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Natividad I. Vda. De Roxas, Petitioner-Appellant, vs. Maria Roxas, et al., Oppositors-Appellees, G. R. No. L-2396, December 11, 1950.

1. *WILLS; PROBATE; TESTIMONY OF ATTESTING WITNESSES, WHEN ENTITLED TO FULL CREDIT.* — Where the reputation for probity of the three attesting witnesses has not been impeached their testimony confirmatory of the due execution of the will, deserves full credit.
2. *ID.; ID.; ID.; RELATIVES OF TESTATOR OR HEIR NOT DISQUALIFIED TO ACT AS ATTESTING WITNESSES.* — The law does not bar relatives either of the testator or of the heirs or legatees from acting as attesting witnesses to the will.
3. *ID.; ID.; ID.; FINDINGS OF TRIAL COURT ENTITLED TO GREAT WEIGHT; EXCEPTION.* — Ordinarily, the findings of fact of a trial court, because of the benefit of having seen and heard the witnesses, are entitled to great weight. But it is not so, where the court relied on the conclusion of experts and failed to analyze the oral evidence.
4. *ID.; ID.; ID.; POOR STATIONARY, LACK OF COPY, OR NON-INTERVENTION OF LAWYER OR NOTARY, DOES NOT AFFECT VALIDITY OF WILL.* — The validity of a will is not affected by the fact that it is written on poor stationary, that it was not prepared by a lawyer or notary public, or that no copies were made.
5. *ID.; ID.; ID.; TESTIMONY OF ATTESTING WITNESSES TO PREVAIL OVER EXPERT OPINIONS.* — The positive testimony of three attesting witnesses in favor of the due execution of the will ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities. The law, in requiring the production of all the attesting witnesses present in the Philippines, impliedly recognizes the almost conclusive weight of their testimony.
6. *ID.; ID.; ID.; WILL NEED NOT BE WRITTEN IN ONE CONTINUOUS ACT.* — The law does not require that the will should be written in one continuous act.
7. *ID.; ID.; ID.; REVOCATION; CRUMPLING OF WILL BY TESTATOR WITHOUT INTENTION TO REVOKE.* — The fact that the testator crumpled the will does not amount to revocation unles it is shown that the crumpling was caused with intention to revoke.

Claro M. Recto and *Francisco A. Rodrigo* for appellant.

Vicente J. Francisco, Estanislao A. Fernandez, Jr., and *Gerardo M. Alfonso* for appellees.

DECISION

PARAS, *J.*:

Pablo Roxas died in the Municipality of Bulacan, province of Bulacan, on July 14, 1946. On August 10, 1946, Natividad Icasiano (the widow) filed in the Court of First Instance of Bulacan a petion for the probate of a will alleged to have been left by Pablo Roxas, devising all his properties to Natividad Icasiano and Reynaldo Roxas (an adulterous son). The will is typewritten and worded in Tagalog and the attesting witnesses are Jacinto Y. Enriquez, Fortunato R. Gupit and Martin Rodrigo. The will is dated, in the body, January 1, 1945. No date is given in the attestation clause.

An opposition was filed by Maria Roxas and Pedro Roxas (sister and brother of Pablo Roxas) on the ground that the alleged will was not executed and attested as required by law, and that, in any event, it was intended as a mere formal request which was, however, subsequently revoked as shown by the fact that it was crumpled with intent to destroy. Upon motion for bill of particulars filed by the petitioner Natividad Icasiano), the oppositors (Maria and Pedro Roxas) alleged that the will is vitiated by the following formal defects: "(a) The alleged last will and testament was not attested and subscribed by three or more credible witnesses in the presence of the testator and of each other; (b) The testator and the instrumental witnesses did not sign the only page of the will on the left margin, nor was the page numbered in letters on the upper part of the sheet; (c) The attestation clause does not state that the alleged witnesses thereto witnessed and signed the will in the presence of of the testator and of each other."

