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[G.R. Nos. L-27860 & L-27896. March 29, 1974]

PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, Administrator of the Testate Estate of Charles Newton Hodges (Sp. Proc. No. 1672 of the Court of First Instance of Iloilo), *petitioner, vs.* **THE HONORABLE VENICIO ESCOLIN,** Presiding Judge of the Court of First Instance of Iloilo, Branch II, and **AVELINA A. MAGNO,** *respondents.*

[G.R. Nos. L-27936 & L-27937. March 29, 1974]

TESTATE ESTATE OF THE LATE LINNIE JANE HODGES (Sp. Proc. No. 1307). **TESTATE ESTATE OF THE LATE CHARLES NEWTON HODGES** (Sp. Proc. No. 1672). **PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK,** *administrator-appellant, vs.* **LORENZO CARLES, JOSE PABLICO, ALFREDO CATEDRAL, SALVADOR GUZMAN, BELCESAR CAUSING, FLORENIA BARRIDO, PURIFICACION CORONADO, GRACIANO LUCERO, ARITEO THOMAS JAMIR, MELQUIADES BATISANAN, PEPITO IYULORES, ESPERIDION PARTISALA, WINIFREDO ESPADA, ROSARIO ALINGASA, ADELFA PREMAYLON, SANTIAGO PACAONSIS, and AVELINA A. MAGNO,** the last as Administratrix in Sp. Proc. No. 1307, *appellees,* **WESTERN INSTITUTE OF TECHNOLOGY, INC.,** *movant-appellee.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPRIETY OF *CERTIORARI* AND PROHIBITION INSTEAD OF APPEAL; CASE AT BAR.**— The respondent's contention of the alleged impropriety of the special civil action of *certiorari* and prohibition in view of the existence of the

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remedy of appeal fails to take into account that there is a common thread among the basic issues involved in all these thirty-three appeals which, unless resolved in one single proceeding, will inevitably cause the proliferation of more or less similar or closely related incidents and consequent eventual appeals. If for this consideration alone, and without taking account anymore of the unnecessary additional effort, expense and time which would be involved in as many individual appeals as the number of such incidents, it is logical and proper to hold, as We do hold, that the remedy of appeal is not adequate in the present cases. In determining whether or not a special civil action of *certiorari* or prohibition may be resorted to in lieu of appeal, in instances wherein lack or excess of jurisdiction or grave abuse of discretion is alleged, it is not enough that the remedy of appeal exists or is possible. It is indispensable that taking all the relevant circumstances of the given case, appeal would better serve the interests of justice. Obviously, the longer delay, augmented expense and trouble and unnecessary repetition of the same work attendant to the present multiple appeals, which, after all, deal with practically the same basic issues that can be more expeditiously resolved or determined in a single special civil action, make the remedies of *certiorari* and prohibition, pursued by petitioner, preferable, for purposes of resolving the common basic issues raised in all of them, despite the conceded availability of appeal.

2. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; PROBATE PROCEEDINGS; DECLARATION OF HEIRS AND DISTRIBUTION OF ESTATE; MOST IMPORTANT FUNCTION OF PROBATE COURTS.**— The declaration of heirs and distribution by the probate court of the estate of a decedent is its most important function, and this Court is not disposed to encourage judges of probate proceedings to be less than definite, plain and specific in making orders in such regard, if for no other reason than that all parties concerned, like the heirs, the creditors, and most of all the government, the devisees and legatees, should know with certainty what are and when their respective rights and obligations ensuing from the inheritance or in relation thereto would begin or cease, as the case may be, thereby avoiding precisely the legal complications and consequent litigations similar to those that have developed unnecessarily in the present cases. While it is true that in instances wherein

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all the parties interested in the estate of a deceased person have already actually distributed among themselves their respective shares therein to the satisfaction of everyone concerned and no rights of creditors or third parties are adversely affected, it would naturally be almost ministerial for the court to issue the final order of declaration and distribution, still it is inconceivable that the special proceeding instituted for the purpose may be considered terminated, the respective rights of all the parties concerned be deemed definitely settled, and the executor or administrator thereof be regarded as automatically discharged and relieved already of all functions and responsibilities without the corresponding definite orders of the probate court to such effect.

3. **ID.; ID.; ID.; ID.; ID.; ESSENTIAL PRE-REQUISITES.—** In order that a proceeding for the settlement of the estate of a deceased may be deemed ready for final closure, (1) there should have been issued already an order of distribution or assignment of the estate of the decedent among or to those entitled thereto by will or by law, but (2) such order shall not be issued until after it is shown that the "debts, funeral expenses, expenses of administration, allowances, taxes, etc. chargeable to the estate" have been paid, which is but logical and proper. (3) Besides, such an order is usually issued upon proper and specific application for the purpose of the interested party or parties, and not of the court.

4. **ID.; ID.; ID.; ID.; ID.; ID.; COURT ORDER CITED BY PETITIONER DID NOT ADJUDICATE DECEDENT'S ESTATE IN CASES AT BAR.—** In the cases at bar, We cannot discern from the voluminous and varied facts, pleadings and orders before Us that the above indispensable prerequisites for the declaration of heirs and the adjudication of the estate of Mrs. Hodges had already been complied with when the order of December 14, 1957 was issued. As already stated, We are not persuaded that the proceedings leading to the issuance of said order, constituting barely of the motion of May 27, 1957, Annex D of the petition, the order of even date, Annex E, and the motion of December 11, 1957, Annex H, all aforequoted, are what the law contemplates. We cannot see in the order of December 14, 1957, so much relied upon by petitioner, anything more than an explicit approval of "all the sales, conveyances, leases and mortgages of all the properties

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left by the deceased Linnie Jane Hodges executed by the Executor Charles N. Hodges" (after the death of his wife and prior to the date of the motion), plus a general advance authorization to enable said "Executor — to execute subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges in consonance with wishes conveyed in the last will and testament of the latter," which, certainly, cannot amount to the order of adjudication of the estate of the decedent to Hodges contemplated in the law. In fact, the motion of December 11, 1957 on which the court predicated the order in question did not pray for any such adjudication at all. What is more, although said motion did allege that "herein Executor (Hodges) is not only part owner of the properties left as conjugal, but also, the successor to all the properties left by the deceased Linnie Jane Hodges," it significantly added that "herein Executor, as Legatee (sic), has the right to sell, convey, lease or dispose of the properties in the Philippines — during his lifetime," thereby indicating that what said motion contemplated was nothing more than either the enjoyment by Hodges of his rights under the particular portion of the dispositions of his wife's will which were to be operative only during his lifetime or the use of his own share of the conjugal estate, pending the termination of the proceedings.

5. **ID.; ID.; ID.; ID.; ESTATE OF TESTATRIX STILL EXISTS IN CASE AT BAR; SPECIAL PROCEEDINGS 1307 SHOULD NOT BE CLOSED.**— According to Mrs. Linnie Hodges' will, her husband was to be the sole owner thereof during his lifetime, with full power and authority to dispose of any of them, provided that should there be any remainder upon his death, such remainder would go to her brothers and sisters, and furthermore, there is no pretension, much less any proof that Hodges had in fact disposed of all of them, and, on the contrary, the indications are rather to the effect that he had kept them more or less intact, it cannot truthfully be said that, upon the death of Hodges, there was no more estate of Mrs. Hodges to speak of. It is Our conclusion, therefore, that properties do exist which constitute such estate, hence Special Proceedings 1307 should not yet be closed.

6. **ID.; ID.; ID.; ID.; QUESTIONED ORDERS OF RESPONDENT COURT GAVE RISE TO PETITIONER'S**

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CLAIM IN CASE AT BAR; WITHIN THE COMPETENCY OF THE COURT TO ISSUE THE SAME.— In the present cases, what gave rise to the claim of PCIB of exclusive ownership by the estate of Hodges over all the properties of the Hodges spouses, including the share of Mrs. Hodges in the community properties, were the orders of the trial court issued in the course of the very settlement proceedings themselves, more specifically, the orders of May 27 and December 14, 1957 so often mentioned above. In other words, the root of the issue of title between the parties is something that the court itself has done in the exercise of its probate jurisdiction. And since in the ultimate analysis, the question of whether or not all the properties herein involved pertain exclusively to the estate of Hodges depends on the legal meaning and effect of said orders, the claim that respondent court has no jurisdiction to take cognizance of and decide the said issue is incorrect. If it was within the competence of the court to issue the root orders, why should it not be within its authority to declare their true significance and intent, to the end that the parties may know whether or not the estate of Mrs. Hodges had already been adjudicated by the court, upon the initiative of Hodges, in his favor, to the exclusion of the other heirs of his wife instituted in her will?

7. **ID.; ID.; ID.; ID.; TESTATE OR INTESTATE PROCEEDINGS; DEATH OF EITHER SPOUSE; LIQUIDATION OF CONJUGAL PROPERTY.**— Under Section 2 of Rule 73, "When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either." Indeed, it is true that the last sentence of this provision allows or permits the conjugal partnership of spouses who are both deceased to be settled or liquidated in the testate or intestate proceedings of either, but precisely because said sentence allows or permits that the liquidation be made in either proceeding, it is a matter of sound judicial discretion in which one it should be made. After all, the former rule referring to the administrator of the husband's estate in respect to such liquidation was done away with by Act 3176, the pertinent provisions of which are now embodied in the rule just cited.

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8. **CIVIL LAW; SUCCESSION; SUBSTITUTION OF HEIRS; NOT PROVIDED IN TESTRATRIX'S WILL.—** Mrs. Hodges' will provides neither for a simple or vulgar substitution under Article 859 of the Civil Code nor for a fideicommissary substitution under Article 863 thereof. There is no vulgar substitution therein because there is no provision for either (1) predecease of the testator by the designated heir or (2) refusal or (3) incapacity of the latter to accept the inheritance, as required by Article 859; and neither is there a fideicommissary substitution therein because no obligation is imposed thereby upon Hodges to preserve the estate or any part thereof for anyone else.

9. **ID.; ID.; ID.; TAKES PLACE IN CASE OF DEFAULT OF ORIGINALLY INSTITUTED HEIR; NO DEFAULT IN CASE AT BAR.—** Substitution occurs only when another heir is appointed in a will "so that he may enter into inheritance in default of the heir originally instituted," (Article 857, *Id.*) and, in the present case, no such possible default is contemplated. The brothers and sisters of Mrs. Hodges are not substitutes for Hodges because, under her will, they are not to inherit what Hodges cannot, would not or may not inherit, but what he would not dispose of from his inheritance; rather, therefore, they are also heirs instituted simultaneously with Hodges, subject, however, to certain conditions, partially resolutory insofar as Hodges was concerned and correspondingly suspensive with reference to his brothers and sisters-in-law. It is partially resolutory, since it bequeaths unto Hodges the whole of her estate to be owned and enjoyed by him as universal and sole heir with absolute dominion over them (With the exception of the limitations referring to the Texas properties.) only during his lifetime, which means that while he could completely and absolutely dispose of any portion thereof *inter vivos* to anyone other than himself, he was not free to do so *mortis causa*, and all his rights to what might remain upon his death would cease entirely upon the occurrence of that contingency, inasmuch as the right of his brothers and sisters-in-law to the inheritance, although vested already upon the death of Mrs. Hodges, would automatically become operative upon the occurrence of the death of Hodges in the event of actual existence of any remainder of her estate then.

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10. **REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; FOREIGN LAWS MAY NOT BE TAKEN JUDICIAL NOTICE OF; RULE.**— Elementary is the rule that foreign laws may not be taken judicial notice of and have to be proven like any other fact in dispute between the parties in any proceeding, with the rare exception in instances when the said laws are already within the actual knowledge of the court, such as when they are well and generally known or they have been actually ruled upon in other cases before it and none of the parties concerned do not claim otherwise. (5 Moran, Comments on the Rules of Court, p. 41, 1970 ed.)

11. **ID.; ID.; ID.; ID.; INSTANCE WHERE PRESENTATION OF EVIDENCE NOT NEEDED.**— From the ruling of the Court in the case of In re Estate of Johnson, 39 Phil. 156, it is implicit therefrom that when, with respect to certain aspects of the foreign laws concerned, the parties in a given case do not have any controversy or are more or less in agreement, the Court may take it for granted for the purpose of the particular case before it that the said laws are as such virtual agreement indicates, without the need of requiring the presentation of what otherwise would be the competent evidence on the point. Thus, in the instant cases wherein it results from the respective contentions of both parties that even if the pertinent laws of Texas were known and to be applied, the amount of the inheritance pertaining to the heirs of Mrs. Hodges is as We have fixed above, the absence of evidence to the effect that, actually and in fact, under said laws, it could be otherwise is of no longer of any consequence, unless the purpose is to show that it could be more. In other words, since PCIB, the petitioner-appellant, concedes that upon application of Article 16 of the Civil Code and the pertinent laws of Texas, the amount of the estate in controversy is just as We have determined it to be, and respondent-appellee is only claiming, on her part, that it could be more, PCIB may not now or later pretend differently.

12. **CIVIL LAW; SUCCESSION; TESTATE PROCEEDINGS; SHARE IN CONJUGAL PARTNERSHIP; CASE AT BAR.**— It is thus unquestionable that as far as PCIB is concerned, the application to these cases of Article 16 of the Civil Code in relation to the corresponding laws of Texas would result in that the Philippine laws on succession should

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control. On that basis, as We have already explained above, the estate of Mrs. Hodges is the remainder of one-fourth of the conjugal partnership properties, considering that We have found that there is no legal impediment to the kind of disposition ordered by Mrs. Hodges in her will in favor of her brothers and sisters and, further, that the contention of PCIB that the same constitutes an inoperative testamentary substitution is untenable.

13. **REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; TRIAL COURT'S ORDERS PROVIDING FOR JOINT ACTION BY TWO ADMINISTRATOR PENDING LIQUIDATION OF CONJUGAL PARTNERSHIP, AFFIRMED; CASE AT BAR.**— Since the questioned orders of the trial court provide for joint action by the two administrators pending liquidation of the conjugal partnership which ought to have been done in the case at bar until the two estates are separated from each other, the Court affirmed the said orders.

14. **CIVIL LAW; SUCCESSION; PROBATE PROCEEDINGS; LETTERS OF ADMINISTRATION; RIGHT OF ADMINISTRATRIX TO HIRE SERVICES OF COUNSEL UPHELD; PAYMENTS OF ATTORNEY'S FEES; CASE AT BAR.**— Appellee Magno is entitled to the services of counsel and to that end had the authority to enter into contracts for attorney's fees in the manner she had done in the agreement of June 6, 1964. And as regards to the reasonableness of the amount therein stipulated, We see no reason to disturb the discretion exercised by the probate court in determining the same. We have gone over the agreement, and considering the obvious size of the estate in question and the nature of the issues between the parties as well as the professional standing of counsel, We cannot say that the fees agreed upon require the exercise by the Court of its inherent power to reduce it.

15. **ID.; ID.; ID.; ID.; PROCEEDS OF REMUNERATIVE TRANSFERS AND DISPOSITIONS MADE BY SPOUSE OF TESTRATRIX AFTER HER DEATH DEEMED PARTS OF HER ESTATE; CASE AT BAR.**— All proceeds of remunerative transfers or dispositions made by Hodges after the death of his wife should be deemed as continuing to be parts of her estate and, therefore, subject to the terms of her will in favor of her brothers and sisters, in the sense that should

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there be no showing that such proceeds, whether in cash or property, have been subsequently conveyed or assigned subsequently by Hodges to any third party by acts *inter vivos*, with the result that they could not thereby belong to him anymore at the time of his death, they automatically became part of the inheritance of said brothers and sisters. The deeds here in question involve transactions which are exactly of this nature. Consequently, the payments made by the appellees should be considered as payments to the estate of Mrs. Hodges which is to be distributed and partitioned among her heirs specified in the will.

16. **ID.; ID.; ID.; CONTRACTS ENTERED INTO WITH BONA FIDE THIRD PARTIES; NOT AFFECTED BY CONTROVERSIES.**— Contracts to sell of properties executed by Hodges during the lifetime of his wife to *bona fide* third parties must not be prejudice by judicial controversies. The transactions they rely on were submitted by them to the probate court for approval, and from already known and recorded actuations of said court then, they had reason to believe that it had authority to act on their motions, since appellee Magno had, from time to time prior to their transactions with her, been allowed to act in her capacity as administratrix of one of the subject estates either alone or conjointly with PCIB. All the sales in question were executed by Magno in 1966 already, but before that, the court had previously authorized or otherwise sanctioned expressly many of her acts as administratrix involving expenditures from the estate made by her either conjointly with or independently from PCIB, as Administrator of the Estate of Hodges. Thus, it may be said that said buyers-appellees merely followed precedents in previous orders of the court. Accordingly, unless the impugned orders approving those sales indubitably suffer from some clearly fatal infirmity the Court would rather affirm them.

17. **ID.; ID.; ID.; ID.; SUBJECT PROPERTIES PERTAIN TO ESTATE OF TESTATRIX; ORDERS OF TRIAL COURT CAN BE ASSAILED ONLY BY HER HEIRS; CASE AT BAR.**— It is of no moment whether the "contracts to sell" upon which the deeds in question were based were executed by Hodges before or after the death of his wife. In a word, We hold, for the reasons already stated, that the properties covered by the deeds being assailed pertain or should be deemed

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as pertaining to the estate of Mrs. Hodges; hence, any supposed irregularity attending the actuations of the trial court may be invoked only by her heirs, not by PCIB, and since the said heirs are not objecting, and the defects pointed out not being strictly jurisdictional in nature, all things considered, particularly the unnecessary disturbance of rights already created in favor of innocent third parties, it is best that the impugned orders are not disturbed.

18. **REMEDIAL LAW; SPECIAL PROCEEDINGS; PROBATE PROCEEDINGS; JURISDICTION OF PROBATE COURT; CAN TAKE COGNIZANCE OF CONVEYANCE OF PROPERTIES EXECUTED BY DECEDENT; WHEN PARTIES ARE IN AGREEMENT.**— When one of the parties to a contract to convey property executed by a deceased person raises substantial objections to its being implemented by the executor or administrator of the decedent's estate that Section 8 of Rule 89 may not apply and, consequently, the matter has, to be taken up in a separate action outside of the probate court; but where, as in the cases of the sales herein involved, the interested parties are in agreement that the conveyance be made, it is properly within the jurisdiction of the probate court to give its sanction thereto pursuant to the provisions of the rule just mentioned. And with respect to the supposed automatic rescission clauses contained in the contracts to sell executed by Hodges in favor of herein appellees, the effect of said clauses depend on the true nature of the said contracts, despite the nomenclature appearing therein, which is not controlling, for if they amount to actual contracts of sale instead of being mere unilateral accepted "promises to sell," (Art. 1479, Civil Code of the Philippines, 2nd paragraph) the *pactum commissorium* or the automatic rescission provision would not operate, as a matter of public policy, unless there has been a previous notarial or judicial demand by the seller (10 Manresa 263, 2nd ed.), neither of which have been shown to have been made in connection with the transactions herein involved.

19. **CIVIL LAW; SUCCESSION; PROCEEDS OF SALE OF ESTATE; THOSE MADE AFTER DEATH OF TESTATRIX BELONG TO HER ESTATE; CASE AT BAR.**— As regards the contracts to sell executed by Hodges after the death of his wife, inasmuch as its payments made by appellees constitute

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proceeds of sales of properties belonging to the estate of Mrs. Hodges, as may be implied from the tenor of the motions of May 27 and December 14, 1957, said payments continue to pertain to said estate, pursuant to her intent obviously reflected in the relevant provisions of her will, on the assumption that the size and value of the properties to correspond to the estate of Mrs. Hodges would exceed the total value of all the properties covered by the impugned deeds of sale, for which reason, said properties may be deemed as pertaining to the estate of Mrs. Hodges.

APPEARANCES OF COUNSEL

San Juan, Africa, Gonzales & San Agustin for Philippine Commercial & Industrial Bank.

Manglapus Law Office, Antonio Law Office and *Rizal R. Quimpo* for private respondents and appellees Avelina A. Magno, etc., et al.

D E C I S I O N

BARREDO, *J.:*

Certiorari and prohibition with preliminary injunction; *certiorari* to "declare all acts of the respondent court in the Testate Estate of Linnie Jane Hodges (Sp. Proc. No. 1307 of the Court of First Instance of Iloilo) subsequent to the order of December 14, 1957 as null and void for having been issued without jurisdiction"; prohibition to enjoin the respondent court from allowing, tolerating, sanctioning, or abetting private respondent Avelina A. Magno to perform or do any acts of administration, such as those enumerated in the petition, and from exercising any authority or power as Regular Administratrix of above-named Testate Estate, by entertaining manifestations, motion and pleadings filed by her and acting on them, and also to enjoin said court from allowing said private respondent to interfere, meddle or take part in any manner in the administration of the Testate Estate of Charles Newton Hodges (Sp. Proc. No. 1672 of the same court and branch); with prayer for preliminary injunction, which was issued by this Court on

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August 8, 1967 upon a bond of P5,000; the petition being particularly directed against the orders of the respondent court of October 12, 1966 denying petitioner's motion of April 22, 1966 and its order of July 18, 1967 denying the motion for reconsideration of said order.

Related to and involving basically the same main issue as the foregoing petition, thirty-three (33) appeals from different orders of the same respondent court approving or otherwise sanctioning the acts of administration of the respondent Magno on behalf of the Testate Estate of Mrs. Hodges.

THE FACTS

On May 23, 1957, Linnie Jane Hodges died in Iloilo City leaving a will executed on November 22, 1952 pertinently providing as follows:

"FIRST: I direct that all my just debts and funeral expenses be first paid out of my estate.

SECOND: I give, devise and bequeath all of the rest, residue and remainder of my estate, both personal and real, wherever situated, or located, to my beloved husband, Charles Newton Hodges, to have and to hold unto him, my said husband, during his natural lifetime.

THIRD: I desire, direct and provide that my husband, Charles Newton Hodges, shall have the right to manage, control, use and enjoy said estate during his lifetime, and he is hereby given the right to make any changes in the physical properties of said estate, by sale or any part thereof which he may think best, and the purchase of any other or additional property as he may think best; to execute conveyances with or without general or special warranty, conveying in fee simple or for any other term or time, any property which he may deem proper to dispose of; to lease any of the real property for oil, gas and/or other minerals, and all such deeds or leases shall pass the absolute fee simple title to the interest so conveyed in such property as he may elect to sell. All rents, emoluments and income from said estate shall belong to him, and he is further authorized to use any part of the principal of said estate as he may need or desire. It is provided herein, however, that he shall not sell or otherwise dispose of any of the improved property now owned by us located at, in or near the City of Lubbock, Texas, but he shall

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have the full right to lease, manage and enjoy the same during his lifetime, above provided. He shall have the right to subdivide any farm land and sell lots therein, and may sell unimproved town lots.

