in the execution of said will.

The record is voluminous—close to two thousand type-written pages, with a varied assortment of exhibits. One brief contains two hundred seventy-four pages, the other four hundred fifteen pages. The usual oral argument has been had. The court must scale this mountain of evidence more or less relevant and of argument intense and prolific to discover the fertile valleys of fact and principle.

The topics suggested by the assignments of error—Testamentary Capacity and Undue Influence—will be taken up separately and in order. An attempt will be made under each subject, first, to make findings of fact quite separate and apart from those of the trial judge, and, second, to make findings of law. Finally, it is proposed to consolidate the facts and the law by rendering judgment.

I. TESTAMENTARY CAPACITY

A. Facts.—For a long time prior to October, 1923, Tomas Rodriguez was in feeble health. His breakdown was undoubtedly due to organic weakness, to advancing years, and to an accident which occurred in 1921 (Exhibit 6). Ultimately, on August 10, 1923, on his own initiative, Rodriguez designated Vicente F. Lopez as the administrator of his property (Exhibit 7).

On October 22, 1923, Margarita Lopez petitioned the Court of First Instance of Manila to name a guardian for Tomas Rodriguez because of his old age and pathological state. This petition was opposed by Attorney Gregorio Araneta acting on behalf of Tomas Rodriguez for the reason that while Rodriguez was far from strong on account of his years, he was yet capable of looking after his property with the assistance of his administrator, Vicente F. Lopez. The deposition of Tomas Rodriguez was taken and a perusal of the same shows that he was able to answer nearly all of the questions propounded intelligently (Exhibit 5-G). A trial was had at which considerable oral testimony for the petitioner was received. At the conclusion of the hearing an order was issued by the presiding judge, declaring Tomas Rodriguez incapacitated to take care of himself and to manage his property, and naming Vicente F. Lopez as his guardian. (Exhibit 37.)

Inasmuch as counsel for the appellee make much of one incident which occurred in connection with the guardianship proceedings, it may as well be mentioned here as later. This episode concerns the effort of deputy sheriff Joaquin Garcia to make service on Tomas Rodriguez on October 31, 1923. We will let the witness tell in his own words what happened on the occasion in question:

"I found him lying down on his bed. * * * And when it (the cleaning of his bed) was finished, I again entered his room and told him that I had an order of the court which I wanted to read as I did read to him, but after reading the order he asked me what the order meant; 'I read it to you so that you may appear before the court, because you have to appear before the court'—'I do not understand,' then I read it again, but he asked what the order said; in view of that fact I left the order and departed from the house." (S. R., p. 642.)

To return to our narrative—possibly inspired by the latter portion of the order of Judge Diaz, Tomas Rodriguez was taken to the Philippine General Hospital on November 27, 1923. There he was to remain sick in bed until his death. The physician in charge during this period was Dr. Elias Domingo. In the clinical case record of the hospital under the topic "Diagnosis (in full)," we find the following: "Senility; Hernia inguinal; Decubitus" (Exhibit 8).

On the door of the patient's room was placed a placard reading—"No visitors, except father, mother, sisters, and brothers" (Testimony of head nurse Carmen Baldonado, S. R., p. 638.) By order of the attending physician, there were permitted to visit the patient only the following named persons: Santiago Lopez, Manuel Ramirez, Romana Lopez, Luz Lopez de Bueno, Remedios Lopez, Benita Lopez, Trinidad Vizcarra, Apolonia Lopez, Antonio

Haman, and Gregorio Araneta (Exhibit 9). The list did not include the names of Margarita Lopez and her husband Antonio Ventura. Indeed the last named persons experienced considerable difficulty in penetrating into the room of Rodriguez.

Santiago Lopez states that on one occasion when he was visiting Tomas Rodriguez in* the hospital, Rodriguez expressed to him a desire to make a will and suggested that the matter be taken up with Vicente F. Lopez (S. R., p. 550). This information Santiago Lopez communicated to Vicente F. Lopez, who then interviewed Maximino Mina, a practising attorney in the City of Manila, for the purpose of securing him to prepare the will. In accordance with this request, Judge Mina conferred with Tomas Rodriguez in the hospital on December 16th and December 29th. He ascertained the wishes of Rodriguez and wrote up a testament in rough draft. The attorney expected to return to the hospital on December 31st to have the will executed but was unable to do so on account of having to make a trip to the provinces. Accordingly, the papers were left with Santiago Lopez.

In corroboration of the above statements, we transcribe a portion of Judge Mina's testimony which has not been challenged in any way:

"ARANETA: Q. Will you please tell your motive for holding an interview with Vicente Lopez?

"MAXIMINO MINA : A. When I arrived in the house of Vicente Lopez, after the usual greetings and other unimportant things, he consulted me or presented the question as to whether or not D. Tomas could make his will, having announced his desire to do so. I told him that it seemed that we were not called upon to decide or give an opinion as to whether or not he can make a will; it is a question to be submitted to the court, but as he had announced his desire, it is our duty to comply with it. Then he requested me to do what was necessary to comply with his wishes; I told him I was to see him; then we agreed that on the morning next to the following evening, that is, on the 16th, I should go to the General Hospital, and so I did.

"Q. Did you go to the hospital in the evening of the 16th ?—A. Yes, sir.

"Q. Did you meet D. Tomas?—A. Yes, sir.

"Q. Did D. Tomas tell you his desire to make a will?

"Ocampo: Leading.

"ARANETA: I withdraw. What, if anything, did D. Tomas tell you on that occasion when you saw him there?—

A. He told me that.

"Q. Please tell us what conversation you had with D. Tomas Rodriguez?—A. The conversation I had with him that evening—according to my best recollection—I cannot tell the exact words and perhaps the order. After the usual greetings, 'Good evening, D. Tomas' 'Good evening' 'How are you' 'How do you do?' 'Very well, just as you find me' Then I introduced myself saying, 'I came here in the name of D. Vicente Lopez, because according to him you stated your desire to make a will' 'Yes' he said, 'and where is Vicente Lopez, why does he not come' 'He cannot come because he has many things to do, and besides it is hard for him and makes him tired, so he told me to come' Then he asked me, 'Who are you?' 'I am Maximino Mina, your tenant, attorney.' 'Are you an attorney?' 'Yes' 'Where do you live?' 'I live in Quiapo' 'Oh, in Quiapo, a good district, it is gay, a commercial place, you must have some business there because that is a commercial place' 'Unfortunately, I have none, D. Tomas.' 'Well, you must have because the profession alone does not give enough. Where is your office?' 'I work in the office of Mr. Chicote' 'That -Mr. Chicote must be rich, it seems to me that he is' 'The profession gives almost nothing, it is better to have properties. I am an attorney but do not depend upon my profession.' I interrupted D. Tomas saying, 'since you want to make a will, when and to whom do you want to leave your fortune?' Then he said, 'To whom else? To my cousin Vicente Lopez and his daughter Luz Lopez.' 'Which properties do you want to give to your cousin and niece?' 'All my properties' 'Won't you specify the

property to be given to each of them?' 'What for?, all my property' 'Don't you have any other relatives?' 'Yes, sir, I have.' 'Won't you give any to those relatives?' 'What for?,' was his answer. 'Well, do you want to specify said properties, to say what they are?' and he again said, 'What for?, they know them, he is my attorney-in-fact as to all my property' I also said, 'Well and as a legacy, won't you give anything to other persons?' The answer, 'I think, something, they will know it' After being asked, 'Whom do you think, whom do you want to be your executor?' After hesitating a little, 'This Torres, Manuel or Santiago Lopez also' Then I asked him, 'What is your religion?' He answered, 'Roman Apostolic Catholic' and then he also asked me, 'And yours?', 'Also Roman Apostolic Catholic' 'Where have you studied?' 'In the University of Santo Tomas' 'It is convenient to preserve the Catholic religion that our ascendants have left us' 'And you, what did you study in the university' he asked. I said, 'Do you have anything more to say as to your testamentary dispositions ?' 'No' he answered. Then I reminded him, 'You know that Vicente Lopez has sent me to get these dispositions of yours' and he said, 'Yes, do it' I asked him, 'When do you want it done?' 'Later on, I will send for you' After this, believing to have done my duty, I bade him good-bye.

"Q. Did you have any other occasion to see him?—A. Yes.

"Q. When?—A. On December 29, 1923, also in the evening.

"Q. Why did you go to see him?—A. Because as I had not received any message either from Vicente Lopez or from Tomas Rodriguez, and as I had received notices in connection with the few cases I had in the provinces, particularly in Tayabas, which compelled me to be absent from Manila until January 1st at least, for I might be there for several days, so I went to the General Hospital of my own accord—since I had not received any message from them— with a rough draft which I had prepared in accordance with what he had told me in our conversation. After the greetings, I told him, 'Here I am, D. Tomas; this is the rough draft of your will in accordance with your former statements to me in order to submit it to you. Do you want to read it?' 'Please do me the favor of reading it' I read it slowly to him in order that he could understand it. After reading, 'It is all right, that is the way,—few words—you see it takes only a few minutes; now I can execute the will' 'We can do it, it takes only a few minutes' In view of that statement of his, I called his attention, 'But we don't have witnesses, D. Tomas' I looked out through the door to see if I could call some witnesses, but it was late then and it was thought better to do it on the 31st of December, and so I told D. Tomas that I would be coming on the 31st of December. Then we talked about other things, and he again asked, 'Where were you born?' I told him in Quiapo. 'Ah, good district, and especially now that the fiesta of Quiapo is coming near' and then I interrupted him, 'Yes, the fiestas of the Holy Child and of Our Lady of Mount Carmel' because we also talked about the fiesta of San Sebastian. I again reminded him that we could not do it because the witnesses were not there and he explained, 'Good Christmas present, isn't it?' I did not tell him anything, and in view of that I did not deem it necessary to stay there any longer.

