CASES NOTED

CIVIL LAW

DONATIONS *Mortis Causa:* ARTICLE 728,[1] NEW CIVIL CODE, CONSTRUED; DISPOSITIONS *Post Mortem* SHOULD REVEAL ANY OR ALL OF THE FOLLOWING CHARACTERISTICS: (1) THAT THE TRANSFEROR RETAINS OWNERSHIP (FULL OR NAKED) AND CONTROL OF THE PROPERTY WHILE ALIVE; (2) THAT BEFORE HIS DEATH, THE TRANSFER IS REVOCABLE BY THE TRANSFEROR AT WILL, *Ad Nutum;* (3) THAT THE TRANSFER IS VOID IF THE TRANSFEROR SURVIVES THE TRANSFEREE.

FACTS: This is a petition for review of a decision of the Court of Appeals holding two deeds of donation executed by the late Domingo Bonsato to be void for being donations *mortis causa* accomplished without the formalities required by law for testamentary dispositions.

In both deeds of donation the donor reserved for himself, during his lifetime, only the owner's share of the fruits or produce. It was also stated in the same deeds of donation that the donations were irrevocable; and that the conveyance was due to the affection of the donor for the donees and for services rendered by the latter.

The donations were expressly accepted in the same deeds of donation by the donees.[2]

[1] Article 728, New Civil Code, defines the nature of donations *mortis causa* and provides for what law governs them. Arts. 804 to 806, New Civil Code, prescribe the strict formalities to be followed in the making of a will.

[2] Only donations *inter vivos* need be accepted. Donation *mortis causa*, being in the nature of a legacy, need not be accepted. (Concepcion *et al.* v. Concepcion, G. R. No. L-4225, August 25, 1952, citing Manresa, Vol. 5, 5th Edition (1932), p. 83.)

The sole issue submitted to the court concerns the juridical nature of the donations in question: Do the documents in question embody valid donations, or are they legacies void for failure to observe the formalities prescribed by law for wills (testaments).

HELD: The term "donations *mortis causa*," as commonly employed, is merely a convenient name to designate those dispositions of property that are void when made in the form of donations and not in the form of wills.[3]

If the late Domingo Bonsato had made a donation *mortis causa*, then the documents should reveal any or all of the following characteristics: (a) It conveys no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;[4] (b) Before his death, the transfer should be revocable by the transferor at will, *ad nutum;* but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;[5] and (c) The transfer is void if the transferor should survive the transferee.[6]

None of these characteristics is discernible in the deeds of donation in question. The donor reserved for himself, during his lifetime, only the owner's share of the fruits or produce, a reservation that would be unnecessary if the ownership of the donated property remained with the donor. The same deeds expressly declare the donations to be "irrevocable," a quality absolutely incompatible with the idea of a conveyance *mortis causa* where revocability is of the essence of the act.

That the conveyance was due to the affection of the donor for the donees and for services rendered by the latter, is of no particular significance in determining whether the deeds in question constitute transfers *inter vivos* or not, because a

[3] The principal characteristics of a donation *mortis causa*, which distinguish it essentially from a donation *inter vivos*, are that, in the former, it is the donor's death that determines the acquisition of, or the right to, the property, and that it is revocable at the will of the donor. (Arts. 774, 777, and 828, New Civil Code; Zapanta v. Posadas, 52 Phil. 557.)

[4] Vidal v. Posadas, 58 Phil. 108; Guzman v. Ibea, 67 Phil. 688.

[5] Bautista v. Sabiniano, G. R. No. L-4326, Nov. 18, 1952.

[6] Article 856, New Civil Code; Resurreccion v. Javier, 68 Phil. 699; Martin v. Nacianceno, 19 Phil. 288.

legacy may have an identical motivation. (*Heirs of Bonsato et al. vs. Court of Appeals et al., G. R. No. L-6600*, July 30, 1954.)

SUCCESSION: WEIGHT TO BE ATTACHED TO TESTIMONY OF SUBSCRIBING WITNESSES; IF THE OPINIONS OF TWO HANDWRITING EXPERTS CONFLICT, AND ASSUMING THAT THERE IS DOUBT AS TO WHICH OPINION CAN BE ACCEPTED, THE TESTIMONY OF THE THREE UNINTERESTED SUBSCRIBING WITNESSES SHOULD PREVAIL.

FACTS: This is an appeal by Teodoro Vaño from a decision of the Court of First Instance of Cebu, denying the probate of a document said to be the last will and testament of Jose Vaño.

Jose Vaño died of pulmonary tuberculosis in Cebu at the age of 78 years, leaving a document supposed to be his last will and testament wherein he bequeathed all his properties to Teodoro Vaño. The latter petitioned the CFI of Cebu to have the document probated. Subsequently, Paz Vaño Vda. de Garces and the supposed heirs of Jesus Vaño, brother of Jose Vaño, filed their opposition thereto, alleging that they were entitled to participate in the estate of the deceased in the event intestacy was declared.

At the hearing the three attesting witnesses [7] testified that the testator had been mentally capable of making the will, that each of them had signed the will in the presence of the testator and of each other, and that no pressure or influence whatsoever had been exerted on the testator. On one minor point however the three witnesses differed.