FOURTH: At the death of my said husband, Charles Newton Hodges, I give, devise and bequeath all of the rest, residue and remainder of my estate, both real and personal, wherever situated or located, to be equally divided among my brothers and sisters, share and share alike, namely:

Esta Higdon, Emma Howell, Leonard Higdon, Roy Higdon, Saddie Rascoe, Era Roman and Nimroy Higdon.

FIFTH: In case of the death of any of my brothers and/or sisters named in item Fourth, above, prior to the death of my husband, Charles Newton Hodges, then it is my will and bequest that the heirs of such deceased brother or sister shall take jointly the share which would have gone to such brother or sister had she or he survived.

SIXTH: I nominate and appoint my said husband, Charles Newton Hodges, to be executor of this, my last will and testament, and direct that no bond or other security be required of him as such executor.

SEVENTH: It is my will and bequest that no action be had in the probate court, in the administration of my estate, other than that necessary to prove and record this will and to return an inventory and appraisement of my estate and list of claims." (Pp. 2-4, Petition.)

This will was subsequently probated in aforementioned Special Proceedings No. 1307 of respondent court on June 28, 1957, with the widower Charles Newton Hodges being appointed as Executor, pursuant to the provisions thereof.

Previously, on May 27, 1957, the said widower (hereafter to be referred to as Hodges) had been appointed Special Administrator, in which capacity he filed a motion on the same date as follows:

"*URGENT EX-PARTE MOTION TO ALLOW OR AUTHORIZE PETITIONER TO CONTINUE THE BUSINESS IN WHICH HE WAS ENGAGED AND TO PERFORM ACTS WHICH HE HAD BEEN DOING WHILE DECEASED WAS LIVING*

Come petitioner in the above-entitled special proceedings, thru his undersigned attorneys, to the Hon. Court, most respectfully states:

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1. - That Linnie Jane Hodges died leaving her last will and testament, a copy of which is attached to the petition for probate of the same.

2. - That in said last will and testament, herein petitioner Charles Newton Hodges is directed to have the right to manage, control, use and enjoy the estate of deceased Linnie Jane Hodges, in the same way, a provision was placed in paragraph two, the following: 'I give, devise and bequeath all of the rest, residue and remainder of my estate, to my beloved husband, Charles Newton Hodges, to have and (to) hold unto him, my said husband, during his natural lifetime.'

3. - That during the lifetime of Linnie Jane Hodges, herein petitioner was engaged in the business of buying and selling personal and real properties, and do such acts which petitioner may think best.

4. - That deceased Linnie Jane Hodges died leaving no descendants or ascendants, except brothers and sisters and herein petitioner as the surviving spouse, to inherit the properties of the decedent.

"5. - That the present motion is submitted in order not to paralyze the business of petitioner and the deceased, especially in the purchase and sale of properties. That proper accounting will be had also in all these transactions.

WHEREFORE, it is most respectfully prayed that, petitioner C. N. Hodges (Charles Newton Hodges) be allowed or authorized to continue the business in which he was engaged and to perform acts which he had been doing while deceased Linnie Jane Hodges was living.

City of Iloilo, May 27, 1957." (Annex "D", Petition.)

which the respondent court immediately granted in the following order:

"It appearing in the urgent *ex-parte* motion filed by petitioner C. N. Hodges, that the business in which said petitioner and the deceased were engaged will be paralyzed, unless and until the Executor is named and appointed by the Court, the said petitioner is allowed or authorized to continue the business in which he was engaged and to perform acts which he had been doing while the deceased was living.

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SO ORDERED.

City of Iloilo, May 27, 1957."
(Annex "E", Petition.)

Under date of December 11, 1957, Hodges filed as such Executor another motion thus:

"MOTION TO APPROVE ALL SALES, CONVEYANCES, LEASES, MORTGAGES THAT THE EXECUTOR HAD MADE FURTHER AND SUBSEQUENT TRANSACTIONS WHICH THE EXECUTOR MAY DO IN ACCORDANCE WITH THE LAST WISH OF THE DECEASED LINNIE JANE HODGES.

"Comes the Executor in the above-entitled proceedings, thru his undersigned attorney, to the Hon. Court, most respectfully states:

1. - That according to the last will and testament of the deceased Linnie Jane Hodges, the executor as the surviving spouse and legatee named in the will of the deceased, has the right to dispose of all the properties left by the deceased, portion of which is quoted as follows:

> Second: I give, devise and bequeath all of the rest, residue and remainder of my estate, both personal and real, wherever situated, or located, to my beloved husband, Charles Newton Hodges, to have and to hold unto him, my said husband, during his natural lifetime.
>
> Third: I desire, direct and provide that my husband, Charles Newton Hodges, shall have the right to manage, control, use and enjoy said estate during his lifetime, and he is hereby given the right to make any changes in the physical properties of said estate, *by sale* or any part thereof which he may think best, and the purchase of any other or additional property as he may think best; to *execute conveyances* with or without general or special warranty, conveying in fee simple or for any other term or time, any property which he may deem proper to dispose of; to lease any of the real property for oil, gas and/or other minerals, and all such deeds or leases shall pass the absolute fee simple title to the interest so conveyed in such property as he may elect to sell. All rents, emoluments and income from said estate *shall belong to him*, and he is further authorized to use any part of the principal of said estate as he may need or desire. x x x

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2. - That herein Executor, is not only part owner of the properties left as conjugal, but also, the successor to all the properties left by the deceased Linnie Jane Hodges. That during the lifetime of herein Executor, as Legatee, has the right to sell, convey, lease or dispose of the properties in the Philippines. That inasmuch as C. N. Hodges was and is engaged in the buy and sell of real and personal properties, even before the death of Linnie Jane Hodges, a motion to authorize said C. N. Hodges was filed in Court, to allow him to continue in the business of buy and sell, which motion was favorably granted by the Honorable Court.

3. - That since the death of Linnie Jane Hodges, Mr. C. N. Hodges had been buying and selling real and personal properties, in accordance with the wishes of the late Linnie Jane Hodges.

4. - That the Register of Deeds for Iloilo, had required of late the herein Executor to have all the sales, leases, conveyances or mortgages made by him, approved by the Hon. Court.

5. - That it is respectfully requested, all the sales, conveyances leases and mortgages executed by the Executor, be approved by the Hon. Court, and subsequent sales conveyances, leases and mortgages in compliances with the wishes of the late Linnie Jane Hodges, and within the scope of the terms of the last will and testament, also be approved;

6. - That the Executor is under obligation to submit his yearly accounts, and the properties conveyed can also be accounted for, especially the amounts received.

"WHEREFORE, it is most respectfully prayed that, all the sales, conveyances, leases, and mortgages executed by the Executor, be approved by the Hon. Court, and also the subsequent sales, conveyances, leases, and mortgages, in consonance with the wishes of the deceased contained in her last will and testament, be with authorization and approval of the Hon. Court.

City of Iloilo, December 11, 1957."

(Annex "G", Petition.)

which again was promptly granted by the respondent court on December 14, 1957 as follows:

"*O R D E R*

As prayed for by Attorney Gellada, counsel for the Executor for the reasons stated in his motion dated December 11, 1957, which

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the Court considers well taken all the sales, conveyances, leases and mortgages of all properties left by the deceased Linnie Jane Hodges executed by the Executor Charles N. Hodges are hereby APPROVED. The said Executor is further authorized to execute subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges in consonance with the wishes conveyed in the last will and testament of the latter.

So ordered.

Iloilo City, December 14, 1957."
(Annex "H", Petition.)

On April 14, 1959, in submitting his first statement of account as Executor for approval, Hodges alleged:

"Pursuant to the provisions of the Rules of Court, herein executor of the deceased, renders the following account of his administration covering the period from January 1, 1958 to December 31, 1958, which account may be found in detail in the individual income tax return filed for the estate of deceased Linnie Jane Hodges, to wit:

That a certified public accountant has examined the statement of net worth of the estate of Linnie Jane Hodges, the assets and liabilities, as well as the income and expenses, copy of which is hereto attached and made integral part of this statement of account as Annex "A".

IN VIEW OF THE FOREGOING, it is most respectfully prayed that, the statement of net worth of the estate of Linnie Jane Hodges, the assets and liabilities, income and expenses as shown in the individual income tax return for the estate of the deceased and marked as Annex "A", be approved by the Honorable Court, as substantial compliance with the requirements of the Rules of Court.

That no person interested in the Philippines of the time and place of examining the herein accounts be given notice, as herein executor is the only devisee or legatee of the deceased, in accordance with the last will and testament already probated by the Honorable Court.

City of Iloilo, April 14, 1959."
(Annex "I", Petition.)

The respondent court approved this statement of account on April 21, 1959 in its order worded thus:

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"Upon petition of Atty. Gellada, in representation of the Executor, the statement of net worth of the estate of Linnie Jane Hodges, the assets and liabilities, income and expenses as shown in the individual income tax return for the estate of the deceased and marked as Annex "A" is approved.

SO ORDERED.

City of Iloilo, April 21, 1959."
(Annex "J", Petition.)

His accounts for the periods January 1, 1959 to December 31, 1959 and January 1, 1960 to December 31, 1960 were submitted likewise accompanied by allegations identical *mutatis mutandis* to those of April 14, 1959, quoted above; and the respective orders approving the same, dated July 30, 1960 and May 2, 1961, were substantially identical to the above-quoted order of April 21, 1959. In connection with the statements of account just mentioned, the following assertions related thereto made by respondent-appellee Magno in her brief do not appear from all indications discernible in the record to be disputable:

"Under date of April 14, 1959, C. N. Hodges filed his first 'Account by the Executor' of the estate of Linnie Jane Hodges. In the 'Statement of Networth of Mr. C. N. Hodges and the Estate of Linnie Jane Hodges' as of December 31, 1958 annexed thereto, C. N. Hodges reported that the combined conjugal estate earned a net income of P328,402.62, divided evenly between him and the estate of Linnie Jane Hodges. Pursuant to this, he filed an 'individual income tax return' for calendar year 1958 on the estate of Linnie Jane Hodges reporting, under oath, the said estate as having earned income of P164,201.31, exactly one-half of the net income of his combined personal assets and that of the estate of Linnie Jane Hodges." (P. 91, Appellee's Brief.)

x x x x x x x x x

"Under date of July 21, 1960, C. N. Hodges filed his second 'Annual Statement of Account by the Executor' of the estate of Linnie Jane Hodges. In the 'Statement of Networth of Mr. C. N. Hodges and the Estate of Linnie Jane Hodges' as of December 31, 1959 annexed thereto, C. N. Hodges reported that the combined conjugal estate earned a net income of P270,623.32, divided evenly between him and the estate of Linnie Jane Hodges. Pursuant to

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this, he filed an 'individual income tax return' for calendar year 1959 on the estate of Linnie Jane Hodges reporting, under oath, the said estate as having earned income of P135,311.66, exactly one-half of the net income of his combined personal assets and that of the estate or Linnie Jane Hodges." (Pp. 91-92, Appellee's Brief.)

x x x x x x x x x

"Under date of April 20, 1961, C. N. Hodges filed his third 'Annual Statement of Account by the Executor for the Year 1960' of the estate of Linnie Jane Hodges. In the 'Statement of Net Worth of Mr. C. N. Hodges and the Estate of Linnie Jane Hodges' as of December 31, 1960 annexed thereto, C. N. Hodges reported that the combined conjugal estate earned a net income of P314,857.94, divided evenly between him and the estate of Linnie Jane Hodges. Pursuant to this, he filed an 'individual income tax return' for calendar year 1960 on the estate of Linnie Jane Hodges reporting, under oath, the said estate as having earned income of P157,428.97, exactly one-half of the net income of his combined personal assets and that of the estate of Linnie Jane Hodges." (Pp. 92-93, Appellee's Brief.)

Likewise the following:

"In the petition for probate that he (Hodges) filed, he listed the seven brothers and sisters of Linnie Jane as her 'heirs' (see p. 2, Green ROA). The order of the court admitting the will to probate unfortunately omitted one of the heirs, Roy Higdon (see p. 14, Green ROA). Immediately, C. N. Hodges filed a verified motion to have Roy Higdon's name included as an heir, stating that he wanted to straighten the records 'in order the heirs of deceased Roy Higdon may not think or believe they were omitted, and that they were really and are interested in the estate of deceased Linnie Jane Hodges.'

"As an executor, he was bound to file tax returns for the estate he was administering under American law. He did file such as estate tax return on August 8, 1958. In Schedule 'M' of such return, he answered 'Yes' to the question as to whether he was contemplating 'renouncing the will'. On the question as to what property interests passed to him as the surviving spouse, he answered:

> 'None, except for purposes of administering the Estate, paying debts, taxes and other legal charges. It is the intention of the surviving husband of deceased to distribute the remaining property and interests of the deceased in their Community

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Estate to the devisees and legatees named in the will when the debts, liabilities, taxes and expenses of administration are finally determined and paid.'

"Again, on August 9, 1962, barely four months before his death, he executed an 'affidavit' wherein he ratified and confirmed all that he stated in Schedule 'M' of his estate tax returns as to his having renounced what was given him by his wife's will.[1]

"As appointed executor, C. N. Hodges filed an 'Inventory' dated May 12, 1958. He listed all the assets of his conjugal partnership with Linnie Jane Hodges on a separate balance sheet and then stated expressly that her estate which has come into his possession as executor was 'one-half of all the items' listed in said balance sheet." (Pp. 89-90, Appellee's Brief.)

Parenthetically, it may be stated, at this juncture, that We are taking pains to quote wholly or at least, extensively from some of the pleadings and orders whenever We feel that it is necessary to do so for a more comprehensive and clearer view of the important and decisive issues raised by the parties and a more accurate appraisal of their respective positions in regard thereto.

The records of these cases do not show that anything else was done in the above-mentioned Special Proceedings No. 1307

[1] Actually, the affidavit reads as follows:

"I, C. N. Hodges, being duly sworn, on oath affirm that at the time the United States Estate Tax Return was filed in the Estate of Linnie Jane Hodges on August 8, 1958, I renounced and disclaimed any and all right to receive the rents, emoluments and income from said estate, as shown by the statement contained in schedule M at page 29 of said return, a copy of which schedule is attached to this affidavit and made a part hereof.

"The purpose of this affidavit is to ratify and confirm, and I do hereby ratify and confirm, the declaration made in schedule M of said return and hereby formally disclaim and renounce any right on my part to receive any of the said rents, emoluments and income from the estate of my deceased wife, Linnie Jane Hodges. This affidavit is made to absolve me or my estate from any liability for the payment of income taxes on income which has accrued to the estate of Linnie Jane Hodges since the death of the said Linnie Jane Hodges on May 23, 1957." (Annex 5, Answer of respondent Avelina Magno, p. 264, L-27860, *Rollo*.)

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until December 26, 1962, when on account of the death of Hodges the day before, the same lawyer, Atty. Leon P. Gellada, who had been previously acting as counsel for Hodges in his capacity as Executor of his wife's estate, and as such had filed the aforequoted motions and manifestations, filed the following:

"*URGENT EX-PARTE MOTION FOR THE APPOINTMENT OF A SPECIAL ADMINISTRATRIX*

COMES the undersigned attorney for the Executor in the above-entitled proceedings, to the Honorable Court, most respectfully states:

1. That in accordance with the Last Will and Testament of Linnie Jane Hodges (deceased), her husband, Charles Newton Hodges was to act as Executor, and in fact, in an order issued by this Hon. Court dated June 28, 1957, the said Charles Newton Hodges was appointed Executor and had performed the duties as such.

2. That last December 22, 1962, the said Charles Newton Hodges was stricken ill, and brought to the Iloilo Mission Hospital for treatment, but unfortunately, he died on December 25, 1962, as shown by a copy of the death certificate hereto attached and marked as Annex 'A'.

3. That in accordance with the provisions of the last will and testament of Linnie Jane Hodges, whatever real and personal properties that may remain at the death of her husband Charles Newton Hodges, the said properties shall be equally divided among their heirs. That there are real and personal properties left by Charles Newton Hodges, which need to be administered and taken care of.

4. That the estate of deceased Linnie Jane Hodges, as well as that of Charles Newton Hodges, have not as yet been determined or ascertained, and there is necessity for the appointment of a general administrator to liquidate and distribute the residue of the estate to the heirs and legatees of both spouses. That in accordance with the provisions of Section 2 of Rule 75 of the Rules of Court, the conjugal partnership of Linnie Jane Hodges and Charles Newton Hodges shall be liquidated in the testate proceedings of the wife.

5. That the undersigned counsel, has perfect personal knowledge of the existence of the last will and testament of Charles Newton Hodges, with similar provisions as that contained in the last will and testament of Linnie Jane Hodges. However, said last will and testament of Charles Newton Hodges is kept inside the vault or

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iron safe in his office, and will be presented in due time before this honorable Court.

6. That in the meantime, it is imperative and indispensable that, an Administratrix be appointed for the estate of Linnie Jane Hodges and a Special Administratrix for the estate of Charles Newton Hodges, to perform the duties required by law, to administer, collect, and take charge of the goods, chattels, rights, credits, and estate of both spouses, Charles Newton Hodges and Linnie Jane Hodges, as provided for in Section 1 and 2, Rule 81 of the Rules of Court.

7. That there is delay in granting letters testamentary or of administration, because the last will and testament of deceased, Charles Newton Hodges, is still kept in his safe or vault, and in the meantime, unless an administratrix (and,) at the same time, a Special Administratrix is appointed, the estate of both spouses are in danger of being lost, damaged or go to waste.

8. That the most trusted employee of both spouses Linnie Jane Hodges and C. N. Hodges, who had been employed for around thirty (30) years, in the person of Miss Avelina Magno, (should) be appointed Administratrix of the estate of Linnie Jane Hodges and at the same time Special Administratrix of the estate of Charles Newton Hodges. That the said Miss Avelina Magno is of legal age, a resident of the Philippines, the most fit, competent, trustworthy and well-qualified person to serve the duties of Administratrix and Special Administratrix and is willing to act as such.

9. That Miss Avelina Magno is also willing to file bond in such sum which the Hon. Court believes reasonable.

WHEREFORE, in view of all the foregoing, it is most respectfully prayed that, Miss AVELINA A. MAGNO be immediately appointed Administratrix of the estate of Linnie Jane Hodges and as Special Administratrix of the estate of Charles Newton Hodges, with powers and duties provided for by law. That the Honorable Court fix the reasonable bond of P1,000.00 to be filed by Avelina A. Magno." (Annex "O", Petition.)

which respondent court readily acted on in its order of even date thus:

"For the reasons alleged in the Urgent Ex-Parte Motion filed by counsel for the Executor dated December 25, 1962, which the Court finds meritorious, Miss AVELINA A. MAGNO, is hereby appointed

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Administratrix of the estate of Linnie Jane Hodges and as Special Administratrix of the estate of Charles Newton Hodges, in the latter case, because the last will of said Charles Newton Hodges is still kept in his vault or iron safe and that the real and personal properties of both spouses may be lost, damaged or go to waste, unless a Special Administratrix is appointed.

Miss Avelina A. Magno is required to file bond in the sum of FIVE THOUSAND PESOS (P5,000.00), and after having done so, let letters of Administration be issued to her." (Annex "P", Petition.)

On December 29, 1962, however, upon urgent ex-parte petition of respondent Magno herself, thru Atty. Gellada, Harold, R. Davies, "a representative of the heirs of deceased Charles Newton Hodges (who had) arrived from the United States of America to help in the administration of the estate of said deceased" was appointed as Co-Special Administrator of the estate of Hodges, (pp. 29-33, Yellow — Record on Appeal) only to be replaced as such co-special administrator on January 22, 1963 by Joe Hodges, who, according to the motion of the same attorney, is "the nephew of the deceased (who had) arrived from the United States with instructions from the other heirs of the deceased to administer the properties or estate of Charles Newton Hodges in the Philippines". (Pp. 47-50, *id.*)

Meanwhile, under date of January 9, 1963, the same Atty. Gellada filed in Special Proceedings 1672 a petition for the probate of the will of Hodges,[2] with a prayer for the issuance

[2] The will of Hodges executed on November 14, 1953 contained mutually similar dispositions as those of his wife as follows:

"x x x x x x x x x

"FIRST: I direct that all my just debts and funeral expenses be first paid out of my estate.

SECOND: I give, devise and bequeath all the rest, residue and remainder of my estate, both personal and real, wherever situated, or located, to my beloved wife, Linnie Jane Hodges, to have and to hold unto her, my said wife, during her natural lifetime.

THIRD: I desire, direct and provide that my wife, Linnie Jane Hodges, shall have the right to manage, control, use and enjoy said estate during her lifetime, and she is hereby given the right to make any changes in the physical properties of said estate, by sale or any part thereof which she may think best; to execute conveyances with

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of letters of administration to the same Joe Hodges, albeit the motion was followed on February 22, 1963 by a separate one

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or without general or special warranty, conveying in fee simple or for any other term or time, any property which she may deem proper to dispose of; to lease any of the real property for oil, gas and/or other minerals, and all such deeds or leases shall pass the absolute fee simple title to the interest so conveyed in such property as she may elect to sell. All rents, emoluments and income from said estate shall belong to her, and she is further authorized to use any part of the principal of said estate as she may need or desire. It is provided herein, however, that she shall not sell or otherwise dispose of any of the improved property now owned by us located at, in or near the City of Lubbock, Texas, but she shall have the full right to lease, manage and enjoy the same during her lifetime, as above provided. She shall have the right to subdivide any farm land and sell lots therein, and may sell unimproved town lots.

x x x x x x x x x

FIFTH: At the death of my beloved wife, Linnie Jane Hodges, I give, devise and bequeath to the heirs of my half brother, Robert Hodges, who is now deceased, a half brother's share of my estate.

SIXTH: At the death of my said wife, Linnie Jane Hodges, I give, devise and bequeath to the heirs of my deceased full sister, Mattie Hodges Simpkins, a full sister's share of my estate.