"Q. With whom did you make the arrangement to make the will on the evening of the 31st of December—you said that it was agreed that the will be executed on the evening of December 31st?—A. With Santiago Lopez and Don Tomas.

"Q. Was the will executed on the 31st of December?— A. What happened is this: In view of that agreement, X fixed up the rough draft which I had, dating it the 31st of December, putting everything in order; we agreed that Santiago Lopez would meet me on said 31st day between five and six in the evening or a little before, but it happened that before the arrival of that date Santiago Lopez came and told me that I need not trouble about going to the General Hospital because it could not be carried out for the reason that certain requisites were lacking. In view of this and bearing always in mind that on the following day I had to go to the provinces, I told, Santiago Lopez that I would leave the papers with him because I might go to the provinces.

"Q. What may be the meaning of those words good Christmas present?—A. They are given as a Christmas present when Christmas comes or on the occasion of Christmas.

"Q. I show you this document which is marked Exhibit A, tell me if that is the will or copy of the will which

you delivered to Santiago Lopez on December 81, 1923?—A. With the exception of the words '3 de enero de 1924' it seems to be literally identical." (S. R., pp. 244-249.)

As the witness stated, the will which was prepared by him is identical with that signed by the testator and the attesting witnesses with the single exception of the change of the date from December 31, 1923, to January 3, 1924. Two copies besides the original of the will were made. The will is brief and simple in terminology.

For purposes of record, we copy the will as here translated into English:

"ONLY PAGE

"In the City of Manila, Philippine Islands, this January 3, 1924, I, Tomas Rodriguez, of age and resident of the City of Manila, Philippine Islands, do freely and voluntarily make this my will and testament in the Spanish language which I know, with the following clauses:

"First. I declare that I am a Roman Apostolic Catholic, and order that my body be buried in accordance with my religion, standing, and circumstances.

Torres and Lopez de Buenovs.. Lopez

"Second. I name my cousin Vicente F. Lopez and his daughter Luz Lopez de Bueno as my only and universal heirs of all my property.

"Third. I appoint D. Manuel Torres and D. Santiago Lopez as my executors.

"In witness whereof I sign this typewritten will, consisting of one single page, in the presence of the witnesses who sign below.

(Sgd.) "TOMAS RODRIGUEZ

(Left marginal signatures:)

"TOMAS RODRIGUEZ

"ELIAS BONOAN

"V. L. LEGARDA

"A. DE ASIS"

"We hereby certify that on the date and in the place above indicated, Don Tomas Rodriguez executed this will, consisting of one single typewritten page, having signed at the bottom of the will in the presence of us who saw as witnesses the execution of this will, and we signed at the bottom thereof in the presence of the testator and of each other.

(Sgd.) "V. L. Legarda

"ELIAS BONOAN

"A. DE ASIS"

(EXHIBIT A.)

On the afternoon of January 3, 1924, there gathered in the quarters of Tomas Rodriguez in the Philippine General Hospital, Santiago Lopez, his relative; Mr. V. L. Legarda, Dr. Elias Bonoan, and Dr. A. de Asis, attesting witnesses; and Dr. Fernando Calderon, Dr. Elias Domingo, and Dr. Florentino Herrera, physicians, there for purposes of observation. (Testimony of Elias Bonoan, S. R., p. 8; testimony of V. L. Legarda, S. R., p. 34.) Possibly also Mrs. Luz Lopez de Bueno and Mrs. Nena Lopez were present; at least they were hovering in the background.

As to what actually happened, we have in the record two absolutely contradictory accounts. One emanates from

the attesting witness, Doctor Bonoan. The other is the united testimony of all the remaining persons who were there.

Doctor Elias Bonoan was the first witness called at the trial. He testified on direct examination as to formal matters, such as the identification of the signatures to the will. On cross-examination, he rather startfled the proponents of the will by stating that Luz Lopez de Bueno told Tomas Rodriguez to sign the document because it concerned a complaint against Castito and that nobody read the will to the testator. Doctor Bonoan's testimony along this line is as follows:

"QUESTIONS.

"MARCAIDA: Q. Why were you a witness to the will of Tomas Rodriguez?

"ARANETA : I object to the question as being immaterial.

'COURT : Objection overruled.

"ARANETA : Exception.

"DR. BONOAN: A. Because I was called up by Mrs. Luz by telephone telling me to be in the hospital at 3 o'clock sharp in the afternoon of the 3d of January.

"Q. Who is that Luz whom you have mentioned?—A. Luz Lopez, daughter of Vicente Lopez.

"Q. What day, January 3, 1924?—A. Yes, sir.

"Q. When did Luz Lopez talk to you in connection with your going to the hospital?—A. On the morning of the 3d she called me up by telephone.

'Q. On the morning?—A. On the morning.

'Q. Before January 3, 1924, when the will of Tomas Rodriguez was signed, did Luz Lopez talk to you?—A. Yes, sir.

"Q. How many days approximately before was it?—A. I cannot tell the day, it was approximately one week before,—on that occasion when I was called up by her about the deceased Vicente Lopez.

"Q. What did she tell you when you went to the house of Vicente Lopez one week approximately before signing the will?—A. That Tomas Rodriguez would make a will.

"Q. Don't you know where the will of Tomas Rodriguez was made?—A. In the General Hospital.

"Q. Was that document written in the hospital?—A. I have not seen it.

"Q. When you went to the General Hospital on January 3, 1924, who were the persons you met in the room where the patient was?—A. I met one of the nieces of the deceased Tomas Rodriguez, Mrs. Nena Lopez, and Dña. Luz Lopez.

"Q. Were those the only persons?—A. Yes, sir.

"Q. What time approximately did you go to the General Hospital on January 3d?—A. A quarter to 3.

"Q. After you, who came?—A. Antonino de Asis, Doctor Herrera, later on Doctor Calderon arrived with Doctor Elias Domingo, and lastly Santiago Lopez came and then Mr. Legarda.

"Q. When you entered the room of the patient, D. Tomas Rodriguez, in the General Hospital in what position did you find him?—A. He was lying down.

"Q. Did you greet D. Tomas Rodriguez?—A. I did.

"Q. Did D. Tomas Rodriguez answer you?—A. Dña. Nena immediately answered in advance and introduced me to him saying that I was the brother of his godson.

"Q. Did other persons whom you have mentioned, viz, Messrs. Calderon, Herrera, Domingo, De Asis, and Legarda, greet Tomas Rodriguez?

"ARANETA: I object to the question as being improper cross-examination. It has not been the subject of the direct examination.

"COURT:: Objection overruled.

"ARANETA : Exception.

"A. No, sir, they joined us.

"Q. What was D. Tomas told when he signed the will?—

A. To sign it.

"Q. Who told D. Tomas to sign the will?—A. Luz Lopez.

"Q. What did Luz Lopez tell Tomas Rodriguez in order that he should sign the will?—A. She told him to sign the document; the deceased Tomas Rodriguez before signing the document asked what that was which he was to sign.

"Q. What did anybody answer to that question of D. Tomas?—A. Luz Lopez told him to sign it because it concerned a complaint against Castito. D. Tomas said, 'What is this?' And Luz Lopez answered, 'You sign this document, uncle Tomas, because this is about the complaint against Castito'

"Q. Then Tomas Rodriguez signed the will?—A. Yes, sir. "Q. Who had the will? Who was holding it?—A. Mr. Vicente Legarda had it in his own hands.

"Q. Was the will signed by Tomas Rodriguez lying down, on his feet, or seated?—A. Lying down.

"Q. Was the will read by Tomas Rodriguez or any person present at the time of signing the will, did they read it to him?—A. Nobody read the will to him.

"Q. Did not D. Tomas read the will?—A. I have not seen it.

"Q. Were you present?—A. Yes, sir." (S. R., p. 8.) As it would be quite impracticable to transcribe the testimony of all the others who attended the making of the will, we will let Vicente L. Legarda, who appears to have assumed the leading role, tell what transpired. He testified in part:

"ARANETA Q. Who exhibited to you those documents, Exhibits A, A-1, and A-2?

"LEGARDA: A. Santiago Lopez.

"Q. Did he show you the same document?—A. First, that is to say the first document he presented to me was a rough draft, a tentative will, and it was dated December 31st, and I called his attention to the fact that the date was not December 31, 1923, and that it was necessary to change the date to January 3, 1924, and it was done.

"Q. And it was then, was it not, when Exhibits A, A-1, and A-2 were written?—A. Yes, sir.

"Q. Do you know where it was written?—A. In the General Hospital.

"Q. Did any time elapse from your making the suggestion that the document which you delivered to Santiago

Lopez be rewritten until those three Exhibits A, A-1, and A-2 were presented to you?—A. About nine or ten minutes approximately.

"Q. The time to make it clean?—A. Yes, sir.