Presented by the opposition, Edgar Bond, an NBI handwriting expert, testified that the signature appearing on the will was a forgery. To counteract the testimony given by Bond, the deposition of Dr. Paul Verzosa, a handwriting expert likewise, was introduced by petitioner's counsel. Verzosa's observation was that any differences noted between the signature in the will and the testator's genuine and accepted signature were due to the age, weakness and illness of the testator, who also was suffering from rheumatism.

[7] With respect to what a subscribing witness attests to, see Padilla, Civil Code Annotated, Vol. II (1953 Edition), pp. 139 to 144.

Finding a discrepancy between the testimony of the three attesting witnesses and adopting the expert testimony of Bond over that of Verzosa, the trial court disallowed the probate of the will.

HELD: The decision appealed from should be reversed and the will of Jose Vaño allowed probate. While the three subscribing witnesses were uncertain as to, first, who had filled out the blank spaces on the will now occupied by the words *11th* and *December*, and, second, whether or not the name *Jose Vaño* appearing on the space at the beginning of the first paragraph was written by the testator, upon which uncertainty the trial court laid emphasis, this court believes that said uncertainty on the part of the three attesting witnesses, far from affecting their veracity, strengthens it because the same refers to a minor detail.

Moreover, the three subscribing witnesses were in no way related to Teodoro Vaño or to the testator; they had no interest in the execution of the will and stood to gain nothing by its probate. Their disinterested testimony therefore cannot be taken lightly.[8]

As to the conflicting opinions of the handwriting experts presented by the parties, assuming that there is doubt as to which of the two is to be accepted, the positive and clear testimony of the three subscribing witnesses should prevail. This doctrine is supported by two cases decided by this Court.[9] (*In the Matter of the Last Will and Testament of Jose Vaño, Deceased. Teodoro Vaño vs. Paz Vaño Vda. de Garces et al., G. R. No. L-6303*, June 30, 1954.)

SUCCESSION: THE PROBATE OF A LOST OR DESTROYED WILL REQUIRES PROOF OF ITS EXECUTION AND VALIDITY, ITS EXISTENCE AT THE TIME OF THE TESTATOR'S DEATH, AS WELL AS ITS CONTENTS.

FACTS: Jose B. Suntay, a Filipino citizen and resident of

[8] Roxas v. Roxas et al., G. R. No. L-2393.
[9] *In Re* Will of Medina, 60 Phil. 391; Sotelo v. Luzon, 59 Phil. 908.

the Philippines, died on May 4, 1934, in the City of Amoy, China, leaving real as well as personal properties in the Philippines; he also left children by a first marriage and a child and surviving spouse by a second marriage. Intestate proceedings were thereafter instituted and Federico Suntay was appointed administrator. On October 15, 1934, the surviving widow filed a petition in the Court of First Instance of Bulacan for the probate of a last will and testament claimed by her to have been executed in the Philippines in November, 1929, by the late Jose B. Suntay. The petition was dismissed and in the meantime the Second World War supervened. After the liberation, Silvino Suntay filed a petition in the intestate proceedings, alternatively praying for the probate of the will executed in the Philippines or of the later will allegedly executed in Amoy, China, on January 4, 1931, which was claimed to have been found among the files, records and documents of the late Jose B. Sunday.

The probate court denied the allowance of the will allegedly executed in the Philippines on the ground of insufficiency of the evidence to establish the loss of said will; it also denied the alleged will executed in China for the reason that it was not proven that the latter had been probated in China.

HELD: Granting that there was a will duly executed by Jose B. Suntay and that it was in existence at the time of and not revoked before, his death, still the testimony adduced falls short of the legal requirement that the provisions of the last will *must be clearly and distinctly proved by at least two credible witnesses.*

As to the will claimed to have been executed in Amoy, China, the law on the point is Section 1, Rule 78 of the Rules of Court, which provides: "Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed and recorded by the proper Court of First Instance in the Philippines."

The fact that the municipal district court of Amoy, China, is a probate court must be proved. The law in China with respect to procedure in probate proceedings must also be proved. The legal requirements for the execution of a valid will in China in 1931 should also be established by competent evidence. There is no proof on this point. In the absence of proof that the municipal district court of Amoy is a probate court and there being no evidence of Chinese laws of procedure in probate matters, it may be presumed that the proceedings for probating wills in Chinese courts are the same as those provided for in our laws on the subject. It is a *proceeding in rem* and for the validity of such proceedings, publication or personal notice, or both, to all the interested parties must be made. The interested parties in this case were known to reside in the Philippines. The evidence shows that no such notice was received by the interested parties. The decree appealed from is therefore affirmed. (*In Re Testate Estate of the Deceased Jose B. Suntay, G. R. Nos. L-3087 and L-3088*, July 31, 1954.)