SEVENTH: At the death of my said wife, Linnie Jane Hodges, I give, devise and bequeath to the heirs of my deceased half sister, Barbara O'dell, a half sister's share of my estate.

EIGHT: At the death of my said wife, Linnie Jane Hodges, I give, devise and bequeath to the heirs of my full brother, Joe Hodges, deceased, a full brother's share of my estate.

NINTH: At the death of my said wife, Linnie Jane Hodges, I give, devise and bequeath to the heirs of my half brother, Willie Carver, deceased, a half brother's share of my estate.

TENTH: At the death of my said wife, Linnie Jane Hodges, I give, devise and bequeath all of the rest, residue and remainder of my estate, both real and personal, wherever situated or located, to be equally divided among my other full brothers and full sisters, share and share alike, namely: J. A. Hodges, B. F. Hodges, Laura Holland and Addie Elliot.

ELEVENTH: In case of the death of any of my full brothers and/or full sisters named in Item Tenth above, prior to the death of my wife, Linnie Jane Hodges, then it is my will and bequest that the heirs of such deceased full brother or full sister shall take jointly the share which would have gone to such full brother or full sister had he or she survived.

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asking that Atty. Fernando Mirasol be appointed as his co-administrator. On the same date this latter motion was filed, the court issued the corresponding order of probate and letters of administration to Joe Hodges and Atty. Mirasol, as prayed for.

At this juncture, again, it may also be explained that just as, in her will, Mrs. Hodges bequeathed her whole estate to her husband to have and to hold unto him, my said husband, during his natural lifetime", she, at the same time or in like manner, provided that "at the death of my said husband — I give devise and bequeath all of the rest, residue and remainder of my estate, both real and personal, wherever situated or located, to be equally divided among my brothers and sisters, share and share alike —." Accordingly, it became incumbent upon Hodges, as executor of his wife's will, to duly liquidate the conjugal partnership, half of which constituted her estate, in order that upon the eventuality of his death, "the rest, residue and remainder" thereof could be determined and correspondingly distributed or divided among her brothers and sisters. And it was precisely because no such liquidation was done and, furthermore, there is the issue of whether the distribution of her estate should be governed by the laws of the Philippines or those of Texas, of which State she was a national, and, what is more, as already stated, Hodges made official and sworn statements or manifestations indicating that as far as he was concerned no "property interests passed to him as surviving spouse — 'except for purposes of administering the estate, paying debts, taxes and other legal charges' and it was the intention of the surviving husband of the deceased to distribute the remaining property and interests of the deceased in their Community Estate to the devisees and legatees named in the will when the debts, liabilities, taxes and expenses of administration are finally determined and paid," that the incidents and controversies now before Us for resolution arose. As may

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"x x x x x x x x x
x x x x x x x x x
x x x x x x x x x
All erasures and interlineations made before signing."

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be observed, the situation that ensued upon the death of Hodges became rather unusual and so, quite understandably, the lower court's actuations presently under review are apparently wanting in consistency and seemingly lack proper orientation.

Thus, We cannot discern clearly from the record before Us the precise perspective from which the trial court proceeded in issuing its questioned orders. And, regrettably, none of the lengthy briefs submitted by the parties is of valuable assistance in clearing up the matter.

To begin with, We gather from the two records on appeal filed by petitioner, as appellant in the appealed cases, one with green cover and the other with a yellow cover, that at the outset, a sort of *modus operandi* had been agreed upon by the parties under which the respective administrators of the two estates were supposed to act conjointly, but since no copy of the said agreement can be found in the record before Us, We have no way of knowing when exactly such agreement was entered into and under what specific terms. And while reference is made to said *modus operandi* in the order of September 11, 1964, on pages 205-206 of the Green Record on Appeal, reading thus:

"The present incident is to hear the side of administratrix, Miss Avelina A. Magno, in answer to the charges contained in the motion filed by Atty. Cesar Tirol on September 3, 1964. In answer to the said charges, Miss Avelina A. Magno, through her counsel, Atty. Rizal Quimpo, filed a written manifestation.

"After reading the manifestation here of Atty. Quimpo, for and in behalf of the administratrix, Miss Avelina A. Magno, the Court finds that everything that happened before September 3, 1964, which was resolved on September 8, 1964, to the satisfaction of parties, was simply due to a misunderstanding between the representative of the Philippine Commercial and Industrial Bank and Miss Magno and in order to restore the harmonious relations between the parties, the Court ordered the parties to remain in *status quo* as to their *modus operandi* before September 1, 1964, until after the Court can have a meeting with all the parties and their counsels on October 3, as formerly agreed upon between counsels, Attys. Ozaeta, Gibbs and Ozaeta, Attys. Tirol and Tirol and Atty. Rizal Quimpo.

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"In the meantime, the prayers of Atty. Quimpo as stated in his manifestation shall not be resolved by this Court until October 3, 1964.

SO ORDERED."

there is nothing in the record indicating whatever happened to it afterwards, except that again, reference thereto was made in the appealed order of October 27, 1965, on pages 292-295 of the Green Record on Appeal, as follows:

"On record is an urgent motion to allow PCIB to open all doors and locks in the Hodges Office at 206-208 Guanco street, Iloilo City, to take immediate and exclusive possession thereof and to place its own locks and keys for security purposes of the PCIB dated October 27, 1965 thru Atty. Cesar Tirol. It is alleged in said urgent motion that Administratrix Magno of the testate estate of Linnie Jane Hodges refused to open the Hodges Office at 206-208 Guanco street, Iloilo City where PCIB holds office and therefore PCIB is suffering great moral damage and prejudice as a result of said act. It is prayed that an order be issued authorizing it (PCIB) to open all doors and locks in the said office, to take immediate and exclusive possession thereof and place thereon its own locks and keys for security purposes; instructing the clerk of court or any available deputy to witness and supervise the opening of all doors and locks and taking possession of the PCIB.

"A written opposition has been filed by Administratrix Magno of even date (Oct. 27) thru counsel Rizal Quimpo stating therein that she was compelled to close the office for the reason that the PCIB failed to comply with the order of this Court signed by Judge Anacleto I. Bellosillo dated September 11, 1964 to the effect that both estates should remain in *status quo* as to their *modus operandi* as of September 1, 1964.

"To arrive at a happy solution of the dispute and in order not to interrupt the operation of the office of both estates, the Court aside from the reasons stated in the urgent motion and opposition heard the verbal arguments of Atty. Cesar Tirol for the PCIB and Atty. Rizal Quimpo for Administratrix Magno.

"After due consideration, the Court hereby orders Magno to open all doors and locks in the Hodges Office at 206-208 Guanco Street, Iloilo City in the presence of the PCIB or its duly authorized representative and deputy clerk of court Albis of this branch not

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later than 7:30 tomorrow morning October 28, 1965 in order that the office of said estates could operate for business.

"Pursuant to the order of this Court thru Judge Bellosillo dated September 11, 1964, it is hereby ordered:

(a) That all cash collections should be deposited in the joint account of the estates of Linnie Jane Hodges and estate of C. N. Hodges;

(b) That whatever cash collections that had been deposited in the account of either of the estates should be withdrawn and since then deposited in the joint account of the estate of Linnie Jane Hodges and the estate of C. N. Hodges;

(c) That the PCIB should countersign the check in the amount of P250 in favor of Administratrix Avelina A, Magno as her compensation as administratrix of the Linnie Jane Hodges estate chargeable to the testate estate of Linnie Jane Hodges only;

(d) That Administratrix Magno is hereby directed to allow the PCIB to inspect whatever records, documents and papers she may have in her possession in the same manner that Administrator PCIB is also directed to allow Administratrix Magno to inspect whatever records, documents and papers it may have in its possession;

(e) That the accountant of the estate of Linnie Jane Hodges shall have access to all records of the transactions of both estates for the protection of the estate of Linnie Jane Hodges; and in like manner the accountant or any authorized representative of the estate of C. N. Hodges shall have access to the records of transactions of the Linnie Jane Hodges estate for the protection of the estate of C. N. Hodges.

"Once the estates' office shall have been opened by Administratrix Magno in the presence of the PCIB or its duly authorized representative and deputy clerk Albis or his duly authorized representative, both estates or any of the estates should not close it without previous consent and authority from this court.

SO ORDERED."

As may be noted, in this order, the respondent court required that all collections from the properties in the name of Hodges should be deposited in a joint account of the two estates, which indicates that seemingly the so-called *modus operandi* was no

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longer operative, but again there is nothing to show when this situation started.

Likewise, in paragraph 3 of the petitioner's motion of September 14, 1964, on pages 188-201 of the Green Record on Appeal, (also found on pp. 83-91 of the Yellow Record on Appeal) it is alleged that:

"3. On January 24, 1964 virtually all of the heirs of C. N. Hodges, Joe Hodges and Fernando P. Mirasol acting as the two co-administrators of the estate of C. N. Hodges, Avelina A. Magno acting as the administratrix of the estate of Linnie Jane Hodges, and Messrs. William Brown and Ardell Young acting for all of the Higdon family who claim to be the sole beneficiaries of the estate of Linnie Jane Hodges and various legal counsel representing the aforementioned parties entered into an amicable agreement, which was approved by this Honorable Court, wherein the parties thereto agreed that certain sums of money were to be paid in settlement of different claims against the two estates and that the assets (to the extent they existed) of both estates would be administered jointly by the PCIB as administrator of the estate of C. N. Hodges and Avelina A. Magno as administratrix of the estate of Linnie Jane Hodges, subject, however, to the aforesaid October 5, 1963 Motion, namely, the PCIB's claim to exclusive possession and ownership of one hundred percent (100%) (or, in the alternative, seventy-five percent (75%) of all assets owned by C. N. Hodges or Linnie Jane Hodges situated in the Philippines. On February 1, 1964 (pp. 934-935, CFI Rec., S.P. No. 1672) this Honorable Court amended its order of January 24, 1964 but in no way changed its recognition of the aforedescribed basic demand by the PCIB as administrator of the estate of C. N. Hodges to one hundred percent (100%) of the assets claimed by both estates."

but no copy of the mentioned agreement of joint administration of the two estates exists in the record, and so, We are not informed as to what exactly are the terms of the same which could be relevant in the resolution of the issues herein.

On the other hand, the appealed order of November 3, 1965, on pages 313-320 of the Green Record on Appeal, authorized payment by respondent Magno of, *inter alia*, her own fees as administratrix, the attorney's fees of her lawyers, etc., as follows:

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"Administratrix Magno thru Attys. Raul S. Manglapus and Rizal R. Quimpo filed a Manifestation and Urgent Motion dated June 10, 1964 asking for the approval of the Agreement dated June 6, 1964 which Agreement is for the purpose of retaining their services to protect and defend the interest of the said Administratrix in these proceedings and the same has been signed by and bears the express conformity of the attorney-in-fact of the late Linnie Jane Hodges, Mr. James L. Sullivan. It is further prayed that the Administratrix of the Testate Estate of Linnie Jane Hodges be directed to pay the retainers fee of said lawyers, said fees made chargeable as expenses for the administration of the estate of Linnie Jane Hodges (pp. 1641-1642, Vol. V, Sp. 1307).

"An opposition has been filed by the Administrator PCIB thru Atty. Herminio Ozaeta dated July 11, 1964, on the ground that payment of the retainers fee of Attys. Manglapus and Quimpo as prayed for in said Manifestation and Urgent Motion is prejudicial to the 100% claim of the estate of C. N. Hodges; employment of Attys. Manglapus and Quimpo is premature and/or unnecessary; Attys. Quimpo and Manglapus are representing conflicting interests and the estate of Linnie Jane Hodges should be closed and terminated (pp. 1679-1684, Vol. V, Sp. 1307).

"Atty. Leon P. Gellada filed a memorandum dated July 28, 1964 asking that the Manifestation and Urgent Motion filed by Attys. Manglapus and Quimpo be denied because no evidence has been presented in support thereof. Atty. Manglapus filed a reply to the opposition of counsel for the Administrator of the C. N. Hodges estate wherein it is claimed that expenses of administration include reasonable counsel or attorney's fees for services to the executor or administrator. As a matter of fact the fee agreement dated February 27, 1964 between the PCIB and the law firm of Ozaeta, Gibbs & Ozaeta as its counsel (Pp. 1280-1284, Vol. V, Sp. 1307) which stipulates the fees for said law firm has been approved by the Court in its order dated March 31, 1964. If payment of the fees of the lawyers for the administratrix of the estate of Linnie Jane Hodges will cause prejudice to the estate of C. N. Hodges, in like manner the very agreement which provides for the payment of attorney's fees to the counsel for the PCIB will also be prejudicial to the estate of Linnie Jane Hodges (pp. 1801-1814, Vol. V, Sp. 1307).

"Atty. Herminio Ozaeta filed a rejoinder dated August 10, 1964 to the reply to the opposition to the Manifestation and Urgent Motion alleging principally that the estates of Linnie Jane Hodges and C.

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N. Hodges are not similarly situated for the reason that C. N. Hodges is an heir of Linnie Jane Hodges whereas the latter is not an heir of the former for the reason that Linnie Jane Hodges predeceased C. N. Hodges (pp. 1839-1848, Vol. V, Sp. 1307); that Attys. Manglapus and Quimpo formally entered their appearance in behalf of Administratrix of the estate of Linnie Jane Hodges on June 10, 1964 (pp. 1639-1640, Vol. V, Sp. 1307).

"Atty. Manglapus filed a manifestation dated December 18, 1964 stating therein that Judge Bellosillo issued an order requiring the parties to submit memorandum in support of their respective contentions. It is prayed in this manifestation that the Manifestation and Urgent Motion dated June 10, 1964 be resolved (pp. 6435-6439, Vol. VII, Sp. 1307).

"Atty. Roman Mabanta, Jr. for the PCIB filed a counter-manifestation dated January 5, 1965 asking that after the consideration by the court of all allegations and arguments and pleadings of the PCIB in connection therewith (1) said manifestation and urgent motion of Attys. Manglapus and Quimpo be denied (pp. 6442-6453, Vol. VII, Sp. 1307). Judge Querubin issued an order dated January 4, 1965 approving the motion dated June 10, 1964 of the attorneys for the administratrix of the estate of Linnie Jane Hodges and agreement annexed to said motion. The said order further states: "The Administratrix of the estate of Linnie Jane Hodges is authorized to issue or sign whatever check or checks may be necessary for the above purpose and the administrator of the estate of C. N. Hodges is ordered to countersign the same." (pp. 6518-6523, Vol. VII, Sp. 1307).

"Atty. Roman Mabanta, Jr. for the PCIB filed a manifestation and motion dated January 13, 1965 asking that the order of January 4, 1965 which was issued by Judge Querubin be declared null and void and to enjoin the clerk of court and the administratrix and administrator in these special proceedings from all proceedings and action to enforce or comply with the provision of the aforesaid order of January 4, 1965. In support of said manifestation and motion it is alleged that the order of January 4, 1965 is null and void because the said order was never delivered to the deputy clerk Albis of Branch V (the sala of Judge Querubin) and the alleged order was found in the drawer of the late Judge Querubin in his office when said drawer was opened on January 13, 1965 after the death of Judge Querubin by Perfecto Querubin, Jr., the son of the judge and in the presence of Executive Judge Rovira and deputy clerk Albis

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(Sec. 1, Rule 36, New Civil Code) (Pp. 6600-6606, Vol. VIII, Sp. 1307).

"Atty. Roman Mabanta, Jr. for the PCIB filed a motion for reconsideration dated February 23, 1965 asking that the order dated January 4, 1964 be reversed on the ground that:

1. Attorneys retained must render services to the estate not to the personal heir;

2. If services are rendered to both, fees should be pro-rated between them;

3. Attorneys retained should not represent conflicting interests; to the prejudice of the other heirs not represented by said attorneys;

4. Fees must be commensurate to the actual services rendered to the estate;

"5. There must be assets in the estate to pay for said fees (Pp. 6625-6636, Vol. VIII, Sp. 1307).

"Atty. Quimpo for Administratrix Magno of the estate of Linnie Jane Hodges filed a motion to submit dated July 15, 1965 asking that the manifestation and urgent motion dated June 10, 1964 filed by Attys. Manglapus and Quimpo and other incidents directly appertaining thereto he considered submitted for consideration and approval (pp. 6759-6765, Vol. VIII, Sp. 1307).

"Considering the arguments and reasons in support to the pleadings of both the Administratrix and the PCIB, and of Atty. Gellada, hereinbefore mentioned, the Court believes that the order of January 4, 1965 is null and void for the reason that the said order has not been filed with deputy clerk Albis of this court (Branch V) during the lifetime of Judge Querubin who signed the said order. However, the said manifestation and urgent motion dated June 10, 1964 is being treated and considered in this instant order. It is worthy to note that in the motion dated January 24, 1964 (Pp. 1149-1163, Vol. V, Sp. 1307) which has been filed by Atty. Gellada and his associates and Atty. Gibbs and other lawyers in addition to the stipulated fees for actual services rendered. However, the fee agreement dated February 27, 1964, between the Administrator of the estate of C. N. Hodges and Atty. Gibbs which provides for retainer fee of P4,000 monthly in addition to specific fees for actual appearances, reimbursement for expenditures and contingent fees has also been approved by the Court and said lawyers have already

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been paid. (pp. 1273-1279, Vol. V, Sp. Proc. 1307 pp. 1372-1373, Vol. V, Sp. Proc. 1307).

"WHEREFORE, the order dated January 4, 1965 is hereby declared null and void.

"The manifestation and motion dated June 10, 1964 which was filed by the attorneys for the administratrix of the testate estate of Linnie Jane Hodges is granted and the agreement annexed thereto is hereby approved.

"The administratrix of the estate of Linnie Jane Hodges is hereby directed to issue and sign whatever check or checks may be needed to implement the approval of the agreement annexed to the motion and the administrator of the estate of C. N. Hodges is directed to countersign the said check or checks as the case may be.

SO ORDERED."

thereby implying somehow that the court assumed the existence of independent but simultaneous administrations.

Be that as it may, again, it appears that on August 6, 1965, the court, acting on a motion of petitioner for the approval of deeds of sale executed by it as administrator of the estate of Hodges, issued the following order, also on appeal herein:

"Acting upon the motion for approval of deeds of sale for registered land of the PCIB, Administrator of the Testate Estate of C. N. Hodges in Sp. Proc. 1672 (Vol. VII, pp. 2244-2245), dated July 16, 1965, filed by Atty. Cesar T. Tirol in representation of the law firms of Ozaeta, Gibbs and Ozaeta and Tirol and Tirol and the opposition thereto of Atty. Rizal R. Quimpo (Vol. VIII, pp. 6811-6813) dated July 22, 1965 and considering the allegations and reasons therein stated, the court believes that the deeds of sale should be signed jointly by the PCIB, Administrator of the Testate Estate of C. N. Hodges and Avelina A. Magno, Administratrix of the Testate Estate of Linnie Jane Hodges and to this effect the PCIB should take the necessary steps so that Administratrix Avelina A. Magno could sign the deeds of sale.

SO ORDERED." (P. 248, Green Record on Appeal.)

Notably, this order required that even the deeds executed by petitioner, as administrator of the Estate of Hodges, involving

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properties registered in his name, should be co-signed by respondent Magno.[3] And this was not an isolated instance.

In her brief as appellee, respondent Magno states:

"After the lower court had authorized appellee Avelina A. Magno to execute final deeds of sale pursuant to contracts to sell executed by C. N. Hodges on February 20, 1963 (pp. 45-46, Green ROA), motions for the approval of final deeds of sale (signed by appellee Avelina A. Magno and the administrator of the estate of C. N. Hodges, first Joe Hodges, then Atty. Fernando Mirasol and later the appellant) were approved by the lower court upon petition of appellee Magno's counsel, Atty. Leon P. Gellada, on the basis of Section 8 of Rule 89 of the Revised Rules of Court. Subsequently, the appellant, after it had taken over the bulk of the assets of the two estates, started presenting these motions itself. The first such attempt was a 'Motion for Approval of Deeds of Sale for Registered Land and Cancellations of Mortgages' dated July 21, 1964 filed by Atty. Cesar T. Tirol, counsel for the appellant, thereto annexing two (2) final deeds of sale and two (2) cancellations of mortgages signed by appellee Avelina A. Magno and D. R. Paulino, Assistant Vice-President and Manager of the appellant (CFI Record, Sp. Proc. No. 1307, Vol. V, pp. 1694-1701). This motion was approved by the lower court on July 27, 1964. It was followed by another motion dated August 4, 1964 for the approval of one final deed of sale again signed by appellee Avelina A. Magno and D. R. Paulino (CFI Record, Sp. Proc. No. 1307, Vol. V, pp. 1825-1828), which was again approved by the lower court on August 7, 1964. The gates having been opened, a flood ensued: the appellant subsequently filed similar motions for the approval of a multitude of deeds of sales and cancellations of mortgages signed by both the appellee Avelina A. Magno and the appellant.

A random check of the records of Special Proceeding No. 1307 alone will show Atty. Cesar T. Tirol as having presented for court approval deeds of sale of real properties signed by both appellee Avelina A. Magno and D. R. Paulino in the following numbers: (a) motion dated September 21, 1964 - 6 deeds of sale; (b) motion dated November 4, 1964 - 1 deed of sale; (c) motion dated December 1, 1964 - 4 deeds of sale; (d) motion dated February 3, 1965 - 8 deeds of sale; (e) motion dated April 22, 1965 - 6 deeds of sale;

[3] None of the two records on appeal contains any copy of the motion and the opposition upon which the court acted.

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(f) motion dated May 7, 1965 - 9 deeds of sale. In view of the very extensive landholdings of the Hodges spouses and the many motions filed concerning deeds of sale of real properties executed by C. N. Hodges, the lower court has had to constitute special but separate *expedientes* in Special Proceedings Nos. 1307 and 1672 to include mere motions for the approval of deeds of sale of the conjugal properties of the Hodges spouses.