After trial, the Court of First Instance of Bulacan rendered a decision disallowing the probate of the will. The lower court concluded that the body of the will was typewritten and signed by the testator on a date or occasion different from and anterior to the date or occasion when the attestation clause was typewritten and signed by the attesting witnesses, with the result that the will was not signed by the testator in the presence of the witnesses, and by the latter in the presence of the testator and of each other, as required in section 618 of Act No. 190 as amended by Act No. 2645. This conclusion was motivated by the following circumstances enumerated in the decision: "(a) That the paper on which the alleged will, Exhibit D, is written has been folded and crumpled; (b) That the body of the will was typewritten before the signature of Pablo M. Roxas had been affixed thereon and before it had been folded and crumpled; (c) That after it had been folded and crumpled, it was smoothened in order to eliminate or minimize as much as possible the folds and wrinkles, preparatory, to the writing of the attestation clause on the same typewriter which was used in typewriting the body of the will; (d) That the attestation clause was typewritten, single space, and a deliberate effort was exerted to make it appear that it was written by the testator himself at the same time with the body thereof, but the tell-tale letter 'o' and the inequality of the marginal alignments of both the body and the attestation clause have betrayed the vain effort; (e) That the texture and fiber of the paper on the portion on which the signature of the attesting witnesses were affixed had been disturbed and affected by the interval of time and the ordinary exposure of the paper to the atmosphere between the signing of the testator and the attesting witnesses, which fact is revealed by the greater penetrations of the ink in the signature of Pablo M. Roxas; (f) That had the testator and the attesting witnesses signed on the same occasion, the probability was that one or two fountain pens only should have been used instead of three as testified to unanimously by the expert witnesses both for the proponent and the oppositors."

The petitioner has appealed. Her counsel insist that the testimony, unanimous in all essential points, of the three attesting witnesses should be given controlling weight. Counsel for oppositors, upon the other hand, argue that the testimony of Maria Roxas, in conjunction with the opinions of experts, should prevail.

The testimony of Fortunato Gupit, Jacinto Y. Enriquez and Martin Rodrigo (the attesting witnesses) tends to show that they were in the house of Rosario Vda. de Icasiano (mother-in-law of Gupit) in barrio Sta. Ana, municipality of Bulacan, province of Bulacan, on January 1, 1945. Between two and three in the afternoon Pablo Roxas showed up and, approaching Gupit who was then reading a book, asked him to go to the Sala with Roxas. The latter got from his hip pocket a folded sheet of paper (the will here in question) and asked Gupit to read it. In the meantime Roxas proceeded to the dining hall where a mahjong game was being played and called Enriquez and Rodrigo who thereupon went to the Sala and were asked to read the will previously handed to Gupit. Roxas then made the request for the three to act as witnesses. Roxas, using his fountain pen, signed it in the presence of Gupit, Enriquez and Rodrigo. Gupit then signed with his own pen and, noticing that ink in his signature was spreading, asked for a blotter. Roxas got a blotter from a nearby writing desk and gave it to Gupit who accordingly applied it. Enriquez and Rodrigo, using the pen of Gupit, took their turns in signing the will, the blotter being also applied. Thereafter, Roxas refolded the document and inserted the same in his hip pocket.

Fortunato A. Gupit is a certified public accountant. He is the dean of the College of Business Administration and the comptroller of the Arellano University. Jacinto Y. Enriquez comes from a distinguished family in Bulacan and is a student in the

University of Santo Tomas. Martin Rodrigo is a businessman and landowner. Gupit is the husband of a half-sister of the petitioner; Enriquez is a second cousin of petitioner; and Rodrigo is the husband of a deceased cousin of petitioner.

The testimony of oppositor Maria Roxas tends to show that on December 30, 1944, Pablo Roxas asked from her a sheet of typewriting paper. At about one in the afternoon of January 1, 1945, Pablo Roxas came back to the house of Maria and showed the will in question signed by Pablo, clean and uncrumpled, and without any attestation clause. Pablo executed the will as it was shown to Maria, as a mere ruse to make the petitioner continue loving Reynaldo Roxas (adulterous son of Pablo Roxas).

Two handwriting experts (Amadeo M. Cabe and Jose C. Espinosa) were employed by the oppositors and their testimony tends to support the theory that the body of the will up to the signature of Pablo Roxas was typewritten on a plain sheet of paper; that the sheet was subsequently removed from the typewriter and signed by the testator; that the sheet, after being crumpled and folded, was reinserted in the typewriter for the insertion of the attestation clause which was signed afterwards by the three attesting witnesses. This expert opinion is based more or less on the circumstances enumerated in the appealed decision hereinbefore quoted, except that while the trial court observed that there are "greater penetrations of the ink in the signature of Psblo M. Roxas," Espinosa and Cabe found that there is greater diffusion of ink in the signatures of the attesting witnesses.