"Q. Where were you during that time?—A. In the room of D. Tomas Rodriguez.

"Q. Were you talking with him during that time?—A. Yes, sir.

"Q. About what things were you talking with him?— A. He was asking me about my health, that of my family, how my family was, my girl, whether we were living in Pasay, he asked me about the steamer Ildefonso, he said that it was a pity that it had been lost because he knew that my father-in-law was the owner of the steamer Ildefonso.

* * * * *

"Q. When those documents, Exhibits A, A-1, and A-2, that is, the original and the two copies of the will signed by D. Tomas Rodriguez were written clean, will you please tell what happened?—A. When Santiago Lopez gave them to me clean, I approached D. Tomas Rodriguez and told him: 'Don Tomas, here is this will which is ready for your signature.'

"Q. What did D. Tomas do when you said that his will you were showing to him was ready?—A. The first thing he asked was: 'the witnesses?' Then I called the witnesses—'Gentlemen, please come forward/ and they came forward, and I handed the documents to D. Tomas. D. Tomas got up and then took his eyeglasses, put them on and as he saw that the electric lamp at the center was not sufficiently clear, he said: 'There is no more light;' then somebody came forward bringing an electric lamp.

"Q. What did D, Tomas do when that electric lamp was put in place?—A. The eyeglasses were adjusted again and then he began to read, and as he could not read much for a long time, for he unexpectedly felt tired and took off the eyeglasses, and as I saw that the poor man was tired, I suggested that it be read to him and he stopped reading and I read the will to him.

"Q. What happened after you had read it to him?—A. He said to me, 'Well, it is all right. It is my wish and my will. Don't you have any pen?' I asked a pen of those who were there and handed it to D. Tomas.

"Q. Is it true that Tomas Rodriguez asked at that time 'What is that which I am going to sign?' and Luz Lopez told him: 'It is in connection with the complaint against Castito?'—A. It is not true, no, sir.

"Q. During the signing of the will, did you hear Luz Lopez say anything to Tomas Rodriguez?—A. No, sir, she said nothing.

"Q. According to you, Tomas Rodriguez signed of his own accord?—A. Yes, sir.

"Q. Did nobody tell him to sign?—A. Nobody.

"Q. What happened after the signing of the will by Tomas Rodriguez?—A. I called the witnesses and we signed in the presence of each other and of Tomas Rodriguez.

"Q. After the signing of the will, did you have any conversation with Tomas Rodriguez?—A. Doctor Calderon asked D. Tomas Rodriguez some questions.

"Q. Do you remember the questions and the conversation held between Doctor Calderon and D. Tomas after the signing of the will?—A. I remember that afterwards Doctor Calderon talked to him about business. He asked him how the business was going on,—'everything is going wrong, except the business of making loans at 18 per cent' It seems that Tomas Rodriguez answered: "That loan at 18 per cent is illegal, it is usury" " (S. R., p. 38.)

In addition to the statements under oath made by Mr. Legarda, an architect and engineer in the Bureau of Public Works and professor of engineering and architecture in the University of Santo Tomas, suffice it to say that Luz Lopez de Bueno denied categorically the statements attributed to her by Doctor Bonoan (S. R., p. 568). In this stand, she is corroborated by Doctor De Asis, an attesting witness, and by Doctors Calderon, Domingo, and Herrera, the attending physicians. On this point, Doctor Calderon, the Director of the Philippine General Hospital and Dean of the College of Medicine in the University of the Philippines, testified:

"MR. ARANETA: Q. What have you seen or heard with regard to the execution of the will ?

"DR. CALDERON: A. Mr. Legarda handed the will to D Tomas Rodriguez. D. Tomas asked for his eyeglasses, wanted to read, and it was extremely hard for him to do so. Mr. Legarda offered to read the will, it was read to him and he heard that in that will Vicente Lopez and Luz Lopez were appointed heirs; we also saw him sign that will, and he signed not only the original but also the other copies of the will and we also saw how the witnesses signed the will; we heard that D. Tomas asked for light at that moment; he was at that time in a perfect mental state. And we remained there after the will was executed. I asked him, 'How do you feel, how are you?' 'Well, I am well,' he answered. 'How is the business?' 'There is a crisis, but there is one good business, namely, that of making loans at the rate of 18 per cent' and he answered, 'That is usury.' When a man answers in that way, 'That is usury' it shows that he is all right.

"Q. Were you present when Mr. Legarda handed the will to him?—A. Yes, sir.

"Q. Did any person there tell Don Tomas that that was a complaint to be filed against one Castito?—A. No, sir, I have not heard anything of the kind.

"Q. It was said here that when the will was handed to him, D. Tomas Rodriguez asked what that was which he was to sign and that Luz Lopez answered, 'That is but a complaint in connection with Castito.' Is that true?—A. I have not heard anything of the kind.

"Q. Had anybody told that to the deceased, would you have heard it?—A. Yes, sir.

"Q. Was Luz Lopez there?—A. I don't remember having seen her; I am not sure; D. Santiago Lopez and the three witnesses were there; I don't remember that Luz Lopez was there.

"Q. Had anybody told that to the deceased, would you have heard it?—A. Yes, sir.

"Q. Did D. Tomas sign of his own accord?—A. Yes, sir.

"Q. Do you remember whether he was given a pen or he himself asked for it?—A..I don't know; it is a detail which I don't remember well; so that whether or not he was given a pen or he himself asked for it, I do not remember.

"Q. But did he sign without hesitation ?—A. With no hesitation.

"Q. Did he sign without anybody having indicated to him where he was to sign?—A. Yes, without anybody having indicated it to him.

"Q. Do you know whether D. Tomas Rodriguez asked for more light before signing?—A. He asked for more light, as I have said before.

"Q. Do you remember that detail?—A. Yes, sir, they first lighted the lamps, but as the light was not sufficient, he asked for more light

"Q. Do you remember very well that he asked for light?—A. Yes, sir." (S. R., p. 93.) A clear preponderance of the evidence exists in favor of the testimony of Vicente Legarda, corroborated as it is by other witnesses of the highest standing in the community. The only explanation we can offer relative to the testimony of Doctor

Bonoan is that possibly he may have arrived earlier than the others with the exception of Luz Lopez de Bueno, and that Luz Lopez de Bueno may have made some sort of an effort to influence Tomas Rodriguez. There is, however, no possible explanation of the statement of Doctor Bonoan to the effect that no one read the will to Rodriguez, when at least five other persons recollect that Vicente Legarda read it to him and recall the details connected with the reading.

There is one curious occurrence which transpired shortly after the making of the will which should here be mentioned. It is that on January 7, 1923 (1924), Luz Lopez de Bueno signed a document in favor of Doctor Bonoan in the amount of one thousand pesos (p1,000). This paper reads as follows: "Be it known by these presents:

"That I, Luz Lopez de Bueno, in consideration of the services which at my instance were, and will when necessary be, rendered by Dr. Elias Bonoan in connection with the execution of the will of my uncle, Don Tomas Rodriguez, and the due probate thereof, do Hereby agree to pay said doctor, by way of remuneratory donation, the sum of one thousand pesos (P1,000), Philippine currency, as soon as said services shall have been fully rendered and I shall be in possession of the inheritance which in said will is given to me.

"In witness whereof, I sign this document which was freely and spontaneously executed by me in Manila, this January 7, 1923.

(Sgd.) "LUZ LOPEZ DE BUENO"
(Exhibit 1)

There is a sharp conflict of testimony, as is natural, between Doctor Bonoan and Luz Lopez de Bueno relative to the execution of the above document. We shall not attempt to settle these differences, as in the final analysis it will not affect the decision one way or the other. The most reasonable supposition is that Luz Lopez de Bueno imprudently endeavored to bring over Doctor Bonoan to her side of the case by signing and giving to him Exhibit 1. But the event cannot easily be explained away.

Tomas Rodriguez passed away in the Philippine General Hospital, as we have said, on February 25, 1924. But . even prior to his demise, the two factions in the Lopez family had prepared themselves for a fight over the estate. The Luz Lopez faction had secured the services of Doctor Domingo, the physician in charge of the Department of Insane of the San Lazaro Hospital and Assistant Professor of Nervous and Mental Diseases in the University of the Philippines, as attending physician; had associated with him for purposes of investigation Dr. Fernando Calderon, the Director of the Philippine General Hospital, and Dr. Florentino Herrera, a physician in active practice in the City of Manila; and had arranged to have two members of the medical fraternity, Doctors De Asis and Bonoan, as attesting witnesses. The Margarita Lopez faction had taken equal precautions by calling as witnesses in the guardianship proceedings Dr. Sixto de los Angeles, Professor and Chief of the Department of Legal Medicine in the University of the Philippines, and Dr. Samuel Tietze, with long experience in mental diseases; thereafter by continuing Doctors De los Angeles and Tietze to examine Tomas Rodriguez, and by associating with them Dr. William Burke, a well-known physician of the City of Manila. Skilled lawyers were available to aid and abet the medical experts. Out of such situations, do will contests arise.

An examination of the certificates made by the two sets of physicians and of their oral testimony shows that on most facts they concur. Their deductions from these facts disclose a substantial divergence of opinion. It is a hopeless task to try to reconcile the views of these distinguished gentlemen who honestly arrived at definite but contradictory conclusions. The best that we can do under the circumstances is to set forth the findings of the Calderon committee on the one hand and of the De los Angeles committee on the other.