As an example, from among the very many, under date of February 3, 1965, Atty. Cesar T. Tirol, as counsel for the appellant, filed a 'Motion for Approval of Deeds of Sale for Registered Land and Cancellations of Mortgages" (CFI Record, Sp. Proc. No. 1307, Vol. VIII, pp. 6570-6596) the allegations of which read:

> '1. In his lifetime, the late C. N. Hodges executed 'Contracts to Sell' real property, and the prospective buyers under said contracts have already paid the price and complied with the terms and conditions thereof;
>
> '2. In the course of administration of both estates, mortgage debtors have already paid their debts secured by chattel mortgages in favor of the late C. N. Hodges, and are now entitled to release therefrom;
>
> '3. There are attached hereto documents executed jointly by the Administratrix in Sp. Proc. No. 1307 and the Administrator in Sp. Proc. No. 1672, consisting of deeds of sale in favor —
>
> Fernando Cano, Bacolod city, Occ. Negros
> Fe Magbanua, Iloilo City
> Policarpio M. Pareno, La Paz, Iloilo City
> Rosario T. Libre, Jaro, Iloilo City
> Federico B. Torres, Iloilo City
> Reynaldo T. Lataquin, La Paz, Iloilo City
> Anatolio T. Viray, Iloilo City
> Benjamin Rolando, Jaro, Iloilo City
>
> and cancellations of mortgages in favor of —
>
> Pablo Manzano, Oton, Iloilo
> Ricardo M. Diana, Dao, San Jose, Antique
> Simplicio Tingson, Iloilo City
> Amado Magbanua, Pototan, Iloilo
> Roselia M. Baes, Bolo, Roxas City
> William Bayani, Rizal Estanzuela, Iloilo City

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Elpidio Villarete, Molo, Iloilo City
Norma T. Ruiz, Jaro, Iloilo City.

'4. That the approval of the aforesaid documents will not reduce the assets of the estates so as to prevent any creditor from receiving his full debt or diminish his dividend.'

And the prayer of this motion is indeed very revealing:

'WHEREFORE, it is respectfully prayed that, under Rule 89, Section 8 of the Rules of Court, this Honorable Court approve the aforesaid deeds of sale and cancellations of mortgages.'" (Pp. 113-117, Appellee's Brief.)

None of these assertions is denied in petitioner's reply brief.

Further indicating lack of concrete perspective or orientation on the part of the respondent court and its hesitancy to clear up matters promptly, in its other appealed order of November 23, 1965, on pages 334-335 of the Green Record on Appeal, said respondent court allowed the movant Ricardo Salas, President of appellee Western Institute of Technology (successor of Panay Educational Institutions, Inc.), one of the parties with whom Hodges had contracts that are in question in the appeals herein, to pay petitioner, as Administrator of the estate of Hodges and/or respondent Magno, as Administratrix of the estate of Mrs. Hodges, thus:

"Considering that in both cases there is as yet no judicial declaration of heirs nor distribution of properties to whomsoever are entitled thereto, the Court believes that payment to both the administrator of the testate estate of C. N. Hodges and the administratrix of the testate estate of Linnie Jane Hodges or to either one of the two estates is proper and legal.

WHEREFORE, movant Ricardo T. Salas can pay to both estates or either of them.

SO ORDERED."
(Pp. 334-335, Green Record on Appeal.)

On the other hand, as stated earlier, there were instances when respondent Magno was given authority to act alone. For instance, in the other appealed order of December 19, 1964, on page 221 of the Green Record on Appeal, the respondent

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court approved payments made by her of overtime pay to some employees of the court who had helped in gathering and preparing copies of parts of the records in both estates as follows:

"Considering that the expenses subject of the motion to approve payment of overtime pay dated December 10, 1964, are reasonable and are believed by this Court to be a proper charge of administration chargeable to the testate estate of the late Linnie Jane Hodges, the said expenses are hereby APPROVED and to be charged against the testate estate of the late Linnie Jane Hodges. The administrator of the testate estate of the late Charles Newton Hodges is hereby ordered to countersign the check or checks necessary to pay the said overtime pay as shown by the bills marked Annex 'A', 'B' and 'C' of the motion.

SO ORDERED."
(Pp. 221-222, Green Record on Appeal.)

Likewise, the respondent court approved deeds of sale executed by respondent Magno alone, as Administratrix of the estate of Mrs. Hodges, covering properties in the name of Hodges, pursuant to "contracts to sell' executed by Hodges, irrespective of whether they were executed by him before or after the death of his wife. The orders of this nature which are also on appeal herein are the following:

1. Order of March 30, 1966, on p. 137 of the Green Record on Appeal, approving the deed of sale executed by respondent Magno in favor of appellee Lorenzo Carles on February 24, 1966, pursuant to a "contract to sell" signed by Hodges on June 17, 1958, after the death of his wife, which contract petitioner claims was cancelled by it for failure of Carles to pay the installments due on January 7, 1965.

2. Order of April 5, 1966, on pp. 139-140, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Salvador Guzman on February 28, 1966 pursuant to a "contract to sell" signed by Hodges on September 13, 1960, after the death of his wife, which contract petitioner claims it cancelled on March 3, 1965 in view of failure of said appellee to pay the installments on time.

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3. Order of April 20, 1966, on pp. 167-168, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Purificacion Coronado on March 28, 1966 pursuant to a "contract to sell" signed by Hodges on August 14, 1961, after the death of his wife.

4. Order of April 20, 1966, on pp. 168-169, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Florenia Barrido on March 28, 1966, pursuant to a "contract to sell" signed by Hodges on February 21, 1958, after the death of his wife.

5. Order of June 7, 1966, on pp. 184-185, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Belcezar Causing on May 2, 1966, pursuant to a "contract to sell" signed by Hodges on February 10, 1959, after the death of his wife.

6. Order of June 21, 1966, on pp. 211-212, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Artheo Thomas Jamir on June 3, 1966, pursuant to a "contract to sell" signed by Hodges on May 26, 1961, after the death of his wife.

7. Order of June 21, 1966, on pp. 212-213, *id.*, approving the deed of sale executed by respondent Magno in favor of appellees Graciano Lucero and Melquiades Batisanan on June 6 and June 3, 1966, respectively, pursuant to "contracts to sell" signed by Hodges on June 9, 1959 and November 27, 1961, respectively, after the death of his wife.

8. Order of December 2, 1966, on pp. 303-304, *id.*, approving the deed of sale executed by respondent Magno in favor of appellees Espiridion Partisala, Winifredo Espada and Rosario Alingasa on September 6, 1966, August 17, 1966 and August 3, 1966, respectively, pursuant to "contracts to sell" signed by Hodges on April 20, 1960, April 18, 1960 and August 25, 1958, respectively, that is, after the death of his wife.

9. Order of April 5, 1966, on pp. 137-138, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Alfredo Catedral on March 2, 1966, pursuant to a

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"contract to sell" signed by Hodges on May 29, 1954, before the death of his wife, which contract petitioner claims it had cancelled on February 16, 1966 for failure of appellee Catedral to pay the installments due on time.

10. Order of April 5, 1966, on pp. 138-139, *id.*, approving the deed of sale executed by respondent Magno in favor of appellee Jose Pablico on March 7, 1966, pursuant to a "contract to sell" signed by Hodges on March 7, 1950, after the death of his wife, which contract petitioner claims it had cancelled on June 29, 1960, for failure of appellee Pablico to pay the installments due on time.

11. Order of December 2, 1966, on pp. 303-304, *id.*, in so far as it approved the deed of sale executed by respondent Magno in favor of appellee Pepito Iyulores on September 6, 1966, pursuant to a "contract to sell" signed by Hodges on February 5, 1951, before the death of his wife.

12. Order of January 3, 1967, on pp. 335-336, *id.*, approving three deeds of sale executed by respondent Magno, one in favor of appellees Santiago Pacaonsis and two in favor of appellee Adelfa Premaylon on December 5, 1966 and November 3, 1966, respectively, pursuant to separate "promises to sell" signed respectively by Hodges on May 26, 1955 and January 30, 1954, before the death of his wife, and October 31, 1959, after her death.

In like manner, there were also instances when respondent court approved deeds of sale executed by petitioner alone and without the concurrence of respondent Magno, and such approvals have not been the subject of any appeal. No less than petitioner points this out on pages 149-150 of its brief as appellant thus:

"The points of fact and law pertaining to the two abovecited assignments of error have already been discussed previously. In the first abovecited error, the order alluded to was general, and as already explained before, it was, as admitted by the lower court itself, superseded by the particular orders approving specific final deeds of sale executed by the appellee, Avelina A. Magno, which are subject of this appeal, as well as the particular orders approving

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specific final deeds of sale executed by the appellant, Philippine Commercial and Industrial Bank, which were never appealed by the appellee, Avelina A. Magno, nor by any party for that matter, and which are now therefore final."

Now, simultaneously with the foregoing incidents, others of more fundamental and all embracing significance developed. On October 5, 1963, over the signature of Atty. Allison J. Gibbs in representation of the law firm of Ozaeta, Gibbs & Ozaeta, as counsel for the co-administrators Joe Hodges and Fernando P. Mirasol, the following self-explanatory motion was filed:

"URGENT MOTION FOR AN ACCOUNTING AND DELIVERY TO ADMINISTRATOR OF THE ESTATE OF C. N. HODGES OF ALL OF THE ASSETS OF THE CONJUGAL PARTNERSHIP OF THE DECEASED LINNIE JANE HODGES AND C. N. HODGES EXISTING AS OF MAY 23, 1957 PLUS ALL THE RENTS, EMOLUMENTS AND INCOME THEREFROM

COMES NOW the co-administrator of the estate of C. N. Hodges, Joe Hodges, through his undersigned attorneys in the above-entitled proceedings, and to this Honorable Court respectfully alleges:

(1) On May 23, 1957 Linnie Jane Hodges died in Iloilo City.

(2) On June 28, 1957 this Honorable Court admitted to probate the Last Will and Testament of the deceased Linnie Jane Hodges executed November 22, 1952 and appointed C. N. Hodges as Executor of the estate of Linnie Jane Hodges (pp. 24-25, Rec. Sp. Proc. 1307).

(3) On July 1, 1957 this Honorable Court issued Letters Testamentary to C. N. Hodges in the Estate of Linnie Jane Hodges (p. 30, Rec. Sp. Proc. 1307).

(4) On December 14, 1957 this Honorable Court, on the basis of the following allegations in a Motion dated December 11, 1957 filed by Leon P. Gellada as attorney for the executor C. N. Hodges:

> 'That herein Executor, (is) not only part owner of the properties left as conjugal, but also, *the successor to all the properties left by the deceased Linnie Jane Hodges.*'
> (p. 44, Rec. Sp. Proc. 1307; italics supplied.)

issued the following order:

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'As prayed for by Attorney Gellada, counsel for the Executor, *for the reasons stated in his motion dated December 11, 1957 which the court considers well taken*, all the sales, conveyances, leases and mortgages of all properties left by the deceased Linnie Jane Hodges are hereby APPROVED. The said executor is further authorized to execute subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges *in consonance with the wishes contained in the last will and testament of the latter.*'

(p. 46, Rec. Sp. Proc. 1307; italics supplied.)

(5) On April 21, 1959 this Honorable Court approved the inventory and accounting submitted by C. N. Hodges through his counsel Leon P. Gellada on April 14, 1959 wherein he alleged among other things

'That no person interested in the Philippines of the time and place of examining the herein account, be given notice, as *herein executor is the only devisee or legatee of the deceased, in accordance with the last will and testament already probated by the Honorable Court.*'

(pp. 77-78. Rec. Sp. Proc. 1307; italics supplied.)

(6) On July 30, 1960 this Honorable Court approved the 'Annual Statement of Account' submitted by C. N. Hodges through his counsel Leon P. Gellada on July 21, 1960 wherein he alleged among other things:

'That no person interested in the Philippines of the time and place of examining the herein account, be given notice as *herein executor is the only devisee or legatee of the deceased Linnie Jane Hodges,* in accordance with the last will and testament of the deceased, already probated by this Honorable Court.'

(pp. 81-82, Rec. Sp. Proc. 1307; italics supplied.)

(7) On May 2, 1961 this Honorable court approved the 'Annual Statement of Account By The Executor For the Year 1960' submitted through Leon P. Gellada on April 20, 1961 wherein he alleged:

'That no person interested in the Philippines be given notice, of the time and place of examining the herein account, as *herein Executor is the only devisee or legatee of the deceased Linnie Jane Hodges, in accordance with the last will and*

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testament of the deceased, already probated by this Honorable Court.'
(pp. 90-91, Rec. Sp. Proc. 1307; italics supplied.)

(8) On December 25, 1962, C. N. Hodges died.

(9) On December 25, 1962, on the Urgent Ex-Parte Motion of Leon P. Gellada filed only in Special Proceeding No. 1307, this Honorable Court appointed Avelina A. Magno.

'Administratrix of the estate of Linnie Jane Hodges and as Special Administratrix of the estate of Charles Newton Hodges, in the latter case, because the last will of said Charles Newton Hodges is still kept in his vault or iron safe and that the real and personal properties of both spouses may be lost, damaged or go to waste, unless a Special Administratrix is appointed.'
(p. 100. Rec. Sp. Proc. 1307)

(10) On December 26, 1962 Letters of Administration were issued to Avelina Magno pursuant to this Honorable Court's aforesaid Order of December 25, 1962

'With full authority to take possession of all the property of said deceased in any province or provinces in which it may be situated and to perform all other acts necessary for the preservation of said property, said Administratrix and/or Special Administratrix having filed a bond satisfactory to the Court.'
(p. 102. Rec. Sp. Proc. 1307)

(11) On January 22, 1963 this Honorable Court on petition of Leon P. Gellada of January 21, 1963 issued Letters of Administration to:

(a) Avelina A. Magno as Administratrix of the estate of Linnie Jane Hodges;

(b) Avelina A. Magno as Special Administratrix of the Estate of Charles Newton Hodges; and

(c) Joe Hodges as Co-Special Administrator of the Estate of Charles Newton Hodges.
(p. 43, Rec. Sp. Proc. 1307)

(12) On February 20, 1963 this Honorable Court on the basis of a motion filed by Leon P. Gellada as legal counsel on February 16, 1963 for Avelina A. Magno acting as Administratrix of the Estate

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of Charles Newton Hodges (pp. 114-116, Sp. Proc. 1307) issued the following order:

> 'x x x se autoriza a aquella (Avelina A. Magno) a firmar escrituras de venta definitiva de propiedades cubiertas por contratos para vender, firmados, en vida, por el finado Charles Newton Hodges, cada vez que el precio estipulado en cada contrato este totalmente pagado. Se autoriza igualmente a la misma a firmar escrituras de cancelacion de hipoteca tanto de bienas reales como personales cada vez que la consideracion de cada hipoteca este totalmente pagada.
>
> 'Cada una de dichas escrituras que se otorguen debe ser sometida para la aprobacion de este Juzgado.'
> (p. 117, Sp. Proc. 1307).
>
> [Par. 1 (c), Reply to Motion For Removal of Joe Hodges]

(13) On September 16, 1963 Leon P. Gellada, acting as attorney for Avelina A. Magno as Administratrix of the estate of Linnie Jane Hodges, alleges:

> '3. - That since January, 1963, both estates of Linnie Jane Hodges and Charles Newton Hodges have been receiving in full, payments for those 'contracts to sell' entered into by C. N. Hodges during his lifetime, and the purchasers have been demanding the execution of definite deeds of sale in their favor.
>
> '4. - That hereto attached are thirteen (13) copies of deeds of sale executed by the Administratrix and by the co-administrator (Fernando P. Mirasol) of the estate of Linnie Jane Hodges and Charles Newton Hodges respectively, in compliance with the terms and conditions of the respective 'contracts to sell' executed by the parties thereto.'

(14) The properties involved in the aforesaid motion of September 16, 1963 are all registered in the name of the deceased C. N. Hodges.

(15) Avelina A. Magno, it is alleged on information and belief, has been advertising in the newspaper in Iloilo thusly:

> 'For Sale
>
> Testate Estate of Linnie Jane Hodges and Charles Newton Hodges.

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All Real Estate or Personal Property will be sold on First Come First Served Basis.

Avelina A. Magno
Administratrix

(16) Avelina A. Magno, it is alleged on information and belief, has paid and still is paying sums of money to sundry persons.

(17) Joe Hodges through the undersigned attorneys manifested during the hearings before this Honorable Court on September 5 and 6, 1963 that the estate of C. N. Hodges was claiming all of the assets belonging to the deceased spouses Linnie Jane Hodges and C. N. Hodges situated in Philippines because of the aforesaid election by C. N. Hodges wherein he claimed and took possession as sole owner of all of said assets during the administration of the estate of Linnie Jane Hodges on the ground that he was the sole devisee and legatee under her Last Will and Testament.

(18) Avelina A. Magno has submitted no inventory and accounting of her administration as Administratrix of the estate of Linnie Jane Hodges and Special Administratrix of the estate of C. N. Hodges. However, from manifestations made by Avelina A. Magno and her legal counsel, Leon P. Gellada, there is no question she will claim that at least fifty per cent (50%) of the conjugal assets of the deceased spouses and the rents, emoluments and income therefrom belong to the Higdon family who are named in paragraphs Fourth and Fifth of the Will of Linnie Jane Hodges (p. 5, Rec. Sp. Proc. 1307).

WHEREFORE, premises considered, movant respectfully prays that this Honorable Court, after due hearing, order:

(1) Avelina A. Magno to submit an inventory and accounting of all of the funds, properties and assets of any character belonging to the deceased Linnie Jane Hodges and C. N. Hodges which have come into her possession, with full details of what she has done with them;

(2) Avelina A. Magno to turn over and deliver to the Administrator of the estate of C. N. Hodges all of the funds, properties and assets of any character remaining in her possession;

(3) Pending this Honorable Court's adjudication of the aforesaid issues, Avelina A. Magno to stop, unless she first secures the conformity of Joe Hodges (or his duly authorized representative, such as the undersigned attorneys) as the Co-administrator and

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attorney-in-fact of a majority of the beneficiaries of the estate of C. N. Hodges:

(a) Advertising the sale and the sale of the properties of the estates:

(b) Employing personnel and paying them any compensation.

(4) Such other relief as this Honorable Court may deem just and equitable in the premises. (Annex "T", Petition.)

Almost a year thereafter, or on September 14, 1964, after the co-administrators Joe Hodges and Fernando P. Mirasol were replaced by herein petitioner Philippine Commercial and Industrial Bank as sole administrator, pursuant to an agreement of all the heirs of Hodges approved by the court, and because the above motion of October 5, 1963 had not yet been heard due to the absence from the country of Atty. Gibbs, petitioner filed the following:

"MANIFESTATION AND MOTION, INCLUDING MOTION TO SET FOR HEARING AND RESOLVE 'URGENT MOTION FOR AN ACCOUNTING AND DELIVERY TO ADMINISTRATORS OF THE ESTATE OF C.N. HODGES OF ALL THE ASSETS OF THE CONJUGAL PARTNERSHIP OF THE DECEASED LINNIE JANE HODGES AND C. N. HODGES EXISTING AS OF MAY 23, 1957 PLUS ALL OF THE RENTS, EMOLUMENTS AND *INCOME THEREFROM' OF OCTOBER 5, 1963.*

COMES NOW Philippine Commercial and Industrial Bank (hereinafter referred to as PCIB), the administrator of the estate of C. N. Hodges, deceased, in Special Proceedings No. 1672, through its undersigned counsel, and to this Honorable Court respectfully alleges that:

1. On October 5, 1963, Joe Hodges acting as the co-administrator of the estate of C. N. Hodges filed, through the undersigned attorneys, an 'Urgent Motion For An Accounting and Delivery To Administrator of the Estate of C. N. Hodges of all Of The Assets Of The Conjugal Partnership of The Deceased Linnie Jane Hodges and C. N. Hodges Existing as Of May 23, 1957 Plus All Of The Rents, Emoluments and Income Therefrom' (pp. 536-542, CFI Rec., S. P. No. 1672).

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2. On January 24, 1964 this Honorable Court, on the basis of an amicable agreement entered into on January 23, 1964 by the two co-administrators of the estate of C. N. Hodges and virtually all of the heirs of C. N. Hodges (p. 912, CFI Rec., S. P. No. 1672), resolved the dispute over who should act as administrator of the estate of C. N. Hodges by appointing the PCIB as administrator of the estate of C. N. Hodges (pp. 905-906, CFI Rec., S. P. No. 1672) and issuing letters of administration to the PCIB.

3. On January 24, 1964 virtually all of the heirs of C. N. Hodges, Joe Hodges and Fernando P. Mirasol acting as the two co-administrators of the estate of C. N. Hodges, Avelina A. Magno acting as the administratrix of the estate of Linnie Jane Hodges, and Messrs. William Brown and Ardel Young acting for all of the Higdon family who claim to be the sole beneficiaries of the estate of Linnie Jane Hodges and various legal counsel representing the aforenamed parties entered into an amicable agreement, which was approved by this Honorable Court, wherein the parties thereto agreed that certain sums of money were to be paid in settlement of different claims against the two estates and *that the assets (to the extent they existed) of both estates would be administered jointly by the PCIB as administrator of the estate of C. N. Hodges and Avelina A. Magno as administratrix of the estate of Linnie Jane Hodges*, subject, however, to the aforesaid October 5, 1963 Motion, namely, the PCIB's claim to exclusive possession and ownership of one-hundred percent (100%) (or, in the alternative, seventy-five percent [75%] of all assets owned by C. N. Hodges or Linnie Jane Hodges situated in the Philippines. On February 1, 1964 (pp. 934-935, CFI Rec., S. P. No. 1672) this Honorable Court amended its order of January 24, 1964 but in no way changes its recognition of the aforedescribed basic demand by the PCIB as administrator of the estate of C. N. Hodges to one hundred percent (100%) of the assets claimed by both estates.

4. On February 15, 1964 the PCIB filed a 'Motion to Resolve' the aforesaid Motion of October 5, 1963. This Honorable Court set for hearing on June 11, 1964 the Motion of October 5, 1963.

5. On June 11, 1964, because the undersigned Allison J. Gibbs was absent in the United States, this Honorable Court ordered the indefinite postponement of the hearing of the Motion of October 5, 1963.

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6. Since its appointment as administrator of the estate of C. N. Hodges, the PCIB has not been able to properly carry out its duties and obligations as administrator of the estate of C. N. Hodges because of the following acts, among others, of Avelina A. Magno and those who claim to act for her as administratrix of the estate of Linnie Jane Hodges:

(a) Avelina A. Magno illegally acts as if she is in exclusive control of all of the assets in the Philippines of both estates including those claimed by the estate of C. N. Hodges as evidenced in part by her locking the premises at 206-208 Guanco Street, Iloilo City on August 31, 1964 and refusing to reopen same until ordered to do so by this Honorable Court on September 7, 1964.