After a careful examination of the record in the light of contentions of the parties, we have no hesitancy in holding that the appealed decision is erroneous. This case is one in which the will is couched in a language known and spoken by the testator and the signature of the testator and the signatures of the three attesting witnesses are admittedly genuine. Such being the situation, the question that arises, far from requiring the intervention of experts, is one merely of credibility of witnesses. In our opinion, the testimony of the three attesting witnesses — confirmatory of the due execution of the will — deserves full credit, not only because of their qualifications (hereinbefore pointed out) but because their reputation for probity has not been impeached. The fact that they may have come relationship with the petitioner is not sufficient to warrant the belief that they did not tell the truth. The law, in the first place, does not bar relatives either of the testator or of the heirs or legatees from acting as witnesses. In the second place, in the normal course of things and to be sure that the witnesses would not let the beneficiaries down, the testator may be inclined to employ, as attesting witnesses, relatives of such beneficiaries, if not wholly disinterested persons. In the third place, under the will, Reynaldo Roxas (adulterous son of Pablo Roxas) is named a legatee on equal footing with the petitioner, and the attesting witnesses are not related whatsoever with him. In the fourth place, whereas the three attesting witnesses have no direct interest in the subject matter of the will, oppositor Maria Roxas, like the other oppositor Pedro Roxas, is an intestate heir of Pablo Roxas and, therefore, naturally interested in having the probate of said will disallowed.

Ordinarily, the findings of fact of a trial court, because of benefit of having seen and heard the witnesses, are entitled to great weight. But, in this case, the lower court relied on the conclusions of experts, and this is obvious from (1) its recital of the circumstances that led it to believe that the will was not executed in accordance with law, and (2) its failure to analyze the oral evidence.

It is alleged that the testator had another adulterous child (Aida), sister of Reynaldo, and it is unnatural that he would have failed to provide for said child, if not for his brother and sister (herein oppositors) in the will, if the testator really intended to dispose of his properties under said will. This is again a mere conjecture which should not prevail over the testimony of the attesting witnesses, not to mention the fact that there is nothing in the record to show conclusively that the testator ever admitted that Aida is another adulterous child, coupled with the circumstance that the latter did not live with the testator. As to the omission of the herein oppositors, there might have been a reason known only to the testator why they should be excluded, or why they need no participation.

That the will in question was written on poor kind of stationery, or that it was not prepared by a lawyer or notary public, or that no copies were made, is of no moment. It should be borne in mind that the will was executed in January, 1945, when everything was practically in confusion due to the impending battles for the liberation of the Philippines, and when paper supply was almost exhausted. Aside from the fact that a will need not be prepared by or acknowledged before a notary public, it is not improbable that testator, before the date of the will in question, had prepared or seen previous wills and therefore was familiar with its wording and legal formalities, and that due to the abnormal time he undertook to prepare said will without the aid of a lawyer or notary public and without making copies thereof.

We do not venture to impute bias to the expert introduced during the trial, but we hasten to state that the positive testimony of the three attesting witnesses ought to prevail over the expert opinions which cannot be mathematically precise but which, on the contrary, are "subject to inherent infirmities." In the instant case, it is significant that while Amadeo M. Cabe observed that four different fountain pens were used in signing the will, Jose C. Espinosa was unable to determine whether the same pen was used for all the signatures. Upon the other hand, Prof. H. Otley Beyer believes that one pen was used for the testator's signature, and another pen for the signatures of the witnesses.

Too much emphasis and effort, through experts Cabe and Espinosa, had been placed on the supposition that after the body of the will had been typewritten, the sheet was removed from the machine and, after having been folded and crumpled, it was replaced in the typewriter for the insertion of the attestation clause. The law does not require that the will should be written in one continuous act; and the supposition does not necessarily, much less conclusively, prove that the signing was not done on one occasion. For the difference in the ink diffusions and penetrations between the signatures of the testator and those of the three attesting witnesses may not be due solely to the folding and crumpling of the sheet on which the will is written, but on such other factors, as class of ink, class of pens, habit of writing, condition of paper, and the use of blotter. Speculations on these matters should give way to the positive declarations of the attesting witnesses. The law impliedly recognizes the almost conclusive weight of the testimony of attesting witnesses when it provides that "if the will is contested, all the subscribing witnesses present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court." (Section 11, Rule 77, Rules of Court.)

The contention made by the appellees in their opposition that the will was revoked by the testator when he crumpled the same, requires no serious consideration, in view of their failure to show that the crumpling was caused with the intention to revoke. Appellees' reference to other formal defects of the will (other than that hereinbefore dispose of) also needs no inquiry, because it is not pressed herein.

Wherefore, the appealed judgment is reversed and the will in question is hereby declared probated. So order, with costs against the appellees.