Doctors Calderon, Domingo, and Herrera examined Tomas Rodriguez individually and jointly before the date

when the will was executed. All of them, as we have noticed, were present at the signing of the will to note the reactions of the testator. On the same day that the will was accomplished, the three doctors signed the following certificate:

"The undersigned, Drs. of Medicine, with offices in the City of Manila, and engaged in the practice of their profession, do hereby certify:

"That they have jointly examined Mr. Tomas Rodriguez, confined in the General Hospital, floor No. 3, room No. 361, on three different occasions and on different days, and have found that said patient is suffering from anaemia, hernia inguinal, chronic dyspepsia, and senility.

"As to his mental state, the result of the different tests to which this patient was submitted is that his intellectual faculties are sound, except that his memory is weak, which is almost a loss for recent facts, or events which have recently occurred, due to his physical condition and old age.

"They also certify that they were present at the time he signed his will on January 3, 1924, at 3.25 p. m., and have found his mental state in the same condition as was found by the undersigned in their former examinations, and that in executing said will the testator had full understanding of the act he was performing, and full knowledge of the contents thereof.

"In testimony whereof, we sign in Manila this January 3, 1924,

(Sgd.) "Florentino Herrera

"Tuberias 1264

"Quiapo

(Sgd.) "DR. FERNANDO CALDERON

"General Hospital

"Manila

(Sgd.) "DR. ELIAS DOMINGO

"613 Remedies

"Malate"

(Exhibit E in relation with Exhibits C and D.)

Doctor Calderon while on the witness-stand expressed a definite opinion as to the mentality of Tomas Rodriguez. What follows is possibly the most significant of the doctor's statements:

Dr. Calderon testifying after interruption:

"A. I was naturally interested in finding out the true mental state of Tomas Rodriguez, and that was the chief reason why I accepted and gave my cooperation to Messrs. Elias Domingo and Florentino Herrera because had I found that Tomas Rodriguez was really insane, I should have ordered his transfer to the San Lazaro Hospital or to other places, and would not have left him in the General Hospital. Pursuant to my desire, I saw Tomas Rodriguez in his room alone twice to have interviews with him, he being a person whom I knew since several years ago; at the end of the interviews I became convinced that there was nothing wrong with him; I had not seen anything indicating that he was insane and for this reason I accepted the request of my companions and joined them; we have been on five different occasions examining Tomas Rodriguez jointly from the physical standpoint, but chiefly from the standpoint of his mental state; I have been there with Messrs. Herrera and Elias Domingo, examining Tomas Rodriguez and submitting him to a mental test on the 28, 29, 30 and 31 of December and the 2d of January, 1924—five consecutive days in which we have been together besides my particular visits.

"Q. Will you please state the result of the observation you made alone before those made by the three of you

jointly?—A. I asked Tomas Rodriguez some questions when I went alone there, I asked him where he was living formerly and he well remembered that in Intramuros, Calle Real; I asked him whether he remembered one Calderon who was living in the upper floor of the house, and then he told me yes; then I asked him about his tenant by the name of Antonio Jimenez and he told me yes,—now I remember that he had two daughters, Matilde and Paz. Then I told him that I had been living in the house of that gentleman, Antonio Jimenez, already dead—in the upper story of the house which belonged to Tomas Rodriguez; I told him that Antonio Jimenez was his tenant of the upper story, that is, that he was living on the ground floor and Antonio Jimenez upstairs, and he remembered all of this; I also began to talk of my brother, Felipe Calderon, whom he said of course that he knew; he remembered him because he was his companion and was a successful attorney. This was when I had an interview with him. Then in order to observe better and to be sure of my judgment or opinion about the mental state of Tomas Rodriguez, I saw him again and we began to speak of something which I don't remember now. In fine, we talked of things of interest and as I had finally accepted the request of Drs. Elias Domingo and Florentino Herrera to join them, the first and second time that Herrera, Domingo and myself went there, no stenographic notes were taken of what happened there.

"Q. So that before joining Doctors Herrera and Domingo you had already paid two visits to the patient?—A. Yes, sir.

"Q. From the result of the conversation you had with Tomas Rodriguez on those two visits, what is your opinion as to his mental capacity?—A. That he was sick; that he was weak, but I have found absolutely no incoherence in his ideas; he answered my questions well, and as I was observing him, there were times when he did not remember things of the present—because this must be admitted—but on the other hand he had a wonderful memory for past events; in talking with him, you would not notice in the conversation any alteration in his mind nor that that man . had lost the reasoning power or logic.

"Q. Did you notice any loss of memory, or that his memory was weakening about things of the past?—A. About things of the past, I mean that you talk to him now about specific matters, and after about five or ten minutes he no longer remembers what had been talked of. * *****

"Q. Do you remember the conversation you had with him for the first time when the three of you paid a visit to the patient?—A. I don't remember the details, but I do remember the questions I put to him. I asked D. Tomas Rodriguez: 'You are an old man, aged, sick, why don't you think of making your will?' and he said: 'Yes, I am thinking to make a will' 'But why don't you decide?' 'There is no hurry, there is time to make a will' he said. 'Then in case you decide to make a will, to whom are you going to leave your property? Don't you have any relatives?' 'I have a relative, Vicente Lopez, my first cousin, and Margarita Lopez, my first cousin, they are brothers.' 'In that case, to whom do you want to leave your property?' 'Why, I don't have much, very little, but I am decided to leave it to my cousin, Vicente Lopez, and his daughter Luz Lopez' 'Why would you not give anything to Margarita Lopez?' 'No because her husband is very bad' to use his exact language, 'is very bad'

"Q. Did you talk with him on that occasion about his estate?—A. Yes, sir, he told me that he had three estates,—one on Calle Magallanes, another on Calle Cabildo, and the third on Calle Juan Luna, and besides he had money in the Monte de Piedad and Hogar Filipino.

* * * * *

"Q. From the questions made by you and the answers given by Mr. Tomas Rodriguez on that occasion, what is your opinion as to his mental capacity?—A. The following: That the memory of Tomas Rodriguez somewhat failed as to things of the present, but is all right with regard to matters or facts of the past; that his ideas were coherent; that he thought with logic, argued even with power, and generally in some of the interviews I have arrived at the conclusion that Tomas Rodriguez had an initiative of his own, did not need that anybody should make him any suggestion, because he answered in such a way that if you permit me now to show you my stenographic notes, they will prove to you conclusively that he had an initiative of his own and had no need of anybody making him any question." (S. R. p. 72.)

Doctor Elias Domingo, who was the attending physician for Tomas Rodriguez throughout all the time that Rodriguez was in the hospital and who even prior to the placing of Rodriguez in the hospital had examined him, was likewise certain that Rodriguez possessed sufficient mentality to make a will. Among other things, Doctor Domingo testified:

"ARANETA: Q. Have you known D. Tomas Rodriguez?

"DR. DOMINGO : A. Yes, sir.

"Q. Did you attend D. Tomas Rodriguez as physician?— A. Yes, sir.

"Q. When did you begin to attend him as physician?— A. On November 28, 1923, until his death.

"Q. Where did you attend him?—A. In the General Hospital.

"Q. On November 28 or October 28, 1923, do you remember?—A. I had been attending him as physician from November 28th although it is true that I had had opportunity to see and examine him during the months of October and November.

"Q. What was the object of your visits or attendance during the months of October and November?—A. It was for the purpose of observing his mental state.

"Q. Did you really examine his mental condition or capacity during the months of October and November?— A. Yes, sir.

"Q. How many times did you visit him?—A. I don't remember exactly but I visited him about five or six times.

* * * * *

"Q. Please tell us the result of your examination during those months of October and November?—A. I examined him physically and mentally; I am not going to tell here the physical result but the result of the mental examination, and that is: General Conduct: In most of the times that I have seen him, I found him lying on his bed, smoking a cigarette and asked for a bottle of lemonade from time to time; I also observed that he was very careful when throwing the ash of the cigarette, seeing to it that it did not fall on the blankets; he also was careful not to throw the stub of the cigarette in any place to avoid fire; I made more observations as to his general conduct and I found that sometimes Don Tomas could move within the place although with certain difficulty. On two occasions I found him seated, once seated at the table, seated on the chair, and the other on a rocking-chair. I also examined his manner of talking and to all questions that I put to him he answered with a fair coherence and in a relevant manner, although sometimes he showed meagerness and certain delay. I based these points of my declarations on the questions which are usually asked when making a mental examination, for instance I asked him, 'What is your name,' and he correctly answered Tomas Rodriguez; I asked him if he was married and he answered 'No;' I asked him his profession and he answered that formerly he was an attorney but that at the time I was making the examination he was not practising the profession; I asked him with what he supported himself and he said that he lived upon his income, he said verbatim, 'I live on my income.' I also asked him what the amount of his income was and he answered that it was about ^900; I asked him what the source of this income was and he said that it came from his property.

"Q. Did you ask him about his property?—A. No, at that time.