(b) Avelina A. Magno illegally acts as though she alone may decide how the assets of the estate of C.N. Hodges should be administered, who the PCIB shall employ and how much they may be paid as evidenced in part by her refusal to sign checks issued by the PCIB payable to the undersigned counsel pursuant to their fee agreement approved by this Honorable Court in its order dated March 31, 1964.

(c) Avelina A. Magno illegally gives access to and turns over possession of the records and assets of the estate of C.N. Hodges to the attorney-in-fact of the Higdon Family, Mr. James L. Sullivan, as evidenced in part by the cashing of his personal checks.

(d) Avelina A. Magno illegally refuses to execute checks prepared by the PCIB drawn to pay expenses of the estate of C. N. Hodges as evidenced in part by the check drawn to reimburse the PCIB's advance of P48,445.50 to pay the 1964 income taxes reported due and payable by the estate of C.N. Hodges.

7. Under and pursuant to the orders of this Honorable Court, particularly those of January 24 and February 1, 1964, and the mandate contained in its Letters of Administration issued on January 24, 1964 to the PCIB, it has

'full authority to take possession of all the property of'

the deceased C. N. Hodges

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and to perform all other acts necessary for the preservation of said property.' (p. 914, CFI Rec., S.P. No. 1672.)

8. As administrator of the estate of C. N. Hodges, the PCIB claims the right to the immediate exclusive possession and control of all of the properties, accounts receivables, court cases, bank accounts and other assets, including the documentary records evidencing same, which existed in the Philippines on the date of C. N. Hodges' death, December 25, 1962, and were in his possession and registered in his name alone. The PCIB knows of no assets in the Philippines registered in the name of Linnie Jane Hodges, the estate of Linnie Jane Hodges, or, C. N. Hodges, Executor of the Estate of Linnie Jane Hodges, on December 25, 1962. All of the assets of which the PCIB has knowledge are either registered in the name of C. N. Hodges, alone or were derived therefrom since his death on December 25, 1962.

9. The PCIB as the current administrator of the estate of C. N. Hodges, deceased, succeeded to all of the rights of the previously duly appointed administrators of the estate of C. N. Hodges, to wit:

(a) On December 25, 1962, date of C. N. Hodges' death, this Honorable Court appointed Miss Avelina A. Magno simultaneously as:

(i) Administratrix of the estate of Linnie Jane Hodges (p. 102, CFI Rec., S.P. No. 1307) to replace the deceased C. N. Hodges who on May 28, 1957 was appointed Special Administrator (p. 13, CFI Rec., S.P. No. 1307) and on July 1, 1957 Executor of the estate of Linnie Jane Hodges (p. 30, CFI Rec., S. P. No. 1307);

(ii) *Special Administratrix of the estate of C. N. Hodges* (p. 102, CFI Rec., S.P. No. 1307).

(b) On December 29, 1962 this Honorable Court appointed Harold K. Davies as co-special administrator of the estate of C.N. Hodges along with Avelina A. Magno (pp. 108-111, CFI Rec., S. P. No. 1307).

(c) On January 22, 1963, with the conformity of Avelina A. Magno, Harold K. Davies resigned in favor of Joe Hodges (pp. 35-36, CFI Rec., S.P. No. 1672) who thereupon was appointed on January 22, 1963 by this Honorable Court as

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special co-administrator of the estate of C.N. Hodges (pp. 38-40 & 43, CFI Rec., S.P. No. 1672) along with Miss Magno who at that time was still acting as special co-administratrix of the estate of C. N. Hodges.

(d) On February 22, 1963, without objection on the part of Avelina A. Magno, this Honorable Court appointed Joe Hodges and Fernando P. Mirasol as co-administrators of the estate of C.N. Hodges (pp. 76-78, 81 & 85, CFI Rec., S.P. No. 1672).

10. Miss Avelina A. Magno, pursuant to the orders of this Honorable Court of December 25, 1962, took possession of all Philippine Assets now claimed by the two estates. Legally, Miss Magno could take possession of the assets registered in the name of C. N. Hodges alone only in her capacity as Special Administratrix of the Estate of C.N. Hodges. With the appointment by this Honorable Court on February 22, 1963 of Joe Hodges and Fernando P. Mirasol as the co-administrators of the estate of C.N. Hodges, they legally were entitled to take over from Miss Magno the full and exclusive possession of all of the assets of the estate of C.N. Hodges. With the appointment on January 24, 1964 of the PCIB as the sole administrator of the estate of C.N. Hodges in substitution of Joe Hodges and Fernando P. Mirasol, the PCIB legally became the only party entitled to the sole and exclusive possession of all of the assets of the estate of C. N. Hodges.

11. The PCIB's predecessors submitted their accounting and this Honorable Court approved same, to wit:

(a) The accounting of Harold K. Davies dated January 18, 1963 (pp. 16-33, CFI Rec., S.P. No. 1672); which shows on its face the:

(i) Conformity of Avelina A. Magno acting as 'Administratrix of the Estate of Linnie Jane Hodges and *Special Administratrix of the Estate of C.N. Hodges*';

(ii) Conformity of Leslie Echols, a Texas lawyer acting for the heirs of C. N. Hodges; and

(iii) Conformity of William Brown, a Texas lawyer acting for the Higdon family who claim to be the only heirs of Linnie Jane Hodges (pp. 18, 25-33, CFI Rec., S.P. No. 1672).

"Note: This accounting was approved by this Honorable Court on January 22, 1963 (p. 34, CFI Rec., S.P. No. 1672).

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(b) The accounting of Joe Hodges and Fernando P. Mirasol as of January 23, 1964, filed February 24, 1964 (pp. 990-1000, CFI Rec., S.P. No. 1672 and pp. 1806-1848, CFI Rec., S.P. No. 1307).

Note: This accounting was approved by this Honorable Court on March 3, 1964.

(c) The PCIB and its undersigned lawyers are aware of no report or accounting submitted by Avelina A. Magno of her acts as administratrix of the estate of Linnie Jane Hodges or special administratrix of the estate of C.N. Hodges, unless it is the accounting of Harold K. Davies as special co-administrator of the estate of C.N. Hodges dated January 18, 1963 to which Miss Magno manifested her conformity (*supra*).

12. In the aforesaid agreement of January 24, 1964, Miss Avelina A. Magno agreed to receive P10,000.00.

'for her services as administratrix of the estate of Linnie Jane Hodges'

and in addition she agreed to be employed, starting February 1, 1964, at

'a monthly salary of P500.00 for her services as an employee of both estates.'

13. Under the aforesaid agreement of January 24, 1964 and the orders of this Honorable Court of same date, the PCIB as administrator of the estate of C. N. Hodges is entitled to the exclusive possession of all records, properties and assets in the name of C. N. Hodges as of the date of his death on December 25, 1962 which were in the possession of the deceased C. N. Hodges on that date and which then passed to the possession of Miss Magno in her capacity as Special Co-Administratrix of the estate of C. N. Hodges or the possession of Joe Hodges or Fernando P. Mirasol as co-administrators of the estate of C. N. Hodges.

14. Because of Miss Magno's refusal to comply with the reasonable request of PCIB concerning the assets of the estate of C. N. Hodges, the PCIB dismissed Miss Magno as an employee of the estate of C. N. Hodges effective August 31, 1964. On September 1, 1964 Miss Magno locked the premises at 206-208 Guanco Street and denied the PCIB access thereto. Upon the Urgent Motion of the PCIB dated September 3, 1964, this Honorable Court on

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September 7, 1964 ordered Miss Magno to reopen the aforesaid premises at 206-208 Guanco Street and permit the PCIB access thereto no later than September 8, 1964.

15. The PCIB pursuant to the aforesaid orders of this Honorable Court is again in physical possession of all of the assets of the estate of C. N. Hodges. However, the PCIB is not in exclusive control of the aforesaid records, properties and assets because Miss Magno continues to assert the claims hereinabove outlined in paragraph 6, continues to use her own locks to the doors of the aforesaid premises at 206-208 Guanco Street, Iloilo City and continues to deny the PCIB its right to know the combinations to the doors of the vault and safes situated within the premises at 206-208 Guanco Street despite the fact that said combinations were known to only C. N. Hodges during his lifetime.

16. The Philippine estate and inheritance taxes assessed the estate of Linnie Jane Hodges were assessed and paid on the basis that C. N. Hodges is the sole beneficiary of the assets of the estate of Linnie Jane Hodges situated in the Philippines. Avelina A. Magno and her legal counsel at no time have questioned the validity of the aforesaid assessment and the payment of the corresponding Philippine death taxes.

17. Nothing further remains to be done in the estate of Linnie Jane Hodges except to resolve the aforesaid Motion of October 5, 1963 and grant the PCIB the exclusive possession and control of all of the records, properties and assets of the estate of C. N. Hodges.

18. Such assets as may have existed of the estate of Linnie Jane Hodges were ordered by this Honorable Court in special Proceedings No. 1307 to be turned over and delivered to C. N. Hodges alone. He in fact took possession of them before his death and asserted and exercised the right of exclusive ownership over the said assets as the sole beneficiary of the estate of Linnie Jane Hodges.

WHEREFORE, premises considered, the PCIB respectfully petitions that this Honorable Court:

(1) Set the Motion of October 5, 1963 for hearing at the earliest possible date with notice to all interested parties;

(2) Order Avelina A. Magno to submit an inventory and accounting as Administratrix of the Estate of Linnie Jane Hodges and Co-Administratrix of the Estate of C. N. Hodges of all of the funds, properties and assets of any character belonging to the deceased

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Linnie Jane Hodges and C. N. Hodges which have come into her possession, with full details of what she has done with them;

(3) Order Avelina A. Magno to turn over and deliver to the PCIB as administrator of the estate of C. N. Hodges all of the funds, properties and assets of any character remaining in her possession;

(4) Pending this Honorable Court's adjudication of the aforesaid issues, order Avelina A. Magno and her representatives to stop interferring with the administration of the estate of C. N. Hodges by the PCIB and its duly authorized representatives;

(5) Enjoin Avelina A. Magno from working in the premises at 206-208 Guanco Street, Iloilo City as an employee of the estate of C. N. Hodges and approve her dismissal as such by the PCIB effective August 31, 1964;

(6) Enjoin James L. Sullivan, Attorneys Manglapus and Quimpo and others allegedly representing Miss Magno from entering the premises at 206-208 Guanco Street, Iloilo City or any other properties of C. N. Hodges without the express permission of the PCIB;

(7) Order such other relief as this Honorable Court finds just and equitable in the premises."(Annex "U", Petition.)

On January 8, 1965, petitioner also filed a motion for "Official Declaration of Heirs of Linnie Jane Hodges Estate" alleging:

"COMES NOW Philippine Commercial and Industrial Bank (hereinafter referred to as PCIB), as administrator of the estate of the late C. N. Hodges, through the undersigned counsel, and to this Honorable Court respectfully alleges that:

'1. During their marriage, spouses Charles Newton Hodges and Linnie Jane Hodges, American citizens originally from the State of Texas, U.S.A., acquired and accumulated considerable assets and properties in the Philippines and in the States of Texas and Oklahoma, United States of America. All said properties constituted their conjugal estate.

2. Although Texas was the domicile of origin of the Hodges spouses, this Honorable Court, in its orders dated March 31 and December 12, 1964 (CFI Record, Sp. Proc. No. 1307, pp. _____; Sp. Proc. No. 1672, p. _____), conclusively found and categorically ruled that said spouses had lived and worked for more than 50 years

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in Iloilo City and had, therefore, acquired a domicile of choice in said city, which they retained until the time of their respective deaths.

3. On November 22, 1952, Linnie Jane Hodges executed in the City of Iloilo her Last Will and Testament, a copy of which is hereto attached as *Annex "A"*. The bequests in said will pertinent to the present issue are the *second*, *third*, and *fourth* provisos, which we quote in full hereunder:

> "SECOND: I give, devise and bequeath all of the rest, residue and remainder of my estate, both personal and real, wherever situated, or located, to my husband, Charles Newton Hodges, to have and to hold unto him, my said husband, during his natural lifetime.
>
> "THIRD: I desire, direct and provide that my husband, Charles Newton Hodges, shall have the right to manage, control, use and enjoy said estate during his lifetime, and he is hereby given the right to make any changes in the physical properties of said estate, by sale of any part thereof which he may think best, and the purchase of any other or additional property as he may think best; to execute conveyances with or without general or special warranty, conveying in fee simple or for any other term or time, any property which he may deem proper to dispose of; to lease any of the real property for oil, gas and/or other minerals, and all such deeds or leases shall pass the absolute fee simple title to the interest so conveyed in such property as he may elect to sell. All rents, emoluments and income from said estate shall belong to him, and he is further authorized to use any part of the principal of said estate as he may need or desire. It is provided herein, however, that he shall not sell or otherwise dispose of any of the improved property now owned by us located at, in or near the City of Lubbock, Texas, but he shall have the full right to lease, manage and enjoy the same during his lifetime, as above provided. He shall have the right to sub-divide any farmland and sell lots therein, and may sell unimproved town lots.
>
> "FOURTH: At the death of my said husband, Charles Newton Hodges, I give, devise and bequeath all of the rest, residue and remainder of my estate both real and personal, wherever situated or located, to be equally divided among my brothers and sisters, share and share alike, namely:

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'Esta Higdon, Emma Howell, Leonard Higdon, Roy Higdon, Sadie Rascoe, Era Boman and Nimray Higdon.'

4. On November 14, 1953, C. N. Hodges executed in the City of Iloilo his Last Will and Testament, a copy of which is hereto attached as *Annex "B"*. In said Will, C. N. Hodges designated his wife, Linnie Jane Hodges, as his beneficiary using the identical language she used in the second and third provisos of her Will, *supra*.

5. On May 23, 1957 Linnie Jane Hodges died in Iloilo City, pre-deceasing her husband by more than five (5) years. At the time of her death, she had no forced or compulsory heir, except her husband, C. N. Hodges. She was survived also by various brothers and sisters mentioned in her Will (*supra*), which, for convenience, we shall refer to as the HIGDONS.

6. On June 28, 1957, this Honorable Court admitted to probate the Last Will and Testament of the deceased Linnie Jane Hodges (Annex "A"), and appointed C. N. Hodges as executor of her estate without bond. (CFI Record, Sp. Proc. No. 1307, pp. 24-25). On July 1, 1957, this Honorable Court issued letters testamentary to C. N. Hodges in the estate of Linnie Jane Hodges. (CFI Record, Sp. Proc. No. 1307, p. 30.)

7. The Will of Linnie Jane Hodges, with respect to the order of succession, the amount of successional rights, and the intrinsic validity of its testamentary provisions, should be governed by Philippine laws, because:

(a) The testatrix, Linnie Jane Hodges, intended Philippine laws to govern her Will;

(b) Article 16 of the Civil Code provides that "the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found," shall prevail. However, the Conflict of Law of Texas, which is the "national law" of the testatrix, Linnie Jane Hodges, provide that the domiciliary law (Philippine law — see paragraph 2, *supra*) should govern the testamentary dispositions and successional rights over movables (personal properties), and the law of the situs of the property (also Philippine law as to properties located in the Philippines) with regards immovable (real properties). Thus applying the "Renvoi Doctrine", as approved and applied by our Supreme Court in the case of "In The Matter Of

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The Testate Estate of Eduard E. Christensen", G.R. No. L-16749, promulgated January 31, 1963, Philippine law should apply to the Will of Linnie Jane Hodges and to the successional rights to her estate insofar as her *movable* and *immovable* assets in the Philippines are concerned. We shall not, at this stage, discuss what law should govern the assets of Linnie Jane Hodges located in Oklahoma and Texas, because the only assets in issue in this motion are those within the jurisdiction of this Honorable Court in the two above-captioned Special Proceedings.

8. Under Philippine and Texas law, the conjugal or community estate of spouses shall, upon dissolution, be divided equally between them. Thus, upon the death of Linnie Jane Hodges on May 23, 1957, one-half (1/2) of the entirety of the assets of the Hodges spouses constituting their conjugal estate pertained automatically to Charles Newton Hodges, *not by way of inheritance, but in his own right as partner in the conjugal partnership.* The other one-half (1/2) portion of the conjugal estate constituted the estate of Linnie Jane Hodges. *This is the only portion of the conjugal estate capable of inheritance by her heirs.*

9. This one-half (1/2) portion of the conjugal assets pertaining to Linnie Jane Hodges cannot, under a clear and specific provision of her Will, be enhanced or increased by income, earnings, rents, or emoluments accruing after her death on May 23, 1957. Linnie Jane Hodges' Will provides that "*all rents, emoluments and income from said estate shall belong to him (C. N. Hodges) and he is further authorized to use any part of the principal of said estate as he may need or desire.*" (Paragraph 3, Annex "A".) Thus, by specific provision of Linnie Jane Hodges' Will, "all rents, emoluments and income" must be credited to the one-half (1/2) portion of the conjugal estate pertaining to C. N. Hodges. *Clearly, therefore the estate of Linnie Jane Hodges, capable of inheritance by her heirs, consisted exclusively of no more than one-half (1/2) of the conjugal estate, computed as of the time of her death on May 23, 1957.*

10. Articles 900, 995, and 1001 of the New Civil Code provide that the surviving spouse of a deceased leaving no ascendants or descendants is entitled, as a matter of right and by way of irrevocable legitime, to at least one-half (1/2) of the estate of the deceased, and no testamentary disposition by the deceased can legally and validly affect this right of the surviving spouse. In fact, her husband is entitled to said one-half (1/2) portion of her estate by way of legitime. (Article 886, Civil Code.) Clearly, therefore, immediately

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upon the death of Linnie Jane Hodges, C. N. Hodges was the owner of at least three-fourths (3/4) or seventy-five (75%) percent of all of the conjugal assets of the spouses, (1/2 or 50% by way of conjugal partnership share and 1/4 or 25% by way of inheritance and legitime), plus all "rents, emoluments and income" accruing to said conjugal estate from the moment of Linnie Jane Hodges' death (see paragraph 9, *supra*).

11. The late Linnie Jane Hodges designated her husband C. N. Hodges as her sole and exclusive heir with full authority to do what he pleased, as exclusive heir and owner of all the assets constituting her estate, except only with regards certain properties "owned by us, located at, in or near the City of Lubbock, Texas." Thus, even without relying on our laws of succession and legitime, which we have cited above, *C. N. Hodges, by specific testamentary designation of his wife, was entitled to the entirety to his wife's estate in the Philippines.*

12. Article 777 of the New Civil Code provides that "the rights of the successor are transmitted from the death of the decedent." Thus, title to the estate of Linnie Jane Hodges was transmitted to C. N. Hodges immediately upon her death on May 23, 1957. For the convenience of this Honorable Court, we attached hereto as *Annex "C"* a graph of how the conjugal estate of the spouses Hodges should be divided in accordance with Philippine law and the Will of Linnie Jane Hodges.

13. In his capacity as sole heir and successor to the estate of Linnie Jane Hodges as above-stated, C. N. Hodges, shortly after the death of Linnie Jane Hodges, appropriated to himself the entirety of her estate. He operated all the assets, engaged in business and performed all acts in connection with the entirety of the conjugal estate, *in his own name alone*, just as he had been operating, engaging and doing while the late Linnie Jane Hodges was still alive. *Upon his death on December 25, 1962, therefore, all said conjugal assets were in his sole possession and control, and registered in his name alone, not as executor, but as exclusive owner of all said assets.*

14. All these acts of C. N. Hodges were authorized and sanctioned expressly and impliedly by various orders of this Honorable Court, as follows:

(a) In an Order dated May 27, 1957, this Honorable Court ruled that C. N. Hodges "is allowed or authorized to continue the business in which he was engaged, and to perform acts which he had been

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doing while the deceased was living." (CFI Record, Sp. Proc. No. 1307, p. 11.)

(b) On December 14, 1957, this Honorable Court, on the basis of the following fact, alleged in the verified Motion dated December 11, 1957 filed by Leon P. Gellada as attorney for the executor C. N. Hodges:

> 'That herein Executor, (is) not only part owner of the properties left as conjugal, but also, *the successor to all the properties left by the deceased Linnie Jane Hodges.*' (CFI Record, Sp. Proc. No. 1307, p. 44; italics supplied.)

issued the following order:

> 'As prayed for by Attorney Gellada, counsel for the Executor, *for the reasons stated in his motion dated December 11, 1957, which the Court considers well taken,* all the sales, conveyances, leases and mortgages of all the properties left by the deceased Linnie Jane Hodges executed by the Executor, Charles Newton Hodges are hereby APPROVED. The said Executor is further authorized to execute subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges *in consonance with the wishes contained in the last will and testament of the latter.*" (CFI Record, Sp. Proc. No. 1307, p. 46; italics supplied.)

(c) On April 21, 1959, this Honorable Court approved the verified inventory and accounting submitted by C. N. Hodges through his counsel Leon P. Gellada on April 14, 1959 wherein he alleged among other things,

> 'That no person interested in the Philippines of the time and place of examining the herein account, be given notice, *as herein executor is the only devisee or legatee of the deceased, in accordance with the last will and testament already probated by the Honorable Court.*' (CFI Record, Sp. Proc. No. 1307, pp 77-78; italics supplied.)

(d) On July 30, 1960, this Honorable Court approved the verified "Annual Statement of Account" submitted by C. N. Hodges through his counsel Leon P. Gellada on July 21, 1960 wherein he alleged, among other things,

> 'That no person interested in the Philippines of the time and place of examining the herein account, be given notice *as*

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herein executor is the only devisee or legatee of the deceased Linnie Jane Hodges, in accordance with the last will and testament of the deceased, already probated by this Honorable Court.' (CFI Record, Sp. Proc. No 1307, pp. 81-82; italics supplied.)

(e) On May 2, 1961, this Honorable Court approved the verified "Annual Statement of Account By The Executor For the Year 1960" submitted through Leon P. Gellada on April 20, 1961 wherein he alleged:

'That no person interested in the Philippines be given notice, of the time and place of examining the herein account, as *herein executor is the only devisee or legatee of the deceased Linnie Jane Hodges, in accordance with the last will and testament of the deceased, already probated by this Honorable Court.*' (CFI Record, Sp. Proc. No. 1307, pp. 90-91; italics supplied.)