Feria, Bengzon, Tuazon, Jugo and Bautista Angelo, J. J.; concur.

Mr. Chief Justice Moran, Justices Pablo and Reyes concur with the separate dissenting opinion of *Mr. Justice Montemayor.*

Mr. Justice Padilla took no part.

MONTEMAYOR, *J.*, Dissenting:

It is a matter of deep regret to me that I have to disagree with my colleagues who signed the learned opinion penned by Mr. Justice Paras. But fully convinced of the correctness of the findings of the trial court based on the evidence on record. I am constrained to dissent and to give my reasons for doing so.

To the statement of facts made in the majority opinion, I would like to add other undisputed facts which I believe are

not only pertinent but may also shed additional light and throw decisive weight in the correct determination of this case. It is a fact testified to not only by Maria Roxas for the oppositors but partly and substantially corroborated by Natividad Icasiano, the petitioner and her witness, Remedios Logroño, that besides Reynaldo Roxas, the deceased Pablo Roxas had another illegitimate child by his mistress Remedios Logroño, a daughter named Aida, a few years younger than Reynaldo, who remained in the custody of her mother. As to Reynaldo, when a little over a year old he was taken to the marital home of Pablo Roxas and his wife Natividad Icasiano in the year 1940, to live with them because they had no children of their own. Pablo not only failed to tell his wife that Reynaldo was his own son, fruit of adulterous relations with Remedios, but he falsely told his wife that the boy whose mother was already dead came from an orphanage. According to Natividad it was only after Pablo's death that she found out Reynaldo's true paternity.

There are several theories, more or less plausible as to the intervention of Pablo Roxas in the preparation of the supposed will, Exh. "D", and what he intended by it. One of them is that Pablo Roxas did not design Exh. "D" as his will According to Maria Roxas, her brother Pablo told her on Jan. 1, 1945, when he showed her Exh. "D" with his signature on it but without the attestation clause nor the signatures of attesting witnesses, that he did not intend said document as his last will but only to counteract his wife's natural reaction and to calm and assuage her inevitable feeling of righteous anger and indignation when after his death, she came as she was bound to know that Reynaldo was his own son by his mistress Remedios; because if she were led to believe by the document that all his property would go to her and to Reynaldo in equal portions, his supposed act of liberality might at least temporarily, induce her to overlook and forgive his infidelity and prevent her from losing her affection for the boy and sending him away from her.

At first blush, this theory might appear to be far-fetched and unreasonable because husbands do not usually commit such acts of deception on their wives and widows and expect to get away with it. But, let us not forget that Pablo Roxas was not only capable of but actually succeeded in deceiving his trusting and credulous wife for about six years, from 1940 until 1946 when he died, leading her to believe that the child Reynaldo whom he had brought into their home, was a total stranger and an orphan whom he had gotten from a charitable institution out of pity and to enliven their childless home. Not only this but during those six years of deception, far from being a repentant sinner, he continued his illicit and extramarital relations which resulted in the subsequent birth of another illegitimate child, Aida.

Moreover, it is rather difficult to believe that Pablo Roxas should deliberately execute a will like Exh. "D" wherein he entirely forgot his other younger child Aida, not giving her even a centavo from his considerable estate. The same thing may be said of his mistress, Remedios Logroño. That he loved Remedios or at least liked her, there could be no doubt. She was much younger than his wife. Not a few marital troubles, even tragedies have their origin in elderly husbands tiring of their elderly wives and feeling attracted to and falling for younger women. At least Pablo had sufficient attachment to and felt enough affection for Remedios so as to forget his marital vows and cohabit with her for years and let her be the mother of his two children the illegitimate.

It should be borne in mind that Pablo Roxas was quite a wealthy man. Considering the products of his properties alone during his long married life with Natividad, there must be considerable conjugal property which he left upon his death. Therefore he must have known that out of the partnership property alone, Natividad would be well provided for in her widowhood; and yet under Exh. "D" he would be giving her one-half (1/2) of all his exclusive properties, the other half to one of his two children, and absolutely nothing to his other younger child, to their mother, and to his only brother and sister, the oppositors herein.