"Q. Proceed.—A. I also observed his emotional status and affectivity. I found it rather superficial, and he oftentimes got angry due to his physical disease; I asked him if he had any relatives and he answered correctly saying that he had. He mentioned Vicente Lopez, Margarita Lopez, and Luz Lopez. As to his memory. His memory for the past. He very easily remembered past events and when he described them he did it with such pleasure that he used to smile afterwards—if it was a fact upon which one must smile. His memory for recent facts was very much lessened. I say this because on various occasions and not having known me when he had a

better memory, after I had seen him thrice he remembered my name and he recognized me. Insight and judgment. I arrived at the conclusion that he had fair knowledge of himself because he knew that he was sick and could not be moving with ease, but he believed that he could perform with sufficient ease mental acts; his judgment was also all right because I asked him this question: 'Supposing that you should find a bill of P5 in the vestibule of a hotel, what would you do with it?' He told me that he would take the bill and give it to the manager in order that the latter may look for the owner if possible. His reasoning. I found that he showed a moderate retardation in the flow of his thought, especially with regard to recent events, but was quite all right as to past events. His capacity. He believed that he was capable of thinking properly although what did not permit him to do so was his physical decrepit condition. The conclusion is that his memory is lost for recent events tho not totally and diminution of his intellectual vigor. This is in few words the result of my examination." (S. R., p. 345.)

Tomas Rodriguez was likewise examined thoroughly by Doctors De los Angeles, Tietze, and Burke. Doctor De los Angeles had been a witness in the guardianship proceedings and had seen the patient on November 6 and 7, 1923. Doctor Tietze had also been a witness in the guardianship case and had visited the patient on November 9 and 12, 1923, and on January 15, 1924, Doctors Tietze and Burke together examined Rodriguez on January 17, 20, and 24, 1924. The three physicians conducted a joint examination on January 27 and 28, and February 10, 1924. As a result, on March 15, 1924, they prepared and signed the following:

"MEDICAL CERTIFICATE

"In the Matter of Tomas Rodriguez y Lopez, male, 76 years of age, single and residing or being confined in the Philippine General Hospital.

"We, the undersigned Doctors, Sixto de los Angeles, W. B. Burke, and Samuel Tietze, do hereby certify as follows:

"1. That we are physicians, duly registered under the Medical Act, and are in the actual practice of the medical profession in the Philippines.

"2. That on January 27th and 28th, and February 10th, 1924, at the Philippine General Hospital, we three have with care and diligence jointly and personally examined the person of said Tomas Rodriguez y Lopez; and previous to these dates, we have separately and partly jointly observed and examined said patient on various occasions; Dr. Sixto de los Angeles, at the patient's home, 246 Magallanes St., Manila, on November 6th and 7th, 1923; Dr. Samuel Tietze, at the patient's home on November 9th and 12th, 1923, and at the Philippine General Hospital on January 15th, 1924; and Dr. W. B. Burke together with Dr. Samuel Tietze at the Philippine General Hospital on January 17th, 20th, and 24th, 1924; and as a result of the medical examinations and the history of the case we found and hereby certify to the following conclusions:

" (a) That he was of unsound mind suffering from senile dementia, or of mental impairment exceeding to a pathologic extent the usual conditions and changes found to occur In the involuntal period of life.

"(b) That he was under the influence of the above condition continuously, at least from November, 1923, till the date of our joint reexamination, January 27th and 28th, and February 10th, 1924; and that he would naturally have continued without improvement, as these cases of insanity are due to organic pathological changes of the brain. This form of mental disease is progressive in its pathological tendency, going on to progressive atrophy and degeneration of the brain, the mental symptoms, of course, running parallel with such pathological basis.

"(c) That on account of such disease and conditions, his mind and memory were so greatly impaired as to make him unable to know or to appreciate sufficiently the nature, effect, and consequences of the business he was engaged in; to understand and comprehend the extent and conditions of his properties; to collect and to hold in his mind the particulars and details of his business transactions and his relations to the persons who were or

might have been the objects of his bounty; and to free himself from the influences of importunities, threats, and ingenuities, so that with a relatively less resistance, he might had been induced to do what others would not have done.

"3. We have diagnosed this case as senile dementia of the simple type, approaching the deteriorated stage upon the following detailed mental examinations:

"(a) Disorder of memory.—There was almost an absolute loss of memory for recent events, to the extent that things and occurrences seen or observed only a few minutes previously were completely forgotten. Faces and names of persons introduced to him were not remembered after a short moment even without leaving his bedside. He showed no comprehension of the elemental routine required in the management of his properties, i. e.: who were the lessees of his houses, what rents they were paying, who was the administrator of his properties, in what banks he deposited his money or the amount of money deposited in such banks. Regarding his personal relations, he forgot that Mr. Antonio Ventura is the husband of his nearest woman cousin; that Mrs. Margarita Lopez was married, saying that the latter was single or spinster, in spite of the fact that formerly, during the past twenty-five years, he was aware of their marriage life. He did not know the names of the sons and daughters of Mr. Vicente Lopez, one of his nearest relatives, even failing to name Mrs. Luz Lopez de Bueno, a daughter of said Vicente Lopez, and who now appears to be the only living beneficiary of his will. He also stated that Mr. Vicente Lopez frequently visited him in the hospital, though the latter died on January 7th, 1924. He did not recognize and remember the name and face of Doctor Domingo, his own physician. However, the memory for remote events was generally good, which is a characteristic symptom of senile dementia.

"(b) Disorientation of time, place, and persons.—He could not name the date when asked (day or month); could not name the hospital wherein he was confined; and failed to recognize the fact that Doctor Domingo was his physician.

"(c) Disorders of perception.—He was almost completely indifferent to what was going on about him. He also failed to recognize the true value of objects shown him, that is, he failed to recognize the 'Saturday Evening Post' nor would he deny that it was a will when presented as such. He also failed to show normal intellectual perception, making no effort to correlate facts or to understand matters discussed in their proper light.

"(d) Emotional deterioration.—The patient was not known during his time of physical incapacity to express in any way or lament the fact that he was unable to enjoy the happiness that was due him with his wealth. As a matter of fact, he showed complete indifference. He showed loss of emotional control by furious outbreaks over trifling matters and actually behaved like a child; for example, if his food did not arrive immediately or when his cigar was not lit soon, he would become abusive in his language and show marked emotional outburst. If the servants did not immediately answer his call, he would break down and cry as a child.

"(e) Symptoms of decreased intellectual capacity.— There was a laxity of the internal connection of ideas. The patient has shown no insight regarding his own condition. He did not appreciate the attitude of the parties concerned in his case; he would on several occasions become suspicious and fail to comprehend the purpose of our examination. He was inconsistent in his ideas and failed to grasp the meaning of his own statements. When questioned whether he would make a will, he stated to Doctor Tietze that he intended to bequeath his money to San Juan de Dios Hospital and Hospicio de San Jose. When he was informed, however, that he had made a will on January 3d, 1924, he denied the latter statement, and failed to explain the former. Although for a long time confined to bed and seriously ill for a long period, he expressed himself as sound physically and mentally, and in the false belief that he was fully able to administer his business personally.

"His impairment of the intellectual field was further shown by his inability, despite his knowledge of world affairs, to appreciate the relative value of the statement made by Doctor Tietze as follows: 'We have here a cheque of P2,000 from the King of Africa payable to you so that you may deposit it in the bank. Do you want to accept the cheque?' His answer' was as follows: 'Now I cannot give my answer. It may be a surprise.' Such

answer given by a man after long experience in business life, who had handled real estate property, well versed in the transaction of cheques, certainly shows a breaking down of the above field. No proper questions were asked why the cheque was given by the King, who the King was, why he was selected by the King of Africa, or if there is a King of Africa at present. He further shows doubt in his mental capability by the following questions and answers:

"MARCAIDA : P. i Tiene usted actualmente algun asunto en los tribunales de justicia de Manila?—R. No recuerdo en este momento.

"P. De tener usted algun asunto propio en los tribunales de justicia de Manila, ¿a que abogado confiaria usted la defensa del mismo?—R. Al Sr. Marcaida, como conocido antiguo.

"P. ¿ Ha hablado usted y conferenciado alguna vez o varias veces en estos dias, o sea desde el 25 de octubre de 1923 hasta hoy, con algun abogado para que le defendiera algun asunto ante el Juzgado de Primera Instancia de Manila?—R. Con ninguno, porque en caso de nombrar, nombrarfa al Sr. Marcaida. (P. 5, deposition, Nov. 19, 1923.)

"ARANETA : P. I No recuerda usted que usted me ha encomendado como abogado para que me oponga a que le declaren a usted loco o incapacitado?—R. Si, señor, quien ha solicitado? (P. 9, deposition, Nov. 19, 1923.)

"DR. DOMINGO: P. ¿Don Tomas, me conoce usted? ¿ Se acuerda usted que soy el Doctor Domingo?—R. Si. (P. 7, sten. n., Jan. 28, 1924.)

"P. ¿Quien soy, Don Tomas, usted me conoce?—R. No se (P. 6, sten. n.f Feb. 10, 1924.)

"Dr. Angeles: P. ¿Me conoce usted, D. Tomas?—R. Le conozco de vista. (P. 6, sten. n., Jan. 28, 1924.)

"P. Nos vamos a despedir ya, Don Tomas, de usted. Yo soy el Doctor Angeles, ¿me conoce usted?—R. De nombre.

"P. Este es el Doctor Burke, ¿le conoce usted?—R. De nombre.

"P. Este es el Doctor Domingo, ¿le conoce usted?—R. De vista.