15. Since C. N. Hodges was the sole and exclusive heir of Linnie Jane Hodges, not only by law, but in accordance with the dispositions of her Will, there was, in fact, no need to liquidate the conjugal estate of the spouses. The entirety of said conjugal estate pertained to him exclusively, therefore this Honorable Court sanctioned and authorized, as above-stated, C. N. Hodges to manage, operate and control all the conjugal assets as owner.

16. By expressly authorizing C. N. Hodges to act as he did in connection with the estate of his wife, this Honorable Court has (1) declared C. N. Hodges as the sole heir of the estate of Linnie Jane Hodges, and (2) delivered and distributed her estate to C. N. Hodges as sole heir in accordance with the terms and conditions of her Will. Thus, although the "estate of Linnie Jane Hodges" still exists as a legal and juridical personality, it had no assets or properties located in the Philippines registered in its name whatsoever at the time of the death of C. N. Hodges on December 25, 1962.

17. The Will of Linnie Jane Hodges (Annex "A"), fourth paragraph, provides as follows:

'At the death of my said husband, Charles Newton Hodges, I give, devise and bequeath all of the rest, residue and remainder of my estate both real and personal, wherever situated or located, to be equally divided among my brothers and sisters, share and share alike, namely:

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'Esta Higdon, Emma Howell, Leonard Higdon, Roy Higdon, Sadie Rascoe, Era Boman and Nimray Higdon.'

Because of the facts hereinabove set out there is no "rest, residue and remainder," at least to the extent of the Philippine assets, which remains to vest in the HIGDONS, assuming this proviso in Linnie Jane Hodges' Will is valid and binding against the estate of C. N. Hodges.

18. Any claims by the HIGDONS under the above-quoted provision of Linnie Jane Hodges' Will is without merit because said provision is void and invalid at least as to the Philippine assets. It should not, in anyway, affect the rights of the estate of C. N. Hodges or his heirs to the properties, which C. N. Hodges acquired by way of inheritance from his wife Linnie Jane Hodges upon her death.

(a) In spite of the above-mentioned provision in the Will of Linnie Jane Hodges, C. N. Hodges acquired, not merely a usufructuary right, but absolute title and ownership to her estate. In a recent case involving a very similar testamentary provision, the Supreme Court held that the heir first designated acquired full ownership of the property bequeathed by the will, not mere usufructuary rights. (Consolacion Florentino de Crisologo, et al., *vs.* Manuel Singson, G.R. No. L-13876, February 28, 1962.)

(b) Article 864, 872 and 886 of the New Civil Code clearly provide that no charge, condition or substitution whatsoever upon the legitime can be imposed by a testator. Thus, under the provisions of Articles 900, 995 and 1001 of the New Civil Code, the legitime of a surviving spouse is 1/2 of the estate of the deceased spouse. Consequently, the above-mentioned provision in the Will of Linnie Jane Hodges is clearly invalid insofar as the legitime of C. N. Hodges was concerned, which consisted of 1/2 of the 1/2 portion of the conjugal estate, or 1/4 of the entire conjugal estate of the deceased.

(c) There are generally only two kinds of substitution provided for and authorized by our Civil Code (Articles 857-870), namely, (1) *simple or common* substitution, sometimes referred to as *vulgar* substitution (Article 859), and (2) fideicommissary substitution (Article 863). All other substitutions are merely variations of these. The substitution provided for by paragraph four of the Will of Linnie Jane

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Hodges is not fideicommissary substitution, because there is clearly no obligation on the part of C. N. Hodges as the first heir designated, to preserve the properties for the substitute heirs. (Consolacion Florentino de Crisologo, et al. *vs*. Manuel Singson, G.R. No. L-13876.) At most, it is a *vulgar* or *simple* substitution. However, in order that a *vulgar* or *simple* substitution can be valid, three alternative conditions must be present, namely, that the first designated heir (1) should die before the testator; or (2) should not wish to accept the inheritance; or (3) should be incapacitated to do so. None of these conditions apply, to C. N. Hodges, and, therefore, the substitution provided for by the above-quoted provision of the Will is not authorized by the Code, and, therefore, it is void. Manresa, commenting on these kinds of substitution, meaningfully stated that: "x x x cuando el testador instituye un primer heredero, y por fallecimiento de este, nombra otro u otros, ha de entenderse que estas segundas designaciones solo han de llegar a tener efectividad en el caso de que el primer instituido muera antes que el testador, fuera o no esta su verdadera intencion. x x x". (6 Manresa, 7 a ed., pag. 175.) In other words, *when another heir is designated to inherit upon the death of a first heir, the second designation can have effect only in case the first instituted heir dies before the testator, whether or not that was the true intention of said testator*. Since C. N. Hodges did not die before Linnie Jane Hodges, the provision for substitution contained in Linnie Jane Hodges' Will is void.

(d) In view of the invalidity of the provision for substitution in the Will, C. N. Hodges' inheritance to the entirety of the Linnie Jane Hodges estate is irrevocable and final.

19. Be that as it may, at the time of C. N. Hodges' death, the entirety of the conjugal estate appeared and was registered in him exclusively as owner. Thus, the presumption is that all said assets constituted his estate. Therefore —

(a) If the HIGDONS wish to enforce their dubious rights as substituted heirs to 1/4 of the conjugal estate (the other 1/4 is covered by the legitime of C. N. Hodges which can not be affected by any testamentary disposition), their remedy, if any, is to file their claim against the estate of C. N. Hodges, which should be entitled at the present time to full custody and control of all the conjugal estate of the spouses.

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(b) The present proceedings, in which two estates exist under separate administration, where the administratrix of the Linnie Jane Hodges estate exercises an officious right to object and intervene in matters affecting exclusively the C. N. Hodges estate, is anomalous.

WHEREFORE, it is most respectfully prayed that after trial and reception of evidence, this Honorable Court declare:

1. That the estate of Linnie Jane Hodges was and is composed exclusively of one-half (1/2) share in the conjugal estate of the spouses Hodges, computed as of the date of her death on May 23, 1957;

2. That the other half of the conjugal estate pertained exclusively to C. N. Hodges as his share as partner in the conjugal partnership;

3. That all "rents, emoluments and income" of the conjugal estate accruing after Linnie Jane Hodges' death pertains to C. N. Hodges;

4. That C. N. Hodges was the sole and exclusive heir of the estate of Linnie Jane Hodges;

5. That, therefore, the entire conjugal estate of the spouses located in the Philippines, plus all the "rents, emoluments and income" above-mentioned, now constitutes the estate of C. N. Hodges, capable of distribution to his heirs upon termination of Special Proceedings No. 1672;

6. That PCIB, as administrator of the estate of C. N. Hodges, is entitled to full and exclusive custody, control and management of all said properties; and

7. That Avelina A. Magno, as administratrix of the estate of Linnie Jane Hodges, as well as the HIGDONS, has no right to intervene or participate in the administration of the C. N. Hodges estate.

PCIB further prays for such and other relief as may be deemed just and equitable in the premises."
(Record, pp. 265-277)

Before all of these motions of petitioner could be resolved, however, on December 21, 1965, private respondent Magno filed her own "Motion for the Official Declaration of Heirs of the Estate of Linnie Jane Hodges" as follows:

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"COMES NOW the Administratrix of the Estate of Linnie Jane Hodges and, through undersigned counsel, unto this Honorable Court most respectfully states and manifests:

1. That the spouses Charles Newton Hodges and Linnie Jane Hodges were American citizens who died at the City of Iloilo after having amassed and accumulated extensive properties in the Philippines;

2. That on November 22, 1952, Linnie Jane Hodges executed a last will and testament (the original of this will now forms part of the records of these proceedings as Exhibit 'C' and appears as Sp. Proc. No. 1307, Folio I, pp. 17-18);

3. That on May 23, 1957, Linnie Jane Hodges died at the City of Iloilo, at the time survived by her husband, Charles Newton Hodges, and several relatives named in her last will and testament;

4. That on June 28, 1957, a petition therefor having been priorly filed and duly heard, this Honorable Court issued an order admitting to probate the last will and testament of Linnie Jane Hodges (Sp. Proc. No. 1307, Folio I, pp. 24-25, 26-28);

5. That the required notice to creditors and to all others who may have any claims against the decedent, Linnie Jane Hodges, has already been printed, published and posted (Sp. Proc. No. 1307, Folio I, pp. 34-40) and the reglamentary period for filing such claims has long ago lapsed and expired without any claims having been asserted against the estate of Linnie Jane Hodges, approved by the Administrator/Administratrix of the said estate, nor ratified by this Honorable Court;

6. That the last will and testament of Linnie Jane Hodges already admitted to probate contains an institution of heirs in the following words:

> "SECOND: I give, devise and bequeath all of the rest, residue and remainder of my estate, both personal and real, wherever situated or located, to my beloved husband, Charles Newton Hodges, to have and to hold unto him, my said husband, during his natural lifetime.
>
> THIRD: I desire, direct and provide that my husband, Charles Newton Hodges, shall have the right to manage, control, use and enjoy said estate during his lifetime, and he is hereby given the right to make any changes in the physical properties

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of said estate, by sale of any part thereof which he may think best, and the purchase of any other or additional property as he may think best; to execute conveyances with or without general or special warranty, conveying in fee simple or for any other term or time, any property which he may deem proper to dispose of; to lease any of the real property for oil, gas and/or other minerals, and all such deeds or leases shall pass the absolute fee simple title to the interest so conveyed in such property as he may elect to sell. All rents, emoluments and income from said estate shall belong to him, and he is further authorized to use any part of the principal of said estate as he may need or desire. It is provided herein, however, that he shall not sell or otherwise dispose of any of the improved property now owned by us located at, in or near the City of Lubbock, Texas, but he shall have the full right to lease, manage and enjoy the same during his lifetime, above provided. He shall have the right to subdivide any farm land and sell lots therein, and may sell unimproved town lots.

FOURTH: At the death of my said husband, Charles Newton Hodges, I give, devise and bequeath all of the rest, residue and remainder of my estate, both real and personal, wherever situated or located, to be equally divided among my brothers and sisters, share and share alike, namely:

Esta Higdon, Emma Howell, Leonard Higdon, Roy Higdon, Sadie Rascoe, Era Boman and Nimroy Higdon.

FIFTH: In case of the death of any of my brothers and/or sisters named in item Fourth, above, prior to the death of my husband, Charles Newton Hodges, then it is my will and bequest that the heirs of such deceased brother or sister shall take jointly the share which would have gone to such brother or sister had she or he survived.'

7. That under the provisions of the last will and testament already above-quoted, Linnie Jane Hodges gave a life-estate or a usufruct over all her estate to her husband, Charles Newton Hodges, and a vested remainder-estate or the naked title over the same estate to her relatives named therein;

8. That after the death of Linnie Jane Hodges and after the admission to probate of her last will and testament, but during the lifetime of Charles Newton Hodges, the said Charles Newton Hodges, with full and complete knowledge of the life-estate or usufruct

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conferred upon him by the will since he was then acting as Administrator of the estate and later as Executor of the will of Linnie Jane Hodges, unequivocably and clearly, through oral and written declarations and sworn public statements, renounced, disclaimed and repudiated his life-estate and usufruct over the estate of Linnie Jane Hodges;

9. That, accordingly, the only heirs left to receive the estate of Linnie Jane Hodges, pursuant to her last will and testament, are her named brothers and sisters, or their heirs, to wit: Esta Higdon, Emma Howell, Leonard Higdon, Aline Higdon and David Higdon, the latter two being the wife and son respectively of the deceased Roy Higdon, Sadie Rascoe, Era Boman and Nimroy Higdon, all of legal ages, American citizens, with residence at the State of Texas, United States of America;

10. That at the time of the death of Linnie Jane Hodges on May 23, 1957, she was the co-owner (together with her husband Charles Newton Hodges) of an undivided one-half interest in their conjugal properties existing as of that date, May 23, 1957, which properties are now being administered sometimes jointly and sometimes separately by the Administratrix of the estate of Linnie Jane Hodges and/or the Administrator of the estate of C. N. Hodges but all of which are under the control and supervision of this Honorable Court;

11. That because there was no separation or segregation of the interests of husband and wife in the combined conjugal estate, as there has been no such separation or segregation up to the present, both interests have continually earned exactly the same amount of 'rents, emoluments and income,' the entire estate having been continually devoted to the business of the spouses as if they were alive;

12. That the one-half interest of Linnie Jane Hodges in the combined conjugal estate was earning 'rents, emoluments and income' until her death on May 23, 1957, when it ceased to be saddled with any more charges or expenditures which are purely personal to her in nature, and her estate kept on earning such 'rents, emoluments and income' by virtue of their having been expressly renounced, disclaimed and repudiated by Charles Newton Hodges to whom they were bequeathed for life under the last will and testament of Linnie Jane Hodges;

13. That, on the other hand, the one-half interest of Charles Newton Hodges in the combined conjugal estate existing as of May 23,

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1957, while it may have earned exactly the same amount of 'rents, emoluments and income' as that of the share pertaining to Linnie Jane Hodges, continued to be burdened by charges, expenditures, and other dispositions which are purely personal to him in nature, until the death of Charles Newton Hodges himself on December 25, 1962;

14. That of all the assets of the combined conjugal estate of Linnie Jane Hodges and Charles Newton Hodges *as they exist today*, the estate of Linnie Jane Hodges is clearly entitled to a portion more than fifty percent (50%) as compared to the portion to which the estate of Charles Newton Hodges may be entitled, which portions can be exactly determined by the following manner:

a. An inventory must be made of the assets of the combined conjugal estate as they existed on the death of Linnie Jane Hodges on May 23, 1957 — one-half of these assets belong to the estate of Linnie Jane Hodges;

b. An accounting must be made of the 'rents, emoluments and income' of all these assets — again one-half of these belong to the estate of Linnie Jane Hodges;

c. Adjustments must be made, after making a deduction of charges disbursements and other dispositions made by Charles Newton Hodges personally and for his own personal account from May 23, 1957 up to December 25, 1962, as well as other charges, disbursements and other dispositions made for him and in his behalf since December 25, 1962 up to the present;

15. That there remains no other matter for disposition now insofar as the estate of Linnie Jane Hodges is concerned but to complete the liquidation of her estate, segregate them from the conjugal estate, and distribute them to her heirs pursuant to her last will and testament.

WHEREFORE, premises considered, it is most respectfully moved and prayed that this Honorable Court, after a hearing on the factual matters raised by this motion, issue an order:

a. Declaring the following persons, to wit: Esta Higdon, Emma Howell, Leonard Higdon, Aline Higdon, David Higdon, Sadie Rascoe, Era Boman and Nimroy Higdon, as the sole heirs under the last will and testament of Linnie Jane Hodges and as the only persons entitled to her estate;

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b. Determining the exact value of the estate of Linnie Jane Hodges in accordance with the system enunciated in paragraph 14 of this motion;

c. After such determination ordering its segregation from the combined conjugal estate and its delivery to the Administratrix of the estate of Linnie Jane Hodges for distribution to the heirs to whom they properly belong and appertain."

(Green Record on Appeal, pp. 382-391)

whereupon, instead of further pressing on its motion of January 8, 1965 aforequoted, as it had been doing before, petitioner withdrew the said motion and in addition to opposing the above motion of respondent Magno, filed a motion on April 22, 1966 alleging in part that:

"1. That it has received from the counsel for the administratrix of the supposed estate of Linnie Jane Hodges a notice to set her 'Motion for Official Declaration of Heirs of the Estate of Linnie Jane Hodges';

"2. That before the aforesaid motion could be heard, there are matters pending before this Honorable Court, such as:

a. The examination already ordered by this Honorable Court of documents relating to the allegation of Avelina Magno that Charles Newton Hodges 'through x x x written declarations and sworn public statements, renounced, disclaimed and repudiated his life-estate and usufruct over the Estate of Linnie Jane Hodges';

b. That 'Urgent Motion for An Accounting and Delivery to the Estate of C. N. Hodges of All the Assets of the Conjugal Partnership of the Deceased Linnie Jane Hodges and C. N. Hodges Existing as of May 23, 1957 Plus All the Rents, Emoluments and Income Therefrom';

c. Various motions to resolve the aforesaid motion;

d. Manifestation of September 14, 1964, detailing acts of interference of Avelina Magno under color of title as administratrix of the Estate of Linnie Jane Hodges;

which are all prejudicial, and which involve no issues of fact, all facts involved therein being matters of record, and therefore require only the resolution of questions of law;

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"3. That whatever claims any alleged heirs or other persons may have could be very easily threshed out in the Testate Estate of Charles Newton Hodges;

"4. That the maintenance of two separate estate proceedings and two administrators only results in confusion and is unduly burdensome upon the Testate Estate of Charles Newton Hodges, particularly because the bond filed by Avelina Magno is grossly insufficient to answer for the funds and property which she has inofficiously collected and *held*, as well as those which she continues to inofficiously collect and *hold*;

"5. That it is a matter of record that such state of affairs affects and inconveniences not only the estate but also third-parties dealing with it"; (Annex "V", Petition.)

and then, after further reminding the court, by quoting them, of the relevant allegations of its earlier motion of September 14, 1964, Annex U, prayed that:

"1. Immediately order Avelina Magno to account for and deliver to the administrator of the Estate of C. N. Hodges all the assets of the conjugal partnership of the deceased Linnie Jane Hodges and C. N. Hodges, plus all the rents, emoluments and income therefrom;

"2. Pending the consideration of this motion, immediately order Avelina Magno to turn over all her collections to the administrator Philippine Commercial & Industrial Bank;

"3. Declare the Testate Estate of Linnie Jane Hodges (Sp. Proc. No. 1307) closed;

"4. Defer the hearing and consideration of the motion for declaration of heirs in the Testate Estate of Linnie Jane Hodges until the matters hereinabove set forth are resolved."
(Prayer, Annex "V" of Petition.)

On October 12, 1966, as already indicated at the outset of this opinion, the respondent court denied the foregoing motion, holding thus:

"O R D E R

On record is a motion (Vol. X, Sp. 1672, pp. 4379-4390) dated April 22, 1966 of administrator PCIB praying that (1) Immediately order Avelina Magno to account for and deliver to the administrator of the estate of C. N. Hodges all assets of the conjugal partnership

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of the deceased Linnie Jane Hodges and C. N. Hodges, plus all the rents, emoluments and income therefrom; (2) Pending the consideration of this motion, immediately order Avelina Magno to turn over all her collections to the administrator PCIB; (3) Declare the Testate Estate of Linnie Jane Hodges (Sp. Proc. No. 1307) closed; and (4) Defer the hearing and consideration of the motion for declaration of heirs in the Testate Estate of Linnie Jane Hodges until the matters hereinabove set forth are resolved.

This motion is predicated on the fact that there are matters pending before this court such as (a) the examination already ordered by this Honorable Court of documents relating to the allegation of Avelina Magno that Charles Newton Hodges thru written declaration and sworn public statements renounced, disclaimed and repudiated his life-estate and usufruct over the estate of Linnie Jane Hodges (b) the urgent motion for accounting and delivery to the estate of C. N. Hodges of all the assets of the conjugal partnership of the deceased Linnie Jane Hodges and C. N. Hodges existing as of May 23, 1957 plus all the rents, emoluments and income therefrom; (c) various motions to resolve the aforesaid motion; and (d) manifestation of September 14, 1964, detailing acts of interference of Avelina Magno under color of title as administratrix of the estate of Linnie Jane Hodges.

These matters, according to the instant motion, are all prejudicial involving no issues of facts and only require the resolution of question of law; that in the motion of October 5, 1963 it is alleged that in a motion dated December 11, 1957 filed by Atty. Leon Gellada as attorney for the executor C. N. Hodges, the said executor C. N. Hodges is not only part owner of the properties left as conjugal but also the successor to all the properties left by the deceased Linnie Jane Hodges.

Said motion of December 11, 1957 was approved by the Court in consonance with the wishes contained in the last will and testament of Linnie Jane Hodges.

That on April 21, 1959 this Court approved the inventory and accounting submitted by C. N. Hodges thru counsel Atty. Leon Gellada in a motion filed on April 14, 1959 stating therein that executor C. N. Hodges is the only devisee or legatee of Linnie Jane Hodges in accordance with the last will and testament already probated by the Court.

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That on July 13, 1960 the Court approved the annual statement of accounts submitted by the executor C. N. Hodges thru his counsel Atty. Gellada on July 21, 1960 wherein it is stated that the executor, C. N. Hodges is the only devisee or legatee of the deceased Linnie Jane Hodges; that on May 2, 1961 the Court approved the annual statement of accounts submitted by executor, C. N. Hodges for the year 1960 which was submitted by Atty. Gellada on April 20, 1961 wherein it is stated that executor Hodges is the only devisee or legatee of the deceased Linnie Jane Hodges;

That during the hearing on September 5 and 6, 1963 the estate of C. N. Hodges claimed all the assets belonging to the deceased spouses Linnie Jane Hodges and C. N. Hodges situated in the Philippines; that administratrix Magno has executed illegal acts to the prejudice of the testate estate of C. N. Hodges.

An opposition (Sp. 1672, Vol. X, pp. 4415-4421) dated April 27, 1966 of administratrix Magno has been filed asking that the motion be denied for lack of merit and that the motion for the official declaration of heirs of the estate of Linnie Jane Hodges be set for presentation and reception of evidence.

It is alleged in the aforesaid opposition that the examination of documents which are in the possession of administratrix Magno can be made prior to the hearing of the motion for the official declaration of heirs of the estate of Linnie Jane Hodges, during said hearing.

That the matters raised in the PCIB's motion of October 5, 1963 (as well as the other motion) dated September 14, 1964 have been consolidated for the purpose of presentation and reception of evidence with the hearing on the determination of the heirs of the estate of Linnie Jane Hodges. It is further alleged in the opposition that the motion for the official declaration of heirs of the estate of Linnie Jane Hodges is the one that constitutes a prejudicial question to the motions dated October 5 and September 14, 1964 because if said motion is found meritorious and granted by the Court, the PCIB's motions of October 5, 1963 and September 14, 1964 will become moot and academic since they are premised on the assumption and claim that the only heir of Linnie Jane Hodges was C. N. Hodges;

That the PCIB and counsel are estopped from further questioning the determination of heirs in the estate of Linnie Jane Hodges at this stage since it was PCIB as early as January 8, 1965 which filed a motion for official declaration of heirs of Linnie Jane Hodges;

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that the claim of any heirs of Linnie Jane Hodges can be determined only in the administration proceedings over the estate of Linnie Jane Hodges and not that of C. N. Hodges, since the heirs of Linnie Jane Hodges are claiming her estate and not the estate of C. N. Hodges.