SUCCESSION: ILLEGITIMATE CHILDREN; ARTICLE 945, SPANISH CIVIL CODE, APPLIED;[10] THE NATURAL SISTER OF THE DECEASED, ALTHOUGH POSSESSING AND ENJOYING THE SAME STATUS OF NATURAL CHILD AS THE LATTER IS NOT HER LEGITIMATE AND COLLATERAL SUCCESSOR.

FACTS: The late Perfecto Gabriel executed his last will and testament, which was duly probated, in which he devised a certain parcel of land to Soledad Rodriguez, Obdulia Rodriguez and Lucia Mise.

Lucia Mise, alleging that Soledad and Obdulia had died without legitimate heirs, asked that the shares of Soledad and Obdulia be adjudicated to her so that she would become the sole owner of the property in question. Mercedes Rodriguez opposed the petition, alleging that she was a legitimate successor of Soledad Rodriguez for the reason that she was the natural sister of the latter; Mercedes Rodriguez however admits that both she and Soledad have not been duly acknowledged. Obdulia died without any successor.

The issue is whether or not Mercedes Rodriguez is the legitimate successor of Soledad Rodriguez.

HELD: Although Article 945, Spanish Civil Code, does not mention acknowledgment, such a requirement is understood since the section under which such article comes is entitled "Ac-

[10] Art. 945 of the Spanish Civil Code has been amended and incorporated as Article 994 of the new Civil Code.

knowledged Natural Children," and deals with their right to succeed; it has nothing to do with the rights of simple natural children who have not been acknowledged.[11] (*Mise v. Rodriguez, G. R. No. L-6087*, July 14, 1954.)

DAMAGES: RIGHT TO MORAL DAMAGES IS BASED ON EQUITY; THEREFORE, HE WHO COMES TO COURT DEMANDING MORAL DAMAGES MUST COME WITH CLEAN HANDS.

FACTS: This is an appeal from a judgment of the Court of First Instance, dismissing the complaint filed by Domingo Mabutas. In August, 1950, the defendant Company, which was furnishing electric current to the residents of Calapan, Oriental Mindoro, disconnected the electric current of the plaintiff due to the failure of the latter to pay his electric bill for the month of July.

The evidence discloses that it was the practice of the Company to make the 15th of every month the deadline for payment of bills covering the preceding month; this deadline was moved to the 17th, inasmuch as the Company had no collector and the customers had to go to its office to pay their bills. All bills as a whole carried the following notice: "Your lights will be disconnected if you do not pay your bill at 12:00 noon on the 17th of this month." The bill sent to Mabutas however did not bear such notice.

On the 17th day of July, the current of Mabutas was disconnected for having failed to pay his bill. At 8 o'clock that evening, Mabutas went to the office of the Company and settled his account. After doing so, he requested the manager to have his line reconnected that same night inasmuch as his wife was on the family way and one of his children was seriously ill. The reconnection however was made only on the following day and, due to this, Mabutas brooded the entire night and was ridiculed the following day by his office mates.

[11] Puzon v. Ortega, 55 Phil. 756.
"The brothers and/or sisters must be illegitimate to succeed... For if they be *legitimate* collaterals, they cannot inherit from the illegitimate child, because Article 992 (new Civil Code) prohibits the legitimate children of the illegitimate child's father or mother from inheriting *ab intestato* from said child." (Padilla, Civil Code Annotated, Vol. II (1953 Edition) p. 426.)

Upon the facts, the trial court found that the Company had violated the rules and regulations of the Public Service Commission, as a result of which Mabutas "suffered wounded feelings, moral shock and social humiliation." He was however denied moral damages because Art. 2219[12] of the New Civil Code did not cover his case. Both parties appealed.

HELD: In order to carry out effectively the policy of the Public Service Commission, the 48 hours' notice required must be given after the customer has incurred in default in the payment of his monthly account. In the present case, the plaintiff incurred in default on July 17, at 12:00 noon, so that thereafter he was entitled to 48 hours' written notice that his line would be disconnected.

The Civil Code provides that only persons who wilfully cause loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for damages.[13] As to Mabutas' right to damages, we find ourselves constrained to agree with the trial court that he is not entitled to moral damages, inasmuch as the right to moral damages is based on equity and the principle is well known that he who comes to court demanding equity must come with clean hands. Mabutas cannot claim in this case to have come to court with clean hands; the evidence discloses affirmatively and without contradiction that he had defaulted in the payment of his accounts and that he came to pay his bill after working hours; the company was therefore in no position to reconnect his line immediately.

Even assuming therefore that the act of the Company constituted a breach of public policy, we are constrained to deny Mabutas his right to moral damages because Art. 21 of the Civil Code, which he relied upon, must necessarily be cons-

[12] Art. 2219, New Civil Code, provides for the recovery of moral damages in the following analogous cases:
a. Criminal offenses resulting in physical injuries.
b. *Quasi-delicts* covering physical injuries.
c. Seduction, abduction, rape.
d. Adultery or concubinage.
e. Illegal or arbitrary detention or arrest.
f. Illegal search.
g. Libel and other forms of defamation.
h. Malicious prosecution.
i. Disrespect to the dead.
j. Human relations.

[13] Art. 21, New Civil Code, provides for other circumstances under which moral damages are recoverable.