"P. Este es el Doctor Burke, ¿recuerda usted su nombre?—R. No. (P. 10, sten. n., Jan. 28, 1924.)

"P. ¿Usted conoce a este Doctor? (Senalando al Doctor Burke).—R. De vista; su nombre ya lo he olvidado, ya no me acuerdo.

"P. ¿ Usted nos ve a los tres? (Doctores Angeles, Burke y Tietze).—R. Ya lo creo.

"Dr. Burke: P. ¿Que profesion tenemos? (Señalando a los Sres. Angeles, Burke y Tietze).—R. Yo creo Que son doctores.

"P. ¿Y los dos? (Senalando a los Doctores Angeles y Tietze).—R. No. se.

"P. ¿Y este señor? (Senalando al Doctor Angeles).— R. No me acuerdo en este momento. (Pp. 4 and 5, sten. n., Feb. 10, 1924.)

" (f) Other facts bearing upon the history of the case obtained by investigation of Doctor Angeles:

"I. Family history.—His parents were noted to be of nervous temper and irritable.

"II. Personal history.—He was a lawyer, but did not pursue his practice, devoting the greater part of his life to collecting antiquities. He was generally regarded by his neighbors as miserly and erratic in the ordinary habits of life. He lead a very unhygienic life, making no attempt to clean the filth or dirt that was around him. He was neglectful in personal habits. On April, 1921, he suffered an injury to his forehead, from which he became

temporarily unconscious, and was confined in the Philippine General Hospital for treatment. He frequently complained of attacks of dizziness and headache, following this injury; suffered from a large hernia; and about two years ago, he was fined for failure in filing his income tax, from which incident, we have reason to believe, the onset of his mental condition took place. This incident itself can most probably be considered as a failure of memory. His condition became progressively worse up to his death.

"4. The undersigned have stated all the above facts contained in this certificate to the best of our knowledge and belief.

"Manila, P. I., March 16, 1924. (Sgd.) "Sixto de los Angeles "W. B. BUEKE, M. D. "Samuel Tietze" (Exhibit 33 in relation with Exhibits 28 and 29.)

Another angle to the condition of the patient on or about January 3, 1924, is disclosed by the treatment record kept daily by the nurses, in which appear the nurse's remarks. (Exhibits 8-A, 8-B, and 8-C.) In this connection, the testimony of the nurses is that Rodriguez was in the habit for no reason at all of calling "Maria, where are my 50 centavos, where is my key." In explanation of the observations made by the nurses, the nurse Apolonio Floreza testified:

"Direct questions of Attorney Ocampo:

"Q. Among your observations on the 1st of January, 1924, you say 'with pains all over the body, and uttered some incoherent words of the same topics whenever is awakened.' How could you observe that he had pains all over the body?

"Apolonio Floreza, nurse: A. I observed that by the fact that whenever I touched the body of the patient he complained of some pain.

"Q. On what part of the body did you touch him?— A. On all the parts of his body.

"Q. How did you touch him, strongly or not?—A. Slightly.

"Q. When you touched him slightly, what did he do?— A. He said that it was aching.

"Q. What words did he say when, according to your note, he uttered incoherent words whenever he awakes?— A. As for instance, 'Maria,' repeating it 'Where are my 50 centavos, where is my key?'

"Q. Did you hear him talk of Maria?—A. Only the word 'Maria.'

"Q. How long approximately was he talking, uttering the name of 'Maria,' 'Where are my 50 centavos,' and 'where is my key?'—A. For two or three minutes.

"Q. Can you tell the court whether on those occasions when he said the name of 'Maria* he said other words and was talking with somebody?—A. He was talking to him- self.

"Q. This remark on Exhibit 8-B, when was it written by you?—A. On January 2, 1924.

"Q. In the observation corresponding to January 2, 1924, you also say, 'With pains all over the body,' and later on, 'talked too much whenever patient is awakened.' How did you happen to know the pain which you have noted here?— A. The pains all over the body, I have observed them when giving him baths.

"Q. Besides saying that it ached when you touched the body, do you know whether he did any extraordinary thing?—A, You mean to say acts?

"Q. Acts or words?—A. Yes, sir, like those words which I have already said which he used to say—'Maria, the key, 50 centavos/' "Q. You say that he called Maria. What did he say about Maria on that date, January 2, 1924?—A. He used to say, 'Maria, where is Maria?'

"Q. On that date January 12, 1924, did you answer him when he said 'Maria?'—A. No, sir.

"Q. In this observation of yours appearing on page 8-C, you say, among other things, 'with pains all over the body and shouted whenever he is given injection.' Did you really observe this in the patient?—A. Yes, sir.

"Q. How did he shout?

"ARANETA: Objection as being immaterial.

"COURT: Overruled.

"ARANETA: Exception.

"A. In a loud voice.

"Q. Besides shouting, do you remember whether he said anything?—A. He repeated the same words I have said before—'Maria, the 50 centavos, the key'

"Q. When did this observation occur which appears on page 8-C?—A.

On January 3, 1924." (S. R., p. 595.) On certain facts pertaining to the condition of Tomas Rodriguez, there is no dispute. On January 3, 1924, Rodriguez had reached the advanced age of 76 years. He was suffering from anaemia, hernia inguinal, chronic dyspepsia, and senility. Physically he was a wreck.

As to the mental state of Tomas Rodriguez on January 3, 1924, Doctors Calderon, Domingo, and Herrera admit that he was senile. They, together with Doctors De los Angeles, Tietze, and Burke, further declare that his memory was almost an absolute loss for recent events. His memory, however, for remote events was generally good. He was given to irrational exclamations symptomatic of a deceased mind.

While, however, Doctors Calderon, Domingo, and Herrera certify that the intellectual faculties of the patient are "sound, except that his memory is weak," and that in executing the will the "testator had full understanding of the act he was performing, and full knowledge of the contents thereof," Doctors De los Angeles, Tietze, and Burke certify that Tomas Rodriguez "was of unsound mind" and that they "diagnosed his case as senile dementia of the simple type, approaching the deteriorated stage." Without attempting at this stage to pass in judgment on the antagonistic conclusions of the medical witnesses, or on other disputed points, insofar as the facts are concerned, a resolution of the case comes down to this: Did Tomas Rodriguez on January 3, 1924, possess sufficient mentality to make a will, or had he passed so far along in senile dementia as to require the court to find him of unsound mind? We leave the facts in this situation to pass on to a discussion of the legal phases of the case.

B. Law.—The Code of Civil Procedure prescribes as a requisite to the allowance of a will that the testator be of "sound mind" (Code of Civil Procedure, sec. 614). A "sound mind" is a "disposing mind." One of the grounds for disallowing a will is "If the testator was insane or otherwise mentally incapable of the execution of such an instrument at the time of its execution." (Code of Civil Procedure, sec. 634 [2].) Predicated on these statutory provisions, this court has adopted the following definition of testamentary capacity: "Testamentary capacity is the capacity to comprehend the nature of the transaction in which the testator is engaged at the time, to recollect the property to be disposed of and the persons who would naturally be supposed to have claims upon the testator, and to comprehend the manner in which the instrument will distribute his property among the objects of his bounty" (Bugnao vs.. Ubag [1909], 14 Phil., 163, followed in Bagtasvs.. Paguio [1912], 22 Phil., 227, and Jocsonvs.. Jocson [1922], 46 Phil., 701.) The mental capacity of the testator is determined as of the date of the execution of his will (Civil Code, art. 666).

Various tests of testamentary capacity have been announced by the courts only later to be rejected as incom-

plete. Of the specific tests of capacity, neither old age, physical infirmities, feebleness of mind* weakness of the memory, the appointment of a guardian, nor eccentricities are sufficient singly or jointly to show testamentary incapacity. Each case rests on its own facts and must be decided by its own facts.

There is one particular test relative to the capacity to make a will which is of some practical utility. This rule concerns the nature and rationality of the will. Is the will simple or complicated? Is it natural or unnatural? The mere exclusion of heirs will not, however, in itself indicate that the will was the offspring of an unsound mind.

On the issue of testamentary capacity, the evidence should be permitted to take a wide range in order that all facts may be brought out which will assist in determining the question. The testimony of subscribing witnesses to a will concerning the testator's mental condition is entitled to great weight where they are truthful and intelligent. The evidence of those present at the execution of the will and of the attending physician is also to be relied upon. (Alexander on Wills, vol. I, pp. 433, 484; Wharton & Stille's Medical Jurisprudence, vol. I, pp. 100 et seq.)

The presumption is that every adult is sane. It is only when those seeking to overthrow the will have clearly established the charge of mental incapacity that the courts will intervene to set aside a testamentary document. (Hernaezvs.. Hernaez [1903], 1 Phil., 689; Bagtasvs.. Paguio, supra.)

Counsel for the appellee make capital of the testator being under guardianship at the time he made his will. Citing section 306 of the Code of Civil Procedure and certain authorities, they insist that the effect of the judgment is conclusive with respect to the condition of the person. To this statement we cannot write down our conformity. The provisions of the cited section were taken from California, and there the Supreme Court has never held what is now urged upon us by the appellee. The rule announced that in some states, by force of statute, the finding of insanity is conclusive as to the existence of insanity during the continuance of adjudication, is found to rest on local statutes, of which no counterpart is found in the Philippines. (32 C. J., 647; Gridleyvs.. Boggs [1882], 62 Cal., 190; In the matter of the Estate of Johnson [1881], 57 Cal., 529.) Even where the question of insanity is put in issue in the guardianship proceedings, the most that can be said for the finding is that it raises a presumption of incapacity to make a will but does not invalidate the testament if competency can be shown. The burden of proving sanity in such case is cast upon the proponents.