A reply (Sp. 1672, Vol. X, pp. 4436-4444) dated May 11, 1966 of the PCIB has been filed alleging that the motion dated April 22, 1966 of the PCIB is not to seek deferment of the hearing and consideration of the motion for official declaration of heirs of Linnie Jane Hodges but to declare the testate estate of Linnie Jane Hodges closed and for administratrix Magno to account for and deliver to the PCIB all assets of the conjugal partnership of the deceased spouses which has come to her possession plus all rents and income.

A rejoinder (Sp. 1672, Vol. X, pp. 4458-4462) of administratrix Magno dated May 19, 1966 has been filed alleging that the motion dated December 11, 1957 only sought the approval of all conveyances made by C. N. Hodges and requested the Court authority for all subsequent conveyances that will be executed by C. N. Hodges; that the order dated December 14, 1957 only approved the conveyances made by C. N. Hodges; that C. N. Hodges represented by counsel never made any claim in the estate of Linnie Jane Hodges and never filed a motion to declare himself as the heir of the said Linnie Jane Hodges despite the lapse of more than five (5) years after the death of Linnie Jane Hodges; that it is further alleged in the rejoinder that there can be no order of adjudication of the estate unless there has been a prior express declaration of heirs and so far no declaration of heirs in the estate of Linnie Jane Hodges (Sp. 1307) has been made.

Considering the allegations and arguments in the motion and reply of the PCIB as well as those in the opposition and rejoinder of administratrix Magno, the Court finds the opposition and rejoinder to be well taken for the reason that so far there has been no official declaration of heirs in the testate estate of Linnie Jane Hodges and therefore no disposition of her estate.

WHEREFORE, the motion of the PCIB dated April 22, 1966 is hereby DENIED."
(Annex "W", Petition)

In its motion dated November 24, 1966 for the reconsideration of this order, petitioner alleged *inter alia* that:

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"It cannot be over-stressed that the motion of December 11, 1957 was based on the fact that:

a. Under the last will and testament of the deceased, Linnie Jane Hodges, the late Charles Newton Hodges was the sole heir instituted insofar as her properties in the Philippines are concerned;

b. Said last will and testament vested upon the said late Charles Newton Hodges rights over said properties which, in sum, spell ownership, absolute and in fee simple;

c. Said late Charles Newton Hodges was, therefore, 'not only part owner of the properties left as conjugal, but also, the successor to all the properties left by the deceased Linnie Jane Hodges.

"Likewise, it cannot be over-stressed that the aforesaid motion was granted by this Honorable Court 'for the reasons stated' therein.

"Again, the motion of December 11, 1957 prayed that not only 'all the sales, conveyances, leases, and mortgages executed by' the late Charles Newton Hodges, but also all 'the subsequent sales, conveyances, leases, and mortgages x x x' be approved and authorized. This Honorable Court, in its order of December 14, 1957, 'for the reasons stated' in the aforesaid motion, granted the same, and not only approved all the sales, conveyances, leases and mortgages of all properties left by the deceased Linnie Jane Hodges executed by the late Charles Newton Hodges, but also authorized 'all subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges." (Annex "X", Petition)

and reiterated its fundamental pose that the Testate Estate of Linnie Jane Hodges had already been factually, although not legally, closed with the virtual declaration of Hodges and adjudication to him, as sole universal heir of all the properties of the estate of his wife, in the order of December 14, 1957, Annex G. Still unpersuaded, on July 18, 1967, respondent court denied said motion for reconsideration and held that "the court believes that there is no justification why the order of October 12, 1966 should be considered or modified," and, on July 19, 1967, the motion of respondent Magno "for official declaration of heirs of the estate of Linnie Jane Hodges," already referred to above, was set for hearing.

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In consequence of all these developments, the present petition was filed on August 1, 1967 (albeit petitioner had to pay another docketing fee on August 9, 1967, since the orders in question were issued in two separate testate estate proceedings, Nos. 1307 and 1672, in the court below).

Together with such petition, there are now pending before Us for resolution herein, appeals from the following:

1. The order of December 19, 1964 authorizing payment by respondent Magno of overtime pay, (pp. 221, Green Record on Appeal) together with the subsequent orders of January 9, 1965, (pp. 231-232, *id.*) October 27, 1965, (pp. 227, *id.*) and February 15, 1966 (pp. 455-456, *id.*) repeatedly denying motions for reconsideration thereof.

2. The order of August 6, 1965 (pp. 248, *id.*) requiring that deeds executed by petitioner to be co-signed by respondent Magno, as well as the order of October 27, 1965 (pp. 276-277) denying reconsideration.

3. The other order of October 27, 1965 (pp. 292-295, *id.*) enjoining the deposit of all collections in a joint account and the same order of February 15, 1966 mentioned in No. 1 above which included the denial of the reconsideration of this order of October 27, 1965.

4. The order of November 3, 1965 (pp. 313-320, *id.*) directing the payment of attorney's fees, fees of the respondent administratrix, etc. and the order of February 16, 1966 denying reconsideration thereof.

5. The order of November 23, 1965 (pp. 334-335, *id.*) allowing appellee Western Institute of Technology to make payments to either one or both of the administrators of the two estates as well as the order of March 7, 1966 (p. 462, *id.*) denying reconsideration.

6. The various orders hereinabove earlier enumerated approving deeds of sale executed by respondent Magno in favor of appellees Carles, Catedral, Pablito, Guzman, Coronado, Barrido, Causing, Javier, Lucero and Batisanan, (see pp. 35 to 37 of this opinion), together with the two separate orders both dated December 2, 1966 (pp. 306-308, and pp. 308-309, Yellow Record on Appeal) denying reconsideration of said approval.

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7. The order of January 3, 1967, on pp. 335-336, Yellow Record on Appeal, approving similar deeds of sale executed by respondent Magno, as those in No. 6, in favor of appellees Pacaonsis and Premaylon, as to which no motion for reconsideration was filed.

8. Lastly, the order of December 2, 1966, on pp. 305-306, Yellow Record on Appeal, directing petitioner to surrender to appellees Lucero, Batisanan, Javier, Pablito, Barrido, Catedral, Causing, Guzman, and Coronado, the certificates of title covering the lands involved in the approved sales, as to which no motion for reconsideration was filed either.

Strictly speaking, and considering that the above orders deal with different matters, just as they affect distinctly different individuals or persons, as outlined by petitioner in its brief as appellant on pp. 12-20 thereof, there are, therefore, thirty-three (33) appeals before Us, for which reason, petitioner has to pay also thirty-one (31) more docket fees.

It is as well perhaps to state here as elsewhere in this opinion that in connection with these appeals, petitioner has assigned a total of seventy-eight (LXXVIII) alleged errors, the respective discussions and arguments under all of them covering also the fundamental issues raised in respect to the petition for *certiorari* and prohibition, thus making it feasible and more practical for the Court to dispose of all these cases together.[4]

The assignments of error read thus:

"I to IV

THE LOWER COURT ERRED IN APPROVING THE FINAL DEEDS OF SALE IN FAVOR OF THE APPELLEES, PEPITO G. IYULORES, ESPIRIDION PARTISALA, WINIFREDO C. ESPADA AND ROSARIO ALINGASA, EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, COVERING PARCELS OF LAND OWNED BY THE DECEASED, CHARLES NEWTON HODGES, AND THE CONTRACTS TO SELL COVERING WHICH WERE EXECUTED BY HIM DURING HIS LIFETIME.

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[4] More specific factual details related to these appeals will be stated later in the course of the discussion of the assignments of error.

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V to VIII

THE LOWER COURT ERRED IN APPROVING THE DEEDS OF SALE IN FAVOR OF THE APPELLEES, PEPITO G. IYULORES, ESPIRIDION PARTISALA, WINIFREDO C. ESPADA AND ROSARIO ALINGASA, COVERING PARCELS OF LAND FOR WHICH THEY HAVE NEVER PAID IN FULL IN ACCORDANCE WITH THE ORIGINAL CONTRACTS TO SELL.

IX to XII

THE LOWER COURT ERRED IN DETERMINING THE RIGHTS OF OWNERSHIP OVER REAL PROPERTY OF THE APPELLEES, PEPITO G. IYULORES, ESPIRIDION PARTISALA, WINIFREDO C. ESPADA AND ROSARIO ALINGASA, WHILE ACTING AS A PROBATE COURT.

XIII to XV

THE LOWER COURT ERRED IN APPROVING THE FINAL DEEDS OF SALE IN FAVOR OF THE APPELLEES ADELFA PREMAYLON (LOT NO. 102), SANTIAGO PACAONSIS, AND ADELFA PREMAYLON (LOT NO. 104), EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, COVERING PARCELS OF LAND OWNED BY THE DECEASED, CHARLES NEWTON HODGES, AND THE CONTRACTS TO SELL COVERING WHICH WERE EXECUTED BY HIM DURING HIS LIFETIME.

XVI to XVIII

THE LOWER COURT ERRED IN APPROVING THE DEEDS OF SALE IN FAVOR OF THE APPELLEES ADELFA PREMAYLON (LOT NO. 102), SANTIAGO PACAONSIS, AND ADELFA PREMAYLON (LOT NO. 104) COVERING PARCELS OF LAND FOR WHICH THEY HAVE NEVER PAID IN FULL IN ACCORDANCE WITH THE ORIGINAL CONTRACTS TO SELL.

XIX to XXI

THE LOWER COURT ERRED IN DETERMINING THE RIGHTS OF OWNERSHIP OVER REAL PROPERTY OF THE APPELLEES ADELFA PREMAYLON (LOT NO. 102), SANTIAGO PACAONSIS, AND ADELFA PREMAYLON (LOT NO. 104) WHILE ACTING AS A PROBATE COURT.

XXII to XXV

THE LOWER COURT ERRED IN APPROVING THE FINAL DEEDS OF SALE IN FAVOR OF THE APPELLEES LORENZO

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CARLES, JOSE PABLICO, ALFREDO CATEDRAL AND SALVADOR S. GUZMAN, EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, COVERING PARCELS OF LAND OWNED BY THE DECEASED, CHARLES NEWTON HODGES, AND THE CONTRACTS TO SELL COVERING WHICH WERE EXECUTED BY HIM DURING HIS LIFETIME.

XXVI to XXIX

THE LOWER COURT ERRED IN APPROVING THE FINAL DEED OF SALE EXECUTED IN FAVOR OF THE APPELLEES, LORENZO CARLES, JOSE PABLICO, ALFREDO CATEDRAL AND SALVADOR S. GUZMAN PURSUANT TO CONTRACTS TO SELL WHICH WERE CANCELLED AND RESCINDED.

XXX to XXXIV

THE LOWER COURT ERRED IN DETERMINING THE RIGHTS OF OWNERSHIP OVER REAL PROPERTY OF THE APPELLEES, LORENZO CARLES, JOSE PABLICO, ALFREDO CATEDRAL AND SALVADOR S. GUZMAN, WHILE ACTING AS A PROBATE COURT.

XXXV to XXXVI

THE LOWER COURT ERRED IN APPROVING THE FINAL DEEDS OF SALE IN FAVOR OF THE APPELLEES, FLORENIA BARRIDO AND PURIFICACION CORONADO, EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, COVERING PARCELS OF LAND OWNED BY THE DECEASED, CHARLES NEWTON HODGES AND THE CONTRACTS TO SELL COVERING WHICH WERE EXECUTED BY HIM DURING HIS LIFETIME.

XXXVII to XXXVIII

THE LOWER COURT ERRED IN APPROVING THE DEEDS OF SALE IN FAVOR OF THE APPELLEES, FLORENIA BARRIDO AND PURIFICACION CORONADO, ALTHOUGH THEY WERE IN ARREARS IN THE PAYMENTS AGREED UPON IN THE ORIGINAL CONTRACT TO SELL WHICH THEY EXECUTED WITH THE DECEASED, CHARLES NEWTON HODGES, IN THE AMOUNT OF P10,680.00 and P4,428.90, RESPECTIVELY.

XXXIX to XL

THE LOWER COURT ERRED IN DEPRIVING THE DECEASED CHARLES NEWTON HODGES, OF THE

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CONTRACTUAL RIGHT, EXERCISED THROUGH HIS ADMINISTRATOR, THE INSTANT APPELLANT, TO CANCEL THE CONTRACTS TO SELL OF THE APPELLEES, FLORENIA BARRIDO AND PURIFICACION CORONADO.

XLI to XLIII

THE LOWER COURT ERRED IN APPROVING THE FINAL DEEDS OF SALE IN FAVOR OF THE APPELLEES, GRACIANO LUCERO, ARITEO THOMAS JAMIR AND MELQUIADES BATISANAN, EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, COVERING PARCELS OF LAND OWNED BY THE DECEASED, CHARLES NEWTON HODGES, AND THE CONTRACTS TO SELL COVERING WHICH WERE EXECUTED BY HIM DURING HIS LIFETIME.

XLIV to XLVI

THE LOWER COURT ERRED IN APPROVING THE FINAL DEED OF SALE IN FAVOR OF THE APPELLEES, GRACIANO LUCERO, ARITEO THOMAS JAMIR AND MELQUIADES BATISANAN, PURSUANT TO CONTRACTS TO SELL EXECUTED BY THEM WITH THE DECEASED, CHARLES NEWTON HODGES, THE TERMS AND CONDITIONS OF WHICH THEY HAVE NEVER COMPLIED WITH.

XLVII to XLIX

THE LOWER COURT ERRED IN DEPRIVING THE DECEASED, CHARLES NEWTON HODGES, OF HIS RIGHT, EXERCISED THROUGH HIS ADMINISTRATOR, THE INSTANT APPELLANT, TO CANCEL THE CONTRACTS TO SELL OF THE APPELLEES, GRACIANO LUCERO, ARITEO THOMAS JAMIR AND MELQUIADES BATISANAN, AND IN DETERMINING THE RIGHTS OF THE SAID APPELLEES OVER REAL PROPERTY WHILE ACTING AS A PROBATE COURT.

L

THE LOWER COURT ERRED IN APPROVING THE FINAL DEEDS OF SALE IN FAVOR OF THE APPELLEE, BELCESAR CAUSING EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, COVERING PARCELS OF LAND OWNED BY THE DECEASED, CHARLES NEWTON HODGES, AND THE CONTRACTS TO SELL COVERING WHICH WERE EXECUTED BY HIM DURING HIS LIFETIME.

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LI

THE LOWER COURT ERRED IN APPROVING THE DEEDS OF SALE IN FAVOR OF THE APPELLEE, BELCESAR CAUSING, ALTHOUGH HE WAS IN ARREARS IN THE PAYMENTS AGREED UPON IN THE ORIGINAL CONTRACT TO SELL WHICH HE EXECUTED WITH THE DECEASED, CHARLES NEWTON HODGES, IN THE AMOUNT OF P2,337.50.

LII

THE LOWER COURT ERRED IN APPROVING THE DEED OF SALE IN FAVOR OF THE APPELLEE, BELCESAR CAUSING, ALTHOUGH THE SAME WAS NOT EXECUTED IN ACCORDANCE WITH THE RULES OF COURT.

LIII to LXI

THE LOWER COURT ERRED IN ORDERING THE APPELLANT, PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK TO SURRENDER THE OWNER'S DUPLICATE CERTIFICATES OF TITLE OVER THE RESPECTIVE LOTS COVERED BY THE DEEDS OF SALE EXECUTED BY THE APPELLEE, AVELINA A. MAGNO, IN FAVOR OF THE OTHER APPELLEES, JOSE PABLICO, ALFREDO CATEDRAL, SALVADOR S. GUZMAN, FLORENIA BARRIDO, PURIFICACION CORONADO, BELCESAR CAUSING, ARITEO THOMAS JAMIR, MAXIMA BATISANAN AND GRACIANO L. LUCERO.

LXII

THE LOWER COURT ERRED IN RESOLVING THE MOTION OF THE APPELLEE, WESTERN INSTITUTE OF TECHNOLOGY, DATED NOVEMBER 3, 1965, WITHOUT ANY COPY THEREOF HAVING BEEN SERVED UPON THE APPELLANT, PHILIPPINE COMMERCIAL & INDUSTRIAL BANK.

LXIII

THE LOWER COURT ERRED IN HEARING AND CONSIDERING THE MOTION OF THE APPELLEE, WESTERN INSTITUTE OF TECHNOLOGY, DATED NOVEMBER 3rd, 1965, ON NOVEMBER 23, 1965, WHEN THE NOTICE FOR THE HEARING THEREOF WAS FOR NOVEMBER 20, 1965.

LXIV

THE LOWER COURT ERRED IN GRANTING THE APPELLEE, WESTERN INSTITUTE OF TECHNOLOGY A RELIEF OTHER

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THAN THAT PRAYED FOR IN ITS MOTION, DATED NOVEMBER 3, 1965, IN THE ABSENCE OF A PRAYER FOR GENERAL RELIEF CONTAINED THEREIN.

LXV

THE LOWER COURT ERRED IN ALLOWING THE APPELLEE, WESTERN INSTITUTE OF TECHNOLOGY, TO CONTINUE PAYMENTS UPON A CONTRACT TO SELL THE TERMS AND CONDITIONS OF WHICH IT HAS FAILED TO FULFILL.

LXVI

THE LOWER COURT ERRED IN DETERMINING THE RIGHTS OF THE APPELLEE, WESTERN INSTITUTE OF TECHNOLOGY OVER THE REAL PROPERTY SUBJECT MATTER OF THE CONTRACT TO SELL IT EXECUTED WITH THE DECEASED, CHARLES NEWTON HODGES, WHILE ACTING AS A PROBATE COURT.

LXVII

LOWER COURT ERRED IN ALLOWING THE CONTINUATION OF PAYMENTS BY THE APPELLEE, WESTERN INSTITUTE OF TECHNOLOGY, UPON A CONTRACT TO SELL EXECUTED BY IT AND THE DECEASED, CHARLES NEWTON HODGES, TO A PERSON OTHER THAN HIS LAWFULLY APPOINTED ADMINISTRATOR.

LXVIII

THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF RETAINER'S FEES FROM THE SUPPOSED ESTATE OF THE DECEASED, LINNIE JANE HODGES, WHEN THERE IS NEITHER SUCH ESTATE NOR ASSETS THEREOF.

LXIX

THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF RETAINER'S FEES OF LAWYERS OF ALLEGED HEIRS TO THE SUPPOSED ESTATE OF THE DECEASED, LINNIE JANE HODGES.

LXX

THE LOWER COURT ERRED IN IMPLEMENTING THE ALLEGED AGREEMENT BETWEEN THE HEIRS OF THE SUPPOSED ESTATE OF THE DECEASED, LINNIE JANE HODGES, AND THEIR LAWYERS.

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LXXI

THE LOWER COURT ERRED IN ORDERING THE PREMATURE DISTRIBUTION OF ESTATE ASSETS TO ALLEGED HEIRS OR BENEFICIARIES THEREOF, BY WAY OF RETAINER'S FEES.

LXXII

THE LOWER COURT ERRED IN ORDERING THAT ALL FINAL DEEDS OF SALE EXECUTED PURSUANT TO CONTRACTS TO SELL ENTERED INTO BY THE DECEASED, CHARLES NEWTON HODGES, DURING HIS LIFETIME, BE SIGNED JOINTLY BY THE APPELLEE, AVELINA A. MAGNO, AND THE APPELLANT, PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, AND NOT BY THE LATTER ONLY AS THE LAWFULLY APPOINTED ADMINISTRATOR OF HIS ESTATE.

LXXIII

THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF LEGAL EXPENSES FROM THE SUPPOSED ESTATE OF THE DECEASED, LINNIE JANE HODGES, WHEN THERE IS NEITHER SUCH ESTATE NOR ASSETS THEREOF.

LXXIV

THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF LEGAL EXPENSES OF LAWYERS OF ALLEGED HEIRS TO THE SUPPOSED ESTATE OF THE DECEASED, LINNIE JANE HODGES.

LXXV

THE LOWER COURT ERRED IN ORDERING THE PREMATURE DISTRIBUTION OF ESTATE ASSETS TO ALLEGED HEIRS OR BENEFICIARIES THEREOF, BY WAY OF LEGAL EXPENSES.

LXXVI

THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF COMPENSATION TO THE PURPORTED ADMINISTRATRIX OF THE SUPPOSED ESTATE OF THE DECEASED, LINNIE JANE HODGES, THE INSTANT APPELLEE, AVELINA A. MAGNO, WHEN THERE IS NEITHER SUCH ESTATE NOR ASSETS THEREOF.

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LXXVII

THE LOWER COURT ERRED IN ORDERING THAT THE FUNDS OF THE TESTATE ESTATE OF THE DECEASED, CHARLES NEWTON HODGES, BE PLACED IN A JOINT ACCOUNT OF THE APPELLANT, PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, AND THE APPELLEE, AVELINA A. MAGNO WHO IS A COMPLETE STRANGER TO THE AFORESAID ESTATE.

LXXVIII

THE LOWER COURT ERRED IN ORDERING THAT THE APPELLEE, AVELINA A. MAGNO, BE GIVEN EQUAL ACCESS TO THE RECORDS OF THE TESTATE ESTATE OF THE DECEASED, CHARLES NEWTON HODGES, WHEN SHE IS A COMPLETE STRANGER TO THE AFORESAID ESTATE."

(Pp. 73-83, Appellant's Brief.)

To complete this rather elaborate, and unavoidably extended narration of the factual setting of these cases, it may also be mentioned that an attempt was made by the heirs of Mrs. Hodges to have respondent Magno removed as administratrix, with the proposed appointment of Benito J. Lopez in her place, and that respondent court did actually order such proposed replacement, but the Court declared the said order of respondent court violative of its injunction of August 8, 1967, hence without force and effect (see Resolution of September 8, 1972 and February 1, 1973). Subsequently, Atty. Efrain B. Trenas, one of the lawyers of said heirs, appeared no longer for the proposed administrator Lopez but for the heirs themselves, and in a motion dated October 26, 1972 informed the Court that a motion had been filed with respondent court for the removal of petitioner PCIB as administrator of the estate of C. N. Hodges in Special Proceedings 1672, which removal motion alleged that 22.968149% of the share of C. N. Hodges had already been acquired by the heirs of Mrs. Hodges from certain heirs of her husband. Further, in this connection, in the answer of PCIB to the motion of respondent Magno to have it declared in contempt for disregarding the Court's resolution of September 8, 1972 modifying the injunction of August 8, 1967, said petitioner annexed thereto a joint manifestation and motion, appearing

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to have been fifed with respondent court, informing said court that in addition to the fact that 22% of the share of C. N. Hodges had already been bought by the heirs of Mrs. Hodges, as already stated, certain other heirs of Hodges representing 17.343750% of his estate were joining cause with the heirs of Mrs. Hodges as against PCIB, thereby making somewhat precarious, if not possibly untenable, petitioners' continuation as administrator of the Hodges estate.