Ordinarily, legacies are made to those who enjoy the affection of the testator and who in his opinion need the bequest. Pablo Roxas had no legitimate children of his own and so could do with his estate as he wished, unhampered by legitimes which may be claimed by forced heirs. It would have been more natural for him to have bequeathed his estate or a part of it not only to Reynaldo but also to his daughter Aida and to their mother Remedios Logroño. It would have equally been more natural for him to have remembered his brother and sister Maria and Pedro, especially since the bulk of his exclusive properties was a donation from their common uncle Alejandro Roxas. But as it is, under the supposed will, he forgot and ignored them all and heaped all his bounty and all his liberality on only one child of his and on his wife who apparently was in no need of such bounty.

Again, when a person wants to make a will involving a considerable and valuable estate as is involved in the present case (worth much more than fifty thousand pesos), to be sure that the instrument is validly prepared in order to insure its probate, he would avail himself of the services of a lawyer, at least a notary public, presumed to be versed in such legal matters. The preparation of a will requires special and accurate legal knowledge so as to comply with the various imperative requirements of the law. How often have even lawyers themselves overlooked a small detail required by law, resulting in the rejection of the parties of wills by the courts. Pablo Roxas was by no means an ignorant man. He had been Mayor of his town for two terms. He was also a dentist. He must have realized that a layman should not recklessly and blithely prepare a will and expect it to conform with all the requirements of the law and pass the scrutiny of the courts. So, it is to be reasonably expected that if he really wanted to execute a will, he would have had it prepared by a lawyer or a notary public. Besides, realizing that it was an important document, he would have had copies of it made and kept in different places so that if the original by accident or force majeure was lost or destroyed, his wishes about the disposition of his property after his death would not be frustrated. But as it is, the parties are agreed that Pablo Roxas himself prepared and typed the body of Exh "D", without the benefit of legal advice and without making copies, and afterwards allowed it to be folded, not once but several times, and otherwise crumpled.

The foregoing considerations are in support of the theory that Pablo Roxas did not intend to make a will. A corollary theory is that after signing the body of Exh. "D", and without the attestation clause, he gave it to his wife Natividad. After his death, Natividad and here relatives believing that Pablo really intended Exh. "D" as his will, but finding it to be incomplete proceeded to add the attestation clause, and the attesting witnesses being convinced that the signature of Pablo Roxas on it was genuine and to carry out what they thought to be the wishes and will of the deceased, in good faith signed the attestation clause, believing that by so doing they were merely certifying that the signature was that of Pablo Roxas. It is of course unnecessary to state that under this theory, Exh. "D" may not be allowed probate.

The theory entertained and contended for by the petitioner is that Pablo Roxas really intended to make a will. That he prepared and typewrote the body of Exh. "D", is not disputed. But it is a fact equally undisputed that as Exh. "D" now appears, it was made irregularly and in violation of all rules of uniformity, symmetry and continuity. The body of the instrument is typewritten double spaced, and with the signature of Pablo Roxas, it fairly occupies the middle of the page or paper, considering the space or margin left above and below. Symmetry was observed. Then the attestation clause was added, not with the same double spacing but in single space, thereby destroying uniformity in spacing. Furthermore, the clause is crowded into the remaining space below, and despite the single spacing to save room it almost reaches the bottom of the page, hardly leaving enough space for the signatures of the witnesses. Symmetry is thus sacrificed. What is more, and this is important, the vertical and horizontal alignment of the left margin and the lines of the attestation clause do not coincide with

those of the body of Exh. "D". Moreover, the types of the letters in the attestation clause are lighter than those in the body of the instrument, indicating a different hand with a lighter touch on the keys. In addition, we notice and find that some letter on the body of the instrument are blurred, especially letter "o," whereas the same letters in the attestation clause are clear, showing that the attestation clause was typewritten after the types of the machine had been cleaned and brushed of accummulated dirt. All this leads to the logical conclusion and the finding that after the body of Exh. "D" was typewritten, it was removed from the typewriter; that later, perhaps much later the types of the machine were cleaned and brushed and the same paper, Exh. "D", was re-inserted and the attestation clause typewritten by another hand, not Pablo Roxas who typewrote the body. Furthermore, and this is equally important, while the crevices and folds in the paper on the body of Exh. "D" bear and show the ink of the letters typed on them, indicative of the body having been typed when the paper was still smooth, unfolded and uncrumpled, on the other hand the ink in some letters in the attestation clause, especially the letter "a" in the word "sa", as more graphically demonstrated in the photographic enlargement, did not penetrate and reach the crevices and folds in the proper caused by the folding or the crumpling, equally indicating that the attestation clause was typed after the paper had been folded and crumpled, perhaps long after the typing of the body of Exh. "D".