It is here claimed that the unsoundness of mind of the testator was the result of senile dementia. This is the form of mental decay of the aged upon which wills are most often contested. A Newton, a Paschal, a Cooley suffering under "the variable weather of the mind, the flying vapors of incipient lunacy," would have proved historic subjects for expert dispute. Had Shakespeare's King Lear made a will, without any question, it would have invited litigation and doubt.

Senile dementia, usually called childishness, has various forms and stages. To constitute complete senile dementia, there must be such failure of the mind as to deprive the testator of intelligent action. In the first stages of the disease, a person may possess reason and have will power. (27 L. R. A., N. S. [1910], p. 89; Wharton & Stille's Medical Jurisprudence, vol. I, pp. 791 et seq.; Schouler on Wills, vol. I, pp. 145 et seq.)

It is a rather remarkable coincidence that of all the leading cases which have gone forth from this court, relating to the testator having a sound and disposing mind, and which have been brought to our notice by counsel, every one of them has allowed the will, even when it was necessary to reverse the judgment of the trial court. A study of these cases discloses a consistent tendency to protect the wishes of the deceased whenever it be legally possible. These decisions also show great tenderness on the part of the court towards the last will and testament of the aged. (See Hernaezvs.. Hernaez [1903], 1 Phil., 689, per Arellano, C. J.; In the matter of the will of Butalid [1908], 10 Phil., 27, per Arellano, C. J.; Bugnaovs.. Ubag [1909], 14 Phil., 163, per Carson, J.; Macapinlac vs.. Alimurong [1910], 16 Phil., 41, per Arellano, C. J.; Bagtas vs.. Paguio [1912], 22 Phil., 227, per Trent, /.; Galvez vs., Galvez

[1913], 26 Phil., 243, per Torres, J.; Samson vs. Corrales Tan Quintin [1923], 44 Phil., 573, per Ostrand, J.; and Jocson vs. Jocson [1922], 46 Phil., 701, per Villamor, J.) Because of their peculiar applicability, we propose to make particular mention of four of the earlier cases of this court. In the case of Heraaez vs. Hernaez, supra, the subject of the action was the will executed by Dona Juana Espinosa. The annulment of the will was sought, first, upon the ground of the incapacity of the testatrix. She was over 80 years of age, so ill that three days before she executed the will she received the sacraments and extreme unction, and two days afterwards she died. Prior thereto she walked in a stooping attitude, and gave contradictory orders, "as a result of her senile debility." The Chief Justice reached the conclusion that neither from the facts elicited by the interrogatories nor the documents presented "can the conclusion be reached that the testatrix was deprived of her mental faculties." The will was held valid and efficacious.

In the case of In the matter of the will of Butalid, supra, the will was contested for the reason that Dominga Butalid at the date of the execution of the document was not in the free use of her intellectual powers, she being over 90 years of age, lying in bed seriously ill, senseless, and unable to utter a single word, so that she did not know what she was doing when she executed the will, while the document was claimed to have been executed under the influence and by the direction of one of the heirs designated in the will. Yet after an examination of the evidence, the Chief Justice rendered judgment reversing the judgment appealed from and declaring the will presented for legalization to be valid and sufficient. In the case of Bugnaavs. Ubag, supra, the court gave credence to the testimony of the subscribing witnesses who swore positively that at the time of the execution of the will the testator was of sound mind and memory. Based on these and other facts, Mr. Justice Carson, speaking for the court, laid down the following legal principles:

"Between the highest degree of soundness of mind and memory which unquestionably carries with it full testamentary capacity, and that degree of mental aberration generally known as insanity or idiocy, there are numberless-degrees of mental capacity or incapacity, and while on one hand it has been held that 'mere weakness of mind, or partial imbecility from disease of body, or from age, will not render a person incapable of making a will, a weak or feeble minded person may make a valid will, provided he has understanding and memory sufficient to enable him to know what he is about, and how or to whom he is disposing of his property' (Lodge vs. Lodge, 2 Houst. [Del.], 418); that, 'To constitute a sound and disposing mind, it is not necessary that the mind should be unbroken or unimpaired, unshattered by disease or otherwise' (Sloan vs. Maxwell, 3 N. J. Eq., 568) ; that 'It has not been understood that a testator must possess these qualities (of sound and disposing mind and memory) in the highest degree. * * * Few indeed would be the wills confirmed, if this is correct. Pain, sickness, debility of body, from age or infirmity, would, according to its violence or duration, in a greater or less degree, break in upon, weaken, or derange the mind, but the derangement must be such as deprives him of the rational faculties common to man' (Den. vs. Vancleve, 5 N. J. L., 680); and, that 'Sound mind does not mean a perfectly balanced mind. The question of soundness is one of degree' (Boughton vs. Knight, L. R., 3 P. & D., 64; 42 L. J. P., 25); on the other hand, it has been held that 'testamentary incapacity does not necessarily require that a person shall actually be insane or of an unsound mind. Weakness of intellect, whether it arises from extreme old age, from disease, or great bodily infirmities or suffering, or from all these combined, may render the testator incapable of making a valid will, providing such weakness really disqualifies her from knowing or appreciating the nature, effects, or consequences of the act she is engaged in' (Manatt vs. Scott, 106 Iowa, 203; 63 Am. St. Rep., 293, 302)."

In the case of Bagtas vs. Paguio, supra, the record shows that the testator for some fourteen or fifteen years prior to the time of his death suffered from a paralysis of the left side of his body, that a few years prior to his death, his hearing became impaired, and that he had lost the power of speech. However, he retained the use of his right hand and could write fairly well. Through the medium of signs, he was able to indicate his wishes to his family. The will was attacked on the ground that the testator lacked mental capacity at the time of its execution. The will was nevertheless admitted to probate. Mr. Justice Trent, speaking for the court, announced the following pertinent

legal doctrines: "

"* * * There are many cases and authorities which we might cite to show that the courts have repeatedly held that mere weakness of mind and body, induced by age and disease do not render a person incapable of making a will. The law does not require that a person shall continue in the full enjoyment and use of his pristine physical and mental powers in order to execute a valid will. If such were the legal standard, few indeed would be the number of wills that could meet such exacting requirements. The authorities, both medical and legal, are universal in the statement that the question of mental capacity is one of degree, and that there are many gradations from the highest degree of mental soundness to the lowest conditions of diseased mentality which are denominated as insanity and idiocy.

"The right to dispose of property by testamentary disposition is as sacred as any other right which a person may exercise and this right should not be nullified unless mental incapacity is established in a positive and conclusive manner. In discussing the question of testamentary capacity, it is stated in volume 28, page 70, of the American and English Encyclopedia of Law, that—

" 'Contrary to the very prevalent lay impression, perfect soundness of mind is not essential to testamentary capacity. A testator may be afflicted with a variety of mental weaknesses, disorders, or peculiarities and still be capable in law of executing a valid will.' (See the numerous cases there cited in support of this statement.)

"The rule relating to testamentary capacity is stated in *Buswell on Insanity*, section 365, and quoted with approval in *Campbellvs.. Campbell* (130 III, 466), as follows:

" 'To constitute a sound and disposing mind, it is not necessary that the mind shall be wholly unbroken, unimpaired, or unshattered by disease or otherwise, or that the testator should be in the full possession of his reasoning faculties'

"In note, 1 *Jarman on Wills*, 38, the rule is thus stated:

" 'The question is not so much, what was the degree of memory possessed by the testator, as, had he a disposing memory? Was he able to remember the property he was about to bequeath, the manner of distributing it, and the objects of his bounty? In a word, were his mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time when he executed his will. 1 (See authorities there cited.)

"In *Wilsonvs.. Mitchell* (101 Penn., 495), the following facts appeared upon the trial of the case: The testator died at the age of nearly 102 years. In his early years he was an intelligent and well informed man. About seven years prior to his death he suffered a paralytic stroke and from that time his mind and memory were much enfeebled. He became very dull of hearing and in consequence of the shrinking of his brain he was affected with senile cataract causing total blindness. He became filthy and obscene in his habits, although formerly he was observant of the proprieties of life. The court, in commenting upon the case, said:

" 'Neither age, nor sickness, nor extreme distress, nor debility of body will affect the capacity to make a will, if sufficient intelligence remains. The failure of memory is not sufficient to create the incapacity, unless it be total, or extend to his immediate family or property. * * * " 'Dougal (the testator) had lived over one hundred years before he made the will, and his physical and mental weakness and defective memory were in striking contrast with their strength in the meridian of his life. He was blind; not deaf, but hearing impaired; his mind acted slowly, he was forgetful of recent events, especially of names, and repeated questions in conversation; and sometimes, when aroused from sleep or slumber, would seem bewildered. It is not singular that some of those who had known him when he was remarkable for vigor and intelligence, are of the opinion that his reason was so far gone that he was incapable of making a will, although they never heard him utter an irrational expression.'