RESOLUTION OF ISSUES IN THE CERTIORARI AND PROHIBITION CASES

I

As to the Alleged Tardiness of the Present Appeals

The priority question raised by respondent Magno relates to the alleged tardiness of all the aforementioned thirty-three appeals of PCIB. Considering, however, that these appeals revolve around practically the same main issues and that it is admitted that some of them have been timely taken, and, moreover, their final results hereinbelow to be stated and explained make it of no consequence whether or not the orders concerned have become final by the lapsing of the respective periods to appeal them, We do not deem it necessary to pass upon the timeliness of any of said appeals.

II

The Propriety Here of Certiorari and Prohibition instead of Appeal

The other preliminary point of the same respondent is alleged impropriety of the special civil action of *certiorari* and prohibition in view of the existence of the remedy of appeal which it claims is proven by the very appeals now before Us. Such contention fails to take into account that there is a common thread among the basic issues involved in all these thirty-three appeals which, unless resolved in one single proceeding, will inevitably cause the proliferation of more or less similar or closely related incidents and consequent eventual appeals. If for this consideration alone, and without taking account anymore

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of the unnecessary additional effort, expense and time which would be involved in as many individual appeals as the number of such incidents, it is logical and proper to hold, as We do hold, that the remedy of appeal is not adequate in the present cases. In determining whether or not a special civil action of *certiorari* or prohibition may be resorted to in lieu of appeal, in instances wherein lack or excess of jurisdiction or grave abuse of discretion is alleged, it is not enough that the remedy of appeal exists or is possible. It is indispensable that taking all the relevant circumstances of the given case, appeal would better serve the interests of justice. Obviously, the longer delay, augmented expense and trouble and unnecessary repetition of the same work attendant to the present multiple appeals, which, after all, deal with practically the same basic issues that can be more expeditiously resolved or determined in a single special civil action, make the remedies of *certiorari* and prohibition, pursued by petitioner, preferable, for purposes of resolving the common basic issues raised in all of them, despite the conceded availability of appeal. Besides, the settling of such common fundamental issues would naturally minimize the areas of conflict between the parties and render more simple the determination of the secondary issues in each of them. Accordingly, respondent Magno's objection to the present remedy of *certiorari* and prohibition must be overruled.

We come now to the errors assigned by petitioner-appellant, Philippine Commercial & Industrial Bank, (PCIB, for short) in the petition as well as in its main brief as appellant.

III

On Whether or Not There is Still Any Part of the Testate Estate of Mrs. Hodges that may be Adjudicated to her brothers and sisters as her estate, of which respondent Magno is the unquestioned Administratrix in special Proceedings 1307.

In the petition, it is the position of PCIB that the respondent court exceeded its jurisdiction or gravely abused its discretion in further recognizing after December 14, 1957 the existence

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of the Testate Estate of Linnie Jane Hodges and in sanctioning purported acts of administration therein of respondent Magno. Main ground for such posture is that by the aforequoted order of respondent court of said date, Hodges was already allowed to assert and exercise all his rights as universal heir of his wife pursuant to the provisions of her will, quoted earlier, hence, nothing else remains to be done in Special Proceedings 1307 except to formally close it. In other words, the contention of PCIB is that in view of said order, nothing more than a formal declaration of Hodges as sole and exclusive heir of his wife and the consequent formal unqualified adjudication to him of all her estate remain to be done to completely close Special Proceedings 1307, hence respondent Magno should be considered as having ceased to be Administratrix of the Testate Estate of Mrs. Hodges since then.

After carefully going over the record, We feel constrained to hold that such pose is patently untenable from whatever angle it is examined.

To start with, We cannot find anywhere in respondent court's order of December 14, 1957 the sense being read into it by PCIB. The tenor of said order bears no suggestion at all to such effect. The declaration of heirs and distribution by the probate court of the estate of a decedent is its most important function, and this Court is not disposed to encourage judges of probate proceedings to be less than definite, plain and specific in making orders in such regard, if for no other reason than that all parties concerned, like the heirs, the creditors, and most of all the government, the devisees and legatees, should know with certainty what are and when their respective rights and obligations ensuing from the inheritance or in relation thereto would begin or cease, as the case may be, thereby avoiding precisely the legal complications and consequent litigations similar to those that have developed unnecessarily in the present cases. While it is true that in instances wherein all the parties interested in the estate of a deceased person have already actually distributed among themselves their respective shares therein to the satisfaction of everyone concerned and no rights of creditors or third parties are adversely affected, it would naturally

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be almost ministerial for the court to issue the final order of declaration and distribution, still it is inconceivable that the special proceeding instituted for the purpose may be considered terminated, the respective rights of all the parties concerned be deemed definitely settled, and the executor or administrator thereof be regarded as automatically discharged and relieved already of all functions and responsibilities without the corresponding definite orders of the probate court to such effect.

Indeed, the law on the matter is specific, categorical and unequivocal. Section 1 of Rule 90 provides:

"SECTION 1. *When order for distribution of residue made.* — When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

"No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

These provisions cannot mean anything less than that in order that a proceeding for the settlement of the estate of a deceased person may be deemed ready for final closure, (1) there should have been issued already an order of distribution or assignment of the estate of the decedent among or to those entitled thereto by will or by law, but (2) such order shall not be issued until after it is shown that the "debts, funeral expenses, expenses of administration, allowances, taxes, etc. chargeable to the estate" have been paid, which is but logical and proper. (3) Besides, such an order is usually issued upon proper and

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specific application for the purpose of the interested party or parties, and not of the court.

"x x x it is only after, and not before, the payment of all debts, funeral charges, expenses of administration, allowance to the widow, and inheritance tax shall have been effected that the court should make a declaration of heirs or of such persons as are entitled by law to the residue. (Moran, Comments on the Rules of Court, 2nd ed., Vol. II, p. 397, citing Capistrano *vs.* Nadurata, 49 Phil., 726; Lopez *vs.* Lopez, 37 Off. Gaz., 3091.)" (JIMOGA-ON *v.* BELMONTE, 84 Phil. 545, 548) (p. 86, Appellee's Brief)

x x x x x x x x x

"Under Section 753 of the Code of Civil Procedure, (corresponding to Section 1, Rule 90) what brings an intestate (or testate) proceeding to a close is the order of distribution directing delivery of the residue to the persons entitled thereto after paying the indebtedness, if any, left by the deceased." (Santiesteban *vs.* Santiesteban, 68 Phil. 367, 370.)

In the cases at bar, We cannot discern from the voluminous and varied facts, pleadings and orders before Us that the above indispensable prerequisites for the declaration of heirs and the adjudication of the estate of Mrs. Hodges had already been complied with when the order of December 14, 1957 was issued. As already stated, We are not persuaded that the proceedings leading to the issuance of said order, constituting barely of the motion of May 27, 1957, Annex D of the petition, the order of even date, Annex E, and the motion of December 11, 1957, Annex H, all aforequoted, are what the law contemplates. We cannot see in the order of December 14, 1957, so much relied upon by the petitioner, anything more than an explicit approval of "all the sales, conveyances, leases and mortgages of all the properties left by the deceased Linnie Jane Hodges executed by the Executor Charles N. Hodges" (after the death of his wife and prior to the date of the motion), plus a general advance authorization to enable said "Executor — to execute subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges in consonance with wishes conveyed in the last will and testament of the latter," which, certainly, cannot amount to the order of

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adjudication of the estate of the decedent to Hodges contemplated in the law. In fact, the motion of December 11, 1957 on which the court predicated the order in question did not pray for any such adjudication at all. What is more, although said motion did allege that "herein Executor (Hodges) is not only part owner of the properties left as conjugal, but also, the successor to all the properties left by the deceased Linnie Jane Hodges," it significantly added that "herein Executor, as Legatee (sic), has the right to sell, convey, lease or dispose of the properties in the Philippines — during his lifetime," thereby indicating that what said motion contemplated was nothing more than either the enjoyment by Hodges of his rights under the particular portion of the dispositions of his wife's will which were to be operative only during his lifetime or the use of his own share of the conjugal estate, pending the termination of the proceedings. In other words, the authority referred to in said motions and orders is in the nature of that contemplated either in Section 2 of Rule 109 which permits, in appropriate cases, advance or partial implementation of the terms of a duly probated will before final adjudication or distribution when the rights of third parties would not be adversely affected thereby or in the established practice of allowing the surviving spouse to dispose of his own share of the conjugal estate, pending its final liquidation, when it appears that no creditors of the conjugal partnership would be prejudiced thereby, (see the Revised Rules of Court by Francisco, Vol. V-B, 1970 ed. p. 887) albeit, from the tenor of said motions, We are more inclined to believe that Hodges meant to refer to the former. In any event, We are fully persuaded that the quoted allegations of said motions read together cannot be construed as a repudiation of the rights unequivocally established in the will in favor of Mrs. Hodges' brothers and sisters to whatever have not been disposed of by him up to his death.

Indeed, nowhere in the record does it appear that the trial court subsequently acted upon the premise suggested by petitioner. On the contrary, on November 23, 1965, when the court resolved the motion of appellee Western Institute of Technology by its order We have quoted earlier, it categorically

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held that as of said date, November 23, 1965, "in both cases (Special Proceedings 1307 and 1672) there is as yet no judicial declaration of heirs nor distribution of properties to whomsoever are entitled thereto." In this connection, it may be stated further against petitioner, by way of some kind of estoppel, that in its own motion of January 8, 1965, already quoted in full on pages 54-67 of this decision, it prayed *inter alia* that the court declare that "C. N. Hodges was the sole and exclusive heir of the estate of Linnie Jane Hodges," which it would not have done if it were really convinced that the order of December 14, 1957 was already the order of adjudication and distribution of her estate. That said motion was later withdrawn when Magno filed her own motion for determination and adjudication of what should correspond to the brothers and sisters of Mrs. Hodges does not alter the indubitable implication of the prayer of the withdrawn motion.

It must be borne in mind that while it is true that Mrs. Hodges bequeathed her whole estate to her husband and gave him what amounts to full powers of dominion over the same during his lifetime, she imposed at the same time the condition that whatever should remain thereof upon his death should go to her brothers and sisters. In effect, therefore, what was absolutely given to Hodges was only so much of his wife's estate as he might possibly dispose of during his lifetime; hence, even assuming that by the allegations in his motion, he did intend to adjudicate the whole estate to himself, as suggested by petitioner, such unilateral act could not have affected or diminished in any degree or manner the right of his brothers and sisters-in-law over what would remain thereof upon his death, for surely, no one can rightly contend that the testamentary provision in question allowed him to so adjudicate any part of the estate to himself as to prejudice them. In other words, irrespective of whatever might have been Hodges' intention in his motions, as Executor, of May 27, 1957 and December 11, 1957, the trial court's orders granting said motions, even in the terms in which they have been worded, could not have had the effect of an absolute and unconditional adjudication unto Hodges of the whole estate of his wife. None of them could have deprived

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his brothers and sisters-in-law of their rights under said will. And it may be added here that the fact that no one appeared to oppose the motions in question may only be attributed, firstly, to the failure of Hodges to send notices to any of them, as admitted in the motion itself, and, secondly, to the fact that even if they had been notified, they could not have taken said motions to be for the final distribution and adjudication of the estate, but merely for him to be able, pending such final distribution and adjudication, to either exercise during his lifetime rights of dominion over his wife's estate in accordance with the bequest in his favor, which, as already observed, may be allowed under the broad terms of Section 2 of Rule 109, or make use of his own share of the conjugal estate. In any event, We do not believe that the trial court could have acted in the sense pretended by petitioner, not only because of the clear language of the will but also because none of the interested parties had been duly notified of the motion and hearing thereof. Stated differently, if the orders of May 27, 1957 and December 14, 1957 were really intended to be read in the sense contended by petitioner, We would have no hesitancy in declaring them null and void.

Petitioner cites the case of Austria *vs.* Ventenilla, G.R. No. L-10018, September 19, 1956, (unreported but a partial digest thereof appears in 99 Phil. 1069) in support of its insistence that with the orders of May 27 and December 14, 1957, the closure of Mrs. Hodges' estate has become a mere formality, inasmuch as said orders amounted to the order of adjudication and distribution ordained by Section 1 of Rule 90. But the parallel attempted to be drawn between that case and the present one does not hold. There the trial court had in fact issued a clear, distinct and express order of adjudication and distribution more than twenty years before the other heirs of the deceased filed their motion asking that the administratrix be removed, etc. As quoted in that decision, the order of the lower court in that respect read as follows:

"En orden a la mocion de la administradora, el juzgado la encuentra procedente bajo la condicion de que no se hara entrega ni adjudicacion de los bienes a los herederos antes de que estos presten la fianza

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correspondiente y de acuerdo con lo prescrito en el Art. 754 del Codigo de Procedimientos: pues, en autos no aparece que hayan sido nombrados comisionados de avaluo y reclamaciones. Dicha fianza podra ser por un valor igual al de los bienes que correspondan a cada heredero segun el testamento. Creo que no es obice para la terminacion del expediente el hecho de que la administradora no ha presentado hasta ahora el inventario de los bienes; pues, segun la ley, estan exentos de esta formalidad los administradores que son legatarios del residuo o remanente de los bienes y hayan prestado fianza para responder de las gestiones de su cargo, y aparece en el testamento que la administradora Alejandra Austria reune dicha condicion.

"POR TODO LO EXPUESTO, el juzgado declara, 1.o: no haber lugar a la mocion de Ramon Ventenilla y otros; 2.o, declara asimismo que los unicos herederos del finado Antonio Ventenilla son su esposa Alejandra Austria, Maria Ventenilla, hermana del testador, y Ramon Ventenilla, Maria Ventenilla, Ramon Soriano, Eulalio Soriano, Jose Soriano, Gabriela Ventenilla, Lorenzo Ventenilla, Felicitas Ventenilla, Eugenio Ventenilla y Alejandra Ventenilla, en representacion de los difuntos Juan, Tomas, Catalino y Froilan, hermanos del testador, declarando, ademas, que la heredera Alejandra Austria tiene derecho al remanente de todos los bienes dejados por el finado, despues de deducir de ellos la porcion que corresponde a cada uno de sus coherederos, conforme esta mandado en las clausulas 8.a, 9.a, 10.a, 11.a, 12.a y 13.a del testamento; 3.o, se aprueba el pago hecho por la administradora de los gastos de la ultima enfermedad y funerales del testador, de la donacion hecha por el testador a favor de la Escuela Publica del Municipio de Mangatarem, y de las misas en sufragio del alma del finado; 4.o, que una vez prestada la fianza mencionada al principio de este auto, se haga la entrega y adjudicacion de los bienes, conforme se dispone en el testamento y se acaba de declarar en este auto; 5.o, y, finalmente, que verificada la adjudicacion, se dara por terminada la administracion, revelandole toda responsabilidad a la administradora, y cancelando su fianza.

ASI SE ORDENA."

Undoubtedly, after the issuance of an order of such tenor, the closure of any proceedings for the settlement of the estate of a deceased person cannot be but perfunctory.

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In the case at bar, as already pointed out above, the two orders relied upon by petitioner do not appear *ex-facie* to be of the same tenor and nature as the order just quoted, and, what is more, the circumstances attendant to its issuance do not suggest that such was the intention of the court, for nothing could have been more violative of the will of Mrs. Hodges.

Indeed, to infer from Hodges' said motions and from his statements of accounts for the years 1958, 1959 and 1960, Annexes I, K and M, respectively, wherein he repeatedly claimed that "herein executor (being) the only devisee or legatee of the deceased, in accordance with the last will and testament already probated," there is "no (other) person interested in the Philippines of the time and place of examining herein account to be given notice," an intent to adjudicate unto himself the whole of his wife's estate in an absolute manner and without regard to the contingent interests of her brothers and sisters, is to impute bad faith to him, an imputation which is not legally permissible, much less warranted by the facts of record herein. Hodges knew or ought to have known that, legally speaking, the terms of his wife's will did not give him such a right. Factually, there are enough circumstances extant in the records of these cases indicating that he had no such intention to ignore the rights of his co-heirs. In his very motions in question, Hodges alleged, thru counsel, that the "deceased Linnie Jane Hodges died leaving no descendants and ascendants, *except brothers and sisters and herein petitioner, as surviving spouse, to inherit the properties of the decedent,*" and even promised that "proper accounting will be had — in all these transactions" which he had submitted for approval and authorization by the court, thereby implying that he was aware of his responsibilities vis-a-vis his co-heirs. As alleged by respondent Magno in her brief as appellee:

"Under date of April 14, 1959, C. N. Hodges filed his first 'Account by the Executor' of the estate of Linnie Jane Hodges. In the 'Statement of Networth of Mr. C. N. Hodges and the Estate of Linnie Jane Hodges' as of December 31, 1958 annexed thereto, C. N. Hodges reported that the combined conjugal estate earned a net income of P328,402.62, divided evenly between him and the estate of Linnie Jane Hodges. Pursuant to this, he filed an 'individual income tax

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return' for calendar year 1958 on the estate of Linnie Jane Hodges reporting, under oath, the said estate as having earned income of P164,201.31, exactly one-half of the net income of his combined personal assets and that of the estate of Linnie Jane Hodges." (p. 91, Appellee's Brief.)

"Under date of July 21, 1960, C. N. Hodges filed his second 'Annual Statement of Account by the Executor' of the estate of Linnie Jane Hodges. In the 'Statement of Networth of Mr. C. N. Hodges and the Estate of Linnie Jane Hodges' as of December 31, 1959 annexed thereto, C. N. Hodges reported that the combined conjugal estate earned a net income of P270,623.32, divided evenly between him and the estate of Linnie Jane Hodges. Pursuant to this, he filed an 'individual income tax return' for calendar year 1959 on the estate of Linnie Jane Hodges reporting, under oath, the said estate as having earned income of P135,311.66, exactly one-half of the net income of his combined personal assets and that of the estate of Linnie Jane Hodges." (pp. 91-92, *Id.*)

"Under date of April 20, 1961, C. N. Hodges filed his third 'Annual Statement of Account by the Executor for the year 1960' of the estate of Linnie Jane Hodges. In the 'Statement of Net Worth of Mr. C. N. Hodges and the Estate of Linnie Jane Hodges' as of December 31, 1960 annexed thereto, C. N. Hodges reported that the combined conjugal estate earned a net income of P314,857.94, divided evenly between him and the estate of Linnie Jane Hodges. Pursuant to this, he filed an 'individual income tax return' for calendar year 1960 on the estate of Linnie Jane Hodges reporting, under oath, the said estate as having earned income of P157,428.97, exactly one-half of the net income of his combined personal assets and that of the estate of Linnie Jane Hodges." (pp. 92-93, *Id.*)

"In the petition for probate that he (Hodges) filed, he listed the seven brothers and sisters of Linnie Jane as her 'heirs' (see p. 2, Green ROA). The order of the court admitting the will to probate unfortunately omitted one of the heirs, Roy Higdon (see p. 14, Green ROA). Immediately, C. N. Hodges filed a verified motion to have Roy Higdon's name included as an heir, stating that he wanted to straighten the records 'in order (that) the heirs of deceased Roy Higdon may not think or believe they were omitted, and that they were really and are interested in the estate of deceased Linnie Jane Hodges'."

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Thus, he recognized, if in his own way, the separate identity of his wife's estate from his own share of the conjugal partnership up to the time of his death, more than five years after that of his wife. He never considered the whole estate as a single one belonging exclusively to himself. The only conclusion one can gather from this is that he could have been preparing the basis for the eventual transmission of his wife's estate, or, at least, so much thereof as he would not have been able to dispose of during his lifetime, to her brothers and sisters in accordance with her expressed desire, as intimated in his tax return in the United States to be more extensively referred to anon. And assuming that he did pay the corresponding estate and inheritance taxes in the Philippines on the basis of his being sole heir, such payment is not necessarily inconsistent with his recognition of the rights of his co-heirs. Without purporting to rule definitely on the matter in these proceedings, We might say here that We are inclined to the view that under the peculiar provisions of his wife's will, and for purposes of the applicable inheritance tax laws, Hodges had to be considered as her sole heir, pending the actual transmission of the remaining portion of her estate to her other heirs, upon the eventuality of his death, and whatever adjustment might be warranted should there be any such remainder then is a matter that could well be taken care of by the internal revenue authorities in due time.

It is to be noted that the lawyer, Atty. Leon P. Gellada, who signed the motions of May 27, 1957 and December 11, 1957 and the aforementioned statements of account was the very same one who also subsequently signed and filed the motion of December 26, 1962 for the appointment of respondent Magno as "Administratrix of the Estate of Mrs. Linnie Jane Hodges" wherein it was alleged that "in accordance with the provisions of the last will and testament of Linnie Jane Hodges, whatever real properties that may remain at the death of her husband, Charles Newton Hodges, the said properties shall be equally divided among their heirs." And it appearing that said attorney was Hodges' lawyer as Executor of the estate of his wife, it stands to reason that his understanding of the situation, implicit in his allegations just quoted, could somehow be reflective of Hodges' own understanding thereof.

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As a matter of fact, the allegations in the motion of the same Atty. Gellada dated July 1, 1957, a "Request for Inclusion of the Name of Roy Higdon in the Order of the Court dated July 19, 1957, etc.," reference to which is made in the above quotation from respondent Magno's brief, are over the oath of Hodges himself, who verified the motion. Said allegations read:

"1. - That the Hon. Court issued orders dated June 29, 1957, ordering the probate of the will.

2. - That in said order of the Hon. Court, the relatives of the deceased Linnie Jane Hodges were enumerated. However, in the petition as well as in the testimony of Executor during the hearing, the name Roy Higdon was mentioned, but deceased. It was unintentionally omitted the heirs of said Roy Higdon, who are his wife Aline Higdon and son David Higdon, all of age, and residents of Quinlan, Texas, U.S.A.

3. - *That to straighten the records, and in order the heirs of deceased Roy Higdon may not think or believe they were omitted