Then, we come to the more important detail. The ink lines in the signature of Pablo Roxas are clear and distinct and well-defined even when those ink lines meet the folds or crumplings or breaks in the paper. On the other hand, in the signatures of the attesting witnesses, where the ink lines meet those same vertical folds, breaks and crumplings, said ink lines have spread out and become not well defined because of the diffusion of the ink. This is revealed by the photographic enlargement and even to the naked eye. All this goes to show according not only to the expert testimony but also our own every day experience and observation that when Pablo Roxas signed Exh. "D", it was still unfolded and uncrumpled, and the surface and texture of the paper still smooth, undisturbed and unbroken, while at the time that the attesting witnesses affixed their signatures, the paper had already been folded and crumpled as shown by the diffusion of the ink which had gone in and crept and spread out into the crevices and breaks in the paper.

Prof. Beyer who was presented as expert witness by the petitioner admitted the possibility that judging from the lighter impression or type of the letters of the attestation clause, said clause may have been typewritten by a hand other than the one which typewrote the body. Attempting to explain the diffusions of the ink on the ink lines on the signatures of the attesting witnesses, he stated that they may be due to the class or variety of ink used in the signatures, or to a difference in the texture of the paper itself or the manner in which the signatures are affixed, some writing with a heavy hand, others with a lighter hand, and whether or not a blotter was used.

Chemical Engineer Espinosa, an expert introduced by the oppositors, on the basis of his expert training and knowledge of inks, acquired when he was employed in the Bureau of Science and placed in charge of the purchase of inks by the Government, categorically and without contradiction assured the court that the ink used in the signature of Pablo Roxas and in those of the attesting witnesses was of the same class or kind, namely, iron nutgall. So, the possibility of a difference in the ink used may well be ruled out. As to the other possibilities, assuming for a moment that all the three attesting witnesses signed with a heavy hand and on three attesting witnesses signed with a heavy hand and on a portion of Exh. "D" which happened to be porous, and used a blotter, still it is not explained why the diffusions of the ink on the ink lines of their signatures was not general and all over, but occur only when said ink lines meet the fold, breaks and crumplings in the paper.

From the foregoing, and in the assumption that Pablo Roxas really intended to make a will, we may gather the following inferences which to my mind are reasonable and logical. Pablo Roxas who, according to undisputed evidence owned an Underwood typewriter and must have been quite familiar with, if not adept, in typing ordinary documents but lacking the legal knowledge and training required for preparing a will, and ignoring the necessity of attesting witnesses, most likely typewrote the body of Exh. "D" from a rough draft he had prepared, and then signed it. As already stated, the body standing alone, with the signature, occupies the middle of the page, and perfectly complies with the rule of symmetry and uniformity in spacing and conforms with the good taste of a good typist. He folded the document and kept it or else gave it to his wife Natividad to keep. Afterwards, perhaps long afterwards, he learned or was informed that the will was incomplete because of the absence of an attestation clause and the signatures of attesting witnesses. He then had the attestation clause typewritten by someone who knew the phraseology of such a clause, by re-inserting in the typewriter the paper, Exh. "D", but after it had been folded and more or less crumpled. Then, he proceeded to locate the three attesting witnesses, told them that he had executed a will and wanted them to attest to it. These witnesses either being familiar with his signature or being assured by him that the signature above the typewritten name "Pablo Roxas" was his, readily signed the attestation clause either together on the same occasion or singly on different occasions as he found them. On the basis of our every day observation and experience, this signing by witnesses of clause and certificates attesting to the signature of a person signing the body of a document, without actually seeing him sign, is nothing strange or unusual. Not infrequently, we see a deed of sale or mortgage prepared by or on behalf of the parties, signed by them and later taken to a notary public for acknowledgment, and the notary public more often than not, upon being assured that the document expresses the wishes and true intent of the parties, makes out and signs his certificate to the effect that the parties or at least the party conveying the land or assuming the encumbrance was known to him and had appeared before him, signed and executed the document and had given the assurance that the conveyance or the assumption of the obligation was his free act and deed, when as a matter of fact, said party may never have appeared before the said notary, may not be known to him personally, much less, had given the assurance already mentioned. How often judicial officers and officials authorized to administer oaths have placed on affidavits their certificates to the effect that the affiants had been sworn and afterwards signed the affidavit in his (official's) presence, when in fact the affiant had never taken the oath, and the affidavit had been prepared and signed somewhere else and all the intervention of the official was to ask the affiant if the signature on the affidavit was his, and the contents are true and made voluntarily and without the use of force.