"In the above case the will was sustained. In the case at bar we might draw the same contrast as was pictured

by the court in the case just quoted. * * * "The particular differences between all of the Philippine cases which are cited and the case at bar are that in none of the Philippine cases was there any declaration of incompetency and in none of them were the facts quite as complicated as they are here. A case in point where the will was contested, because the testator was not of sound and disposing mind and memory and because at the time of the making of the will he was acting under the undue influence of his brothers, and where he had a guardian when he executed his will, is Ames' Will ([1902] 40 Ore., 495). Mr. Justice Moore, delivering the opinion of the court, in part said:

"It is contended by contestant's counsel that, on the day said pretended will purports to have been executed, Lowell was declared incompetent by a court which had jurisdiction of the person and subject-matter, and that the decree therein appointing a guardian of his person and estate raises the disputable presumption that he did not possess sufficient testamentary capacity at that time, to overcome which required evidence so strong as to leave no reasonable doubt as to his capacity to make a valid will, and, the testimony introduced by the proponent being insufficient for that purpose, the court erred in admitting it to probate. * * *

"The appointment of a guardian of a person alleged to be non compos mentis, by a court having jurisdiction, must necessarily create a presumption of the mental infirmity of the ward; but such decree does not conclusively show that the testamentary capacity of the person under guardianship is entirely destroyed, and the presumption thus created may be overcome by evidence proving that such person at the time he executed a will was in fact of sound and disposing mind and memory: Stonevs.. Damon, 12 Mass., 487; Breedvs.. Pratt, 18 Pick., 115; In re Slinger's Will, 72 Wis., 22 (37 N. W., 236). * * ?

"* * * The testimony shows that the testator retained a vivid recollection of the contents of the books he had read and studied when he was young, but that he could not readily recall to his mind the ordinary incidents of his later life. The depth and intensity of mental impressions always depend upon, and are measured by, the degree of attention given to the perception of facts, which requires observation, or to the conception of truths, which demands reflection; and hence the inability of a person to recollect events occurring recently is evidence of mental decay, because it manifests a want of power of concentration of the mind. The aged live in the past, and the impressions retained in their minds are those that were made in their younger days, because at that period of their lives they were able to exercise will power by giving attention. While the inability of a person of advanced years to remember recent events distinctly undoubtedly indicates a decay of the human faculties, it does not conclusively establish senile dementia, which is something more than a mere loss of mental power, resulting from old age, and is not only a feeble condition of the mind, but a derangement thereof. * * * The rule is settled in this state that if a testator at the time he executes his will understands the business in which he is engaged, and has a knowledge of his property, and how he wishes to dispose of it among those entitled to his bounty, he possesses sufficient testamentary capacity, notwithstanding his old age, sickness, debility of body, or extreme distress.

* * * * *

"It is contended by contestant's counsel that if Lowell, at the time he executed the pretended will, was not wholly lacking in testamentary capacity, he was, in consequence of age, ill health, debility of body, and infirmity of will power, susceptible to persuasion by his friends, and that his brothers, Andrew and Joseph, having knowledge thereof, took advantage of his physical and mental condition, and unduly influenced him to devise and bequeath his property in the manner indicated, attempting thereby to deprive the contestant of all interest therein except such as was given her by statute. * * * Assuming that he was easily persuaded, and that his brothers and the persons employed by them to care for him took advantage of his enfeebled condition and prejudiced his mind against the contestant, did such undue influence render the will theretofore executed void? * * * When a will has been properly executed, it is the duty of the courts to uphold it, if the testator possessed a sound and disposing mind and memory, and was free from restraint and not acting under undue influence, notwithstanding sympathy for persons legally entitled to the testator's bounty and a sense of innate justice might suggest a different testamentary disposition."Believing, as we do, that the findings of the circuit court

are supported by the weight of the testimony, its decree is affirmed."

Insofar as the law on testamentary capacity to make a will is concerned, and carrying alone one step further the question suggested at the end of the presentation of the facts on the same subject, a resolution of the case comes down to this: Did Tomas Rodriguez on January 3, 1924, possess sufficient mentality to make a will which would meet the legal test regarding testamentary capacity, and have the proponents of the will carried successfully the burden of proof and shown him to be of sound mind on that date?

II. UNDUE INFLUENCE

A. Facts.—The will was attacked on the further ground of undue influence exercised by the persons benefited in the will in collaboration with others. The trial judge found this allegation to have been established and made it one of the bases of his decision. It is now for us to say if the facts justify this finding.

Tomas Rodriguez voluntarily named Vicente F. Lopez as his administrator. The latter subsequently became his guardian. There is every indication that of all his relatives Tomas Rodriguez reposed the most confidence in Vicente F. Lopez and his daughter Luz Lopez de Bueno. Again, it was Vicente F. Lopez who, on the suggestion of Rodriguez, secured Maximino Mina to prepare the will, and it was Luz Lopez de Bueno who appears to have gathered the witnesses and physicians for the execution of the will. This faction of the Lopez family was also shown a favor through the orders of Doctor Domingo as to who could be admitted to see the patient.

The trial judge entertained the opinion that there existed "a preconceived plan on the part of the persons who surrounded Tomas Rodriguez" to secure his signature to the testament. The trial judge may be correct in this supposition. It is hard to believe, however, that men of the standing of Judge Mina, Doctors Caideron, Domingo, Herrera, and De Asis, and Mr. Legarda would so demean themselves and so sully their characters and reputations as to participate in a scheme having for its purpose to delude and to betray an old man in his dotage. Rather do we entertain the opinion that each of the gentlemen named was acting according to the best of his ability to assist in a legitimate act in a legitimate manner. Moreover, considering the attitude of Tomas Rodriguez toward Margarita Lopez and her husband and his apparent enmity toward them, it seems fairly evident that even if the will had been made in previous years when Rodriguez was more nearly in his prime, he would have prepared somewhat a similar document.

B. Law.—One of the grounds for disallowing a will is that it was procured by undue and improper pressure and influence on the part of the beneficiary or some other person for his benefit (Code of Civil Procedure, sec. 634[4]). Undue influence, as here mentioned in connection with the law of wills, and as further mentioned in the Civil Code (art. 1265), may be defined as that which compels the testator to do that which is against the will from fear, the desire of peace, or from other feeling which he is unable to resist.

The theory of undue influence is totally rejected as not proved.

III. Judgment

To restate the combined issue of fact and law in this case pertaining to testamentary capacity: Did Tomas Rodriguez on January 3, 1924, possess sufficient mentality to make a will which would meet the legal test regarding testamentary capacity, and have the proponents of the will carried successfully the burden of proof and shown him to be of sound mind on that date? Two of the subscribing witnesses to the will, one a physician, testified clearly to the regular manner in which the will was executed and to the testator's mental condition. The other subscribing witness, also a physician, on the contrary testified to a fact which, if substantiated, would require the court to disallow the will. The attending physician and three other eminent members of the medical fraternity, who were present at the execution of the will, expressed opinions entirely favorable to the capacity of

the testator. As against this we have the professional speculations of three other equally eminent members of the medical profession who, however, were not included among those present when the will was executed. The advantage on these facts is all with those who offer the will for probate.

The will was short. It could easily be understood by a person in physical distress. It was reasonable, that is, it was reasonable if we take into account the evident prejudice of the testator against the husband of Margarita Lopez.

With special reference to the definition of testamentary capacity, we may say this: On January 3, 1924, Tomas Rodriguez, in our opinion, comprehended the nature of the transaction in which he was engaged. He had had two conferences with his lawyer, Judge Mina, and knew what the will was to contain. The will was read to him by Mr. Legarda. He signed the will and its two copies in the proper places at the bottom and on the left margin. At that time the testator recollected the property to be disposed of and the persons who would naturally be supposed to have claims upon him. While for some months prior to the making of the will he had not managed his property, he seems to have retained a distinct recollection of what it consisted and of his income. Occasionally his memory failed him with reference to the names of his relatives. Ordinarily, he knew who they were. He seemed to entertain a predilection towards Vicente F. Lopez as would be natural since Lopez was nearest to his own age. The testator comprehended the manner in which the instrument distributed the property among the objects of his bounty. His conversations with Judge Mina disclosed an insistence on giving all of his property to the two persons whom he specified.

On January 3, 1924, Tomas Rodriguez may have been of advanced years, may have been physically decrepit, may have been weak of intellect, may have suffered a loss of memory, may have had a guardian, and may have been extremely eccentric, but he still possessed that spark of reason and of life, that strength of mind to form a fixed intention and to summon his enfeebled thoughts to enforce that intention, which the law terms "testamentary capacity." That in effect is the definite opinion which we reach after an exhaustive and exhausting study of a tedious record, after weighing the evidence carefully and conceding all good faith to the witnesses for the oppositors, and after giving to the case the serious consideration which it deserves.

The judgment of the trial court will be set aside and the will of Tomas Rodriguez y Lopez will be admitted to probate, without special pronouncement as to costs in this instance.

Avancena, C, J., Johnson, Vittamor, Johns, Romualdez, and Villa-Real, JJ., concur.

Street and Ostrand, JJ., dissenting:

We are of the opinion that the judgment which is the subject of appeal in this case is in all respects correct and should be affirmed. The testator was clearly suffering from senile dementia and lacked the "disposing mind and memory" the possession of which is a condition precedent to the exercise of testamentary power.

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