The signing of the attestation clause by the three attesting witnesses in this case may have been done following this quite usual and ordinary practice and all in good faith. Under this theory, it is quite clear that Exh. "D" was not duly attested to under the law which expressly requires that the testator sign in the presence of the attesting witnesses and that said witnesses sign in the presence of the testator and in the presence of each other.

But there is even reason to believe that under the last aforementioned theory the attesting witnesses were not together on the same occasion and could not have signed in the presence of the testator and of each other. Assuming that Pablo Roxas had selected the three attesting witnesses to sign the attestation clause, it is hard to believe that all said witnesses could have been found by him in the same house and the same minute without any previous concert or arrangement. Pablo Roxas was then living in the barrio of Taliptip while the house where he was supposed to have found them was in a different barrio. All the three attesting witnesses assured the court that they did not know that

Pablo Roxas had executed a will and that they were going to be witnesses thereto. His finding them there in that house and their being all together at the same time was according to them, a pure coincidence, and to me, too much of a coincidence, to merit belief. Ordinarily, when a testator executes a will he notifies his witnesses long in advance to insure attendance and then sends for them to come to his house. The execution of such a document is a solemn occasion, done only once in a lifetime. A testator does not usually go out, carrying his will, hunting for witnesses. But here, without any previous notification or agreement, Pablo leaves his barrio, goes to the barrio of Sta. Ana and there in one house, strangely enough, finds his three selected witnesses all ready for the signing. And all this in spite of the fact as shown by the evidence for the oppositors that in his own barrio of Taliptip Pablo had other friends of his own confidence, and naturally that of his family, who could well have been utilized as attesting witnesses so as to save him the trouble and the hazard of making a trip of 4-1/2 kilometers to Sta. Ana, in a horsedrawn vehicle, with a stream spanned by a destroyed bridge to negotiate. It is a story that requires considerable effort to believe.

There is another detail which tho apparently of little import, nevertheless may merit consideration. While the body of the document, Exh. "D", bears the date — January 1, 1945, when Pablo Roxas signed it, the attestation clause has no date, neither does it make reference to the date appearing on the body. Almost invariably, an attestation clause is made to bear a date, the same day that appears on the body of the will when the testator signed it, or else the clause makes reference to said date on the body of the will. At least that is the standard form as may be gathered from books on the subject such as Jones Legal Forms Annotated, ninth ed., pp. 2069-2071, Fisher's Legal and Business Forms, 1948 ed. pp. 436, 437, including Modern Philippine Legal Forms, Vol. II, pp. 1146-1147, by Tañada and Rodrigo, the latter being one of the attorneys for the petitioner-appellant. But why the absence of a date on the attestation clause on Exh. "D", or at least a reference to the date on the body? Was it a mere oversight, or was it because the witnesses actually signed on a day later than January 1, 1945, when Pablo Roxas signed the will, and said witnesses could not in conscience state on the attestation clause that they all signed it on January 1, 1945?

The majority opinion asserts that the best evidence as to the due execution of a will is the testimony of the attesting witnesses, and that their testimony on this point is practically conclusive. This may be true when there is no opposition to the probate of the will. But when the probate is opposed, evidence in the form of oral testimony to disprove the alleged due execution of the will, is of course admissible and the testimony of witnesses for the opposition is just as competent, and if worthy and credible can match, even outweigh that of the attesting witnesses. Otherwise, if with the testimony of attesting witnesses to a will we are going to disregard and ignore any other evidence about the due execution of the instrument, then we would be opening wide the door to the commission of fraud or forgery in the execution and probate of this all-important instrument. An instituted heir or a legatee in a forged will could then get three of his friend to sign the attestation clause, and if the three later testified in court that the supposed testator signed the instrument in their presence and that they signed in his presence and in the presence of each other, then the rightful heirs would forever be precluded from proving the forgery and asserting their rights in the inheritance.

> "The testimony of attesting witnesses to a will may be overcome by any competent evidence. . . . Such evidence may be direct, or it may be circumstantial; and expert and opinion evidence is just as competent as any other evidence. . . The rule contended for by appellant would frequently baffle justice and give judicial countenance to many a high-handed fraud. — Opinion by Mr. Justice Dawson in Baird vs. Shaffer, 101 Kan. 585, 168 Pacific 836 (1917)."

Sometimes, the condition and physical appearance of a document are not only competent evidence but they constitute a valuable factor which if correctly considered and evaluated in the light of surrounding circumstances, can greatly help the court in determining whether said document is genuine or forged. Animated witnesses may forget or may exaggerate or understate what they know, saw or heard or what they did. They may be biased and depart from the truth or state halftruths to mislead the court in order to favor one party and prejudice another. Not so with silent witnesses such as surrounding circumstances and facts found on the paper or object itself. Such mute witnesses play no favorites. If correctly understood and interpreted, they show and reveal the whole truth, in all its nakedness, hiding nothing, forgetting nothing, and without prejudice or mental reservation.

The majority opinion says that the determination of this case in great measure hinges upon the credibility of the witnesses. To this, I heartily agree. The trouble is that for no valid reason that I can see, the majority completely ignored the findings of the trial judge, the same official who presided over all the hearings and saw all the witnesses testify and observed their demeanor in court and was in a better position to assess the credit which each witness merits and the weight to be given his testimony; the same judicial officer who questioned and cross-examined the witnesses including the experts and even looked in the stereoscopic microscope to carefully observe the enlargements and magnifications of the portions of Exh. "D", made by experts for the opposition. That party even made an offer to bring the stereoscopic microscope to this Court so that the members of this Tribunal through personal observation and with the aid of scientific facilities could see for themselves the folds, crumplings, types, signatures and ink lines on Exh. "D", which offer, unhappily had not been accepted. It seems that it was the oppositors who have offered all the opportunities and mechanical facilities to the trial court and to this Tribunal with a view to a correct determination of how and when the typing and signing of the body and the attestation clause of Exh. "D" was done.

I am afraid that the majority had unwittingly been unduly impressed by the testimony of the three attesting witnesses because of their qualifications. Says the majority opinion on this point:

> "In our opinion, the testimony of the three attesting witnesses — confirmatory of the due execution of the will — deserves full credit, not only because of *their qualifications* (*hereinbefore pointed out*) but because their reputation for probity has not been impeached."

Said qualifications are listed and described in detail in the majority opinion which I quote:

> "Fortunato A. Gupit is a certified public accountant. He is the dean of the College of Business Administration and the comptroller of the Arellano University, Jacinto Y. Enriquez comes from a distinguished family in Bulacan and is a student in the University of Santo Tomas. Martin Rodrigo is a businessman and landowner. Gupit is the husband of a half-sister of the petitioner; Enriquez is a second cousin of petitioner; and Rodrigo is the husband of a deceased cousin of the petitioner."

But I understand that up to the present, the courts in this jurisdiction are still weighing the testimony of witnesses on the scales of sincerity, truth, and honesty rather than on academic attainments, college degrees and social prominence. Otherwise, a party in court whose witnesses happen to be simple, ignorant but honest farmers and laborers occupying the bottom of the social scale, who have not seen the inside of a barrio school, has absolutely no chance or show against the adverse party who may produce witnesses with college or university degrees and members of the aristocracy, whose names appear on the social register. I have nothing against the witnesses to the supposed will. Exh. "D". They may have testified sincerely and truthfully according to their lights. But I submit that the unknown and perhaps unlettered witnesses for the oppositors, with no social or academic background to boast of could be just as sincere and truthful. At least, the trial court had nothing to say against their testimony while at the same time, it gave no credit to the testimony of the witnesses for the petitioner as to the due execution of the will. It has

been and is still the practice and rule in appellate courts to respect the findings of a trial judge who has had an opportunity to observe the witnesses on the witness stand and to evaluate their testimony, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.(1) I see nothing in the record to warrant us in disturbing the findings of the trial court.

In conclusion, I am of the opinion that Pablo Roxas either did not intend to make Exh. "D" his will for the reason that if he did, he would have availed himself of the services of one who knew how to draft a will, made copies thereof, and bequeathed his estate not only to his child Reynaldo and his widow but also to his other child Aida, the mother of said two children, and perhaps to his own brother or sister; or, assuming that Pablo Roxas intended to make a will, because of his ignorance of legal requirements and technicalities, in preparing the body of Exh. "D" which he signed, he left out the attestation clause and when informed of the necessity of said clause, he had Exh. "D" re-inserted in the typewriter and the attestation clause typed by someone else and thereafter, perhaps long after, he asked and had the attesting witnesses sign said clause either singly on different occasions or on one single occasion, but naturally, without those witnesses having been present when he (Pablo Roxas) signed the body of Exh. "D". Clearly, to my mind, the requirements of the law on wills has not been duly complied with. I believe that the decision appealed from should be affirmed.

Montemayor, Moran, and *Pablo, JJ. concur.*

Justice Padilla took no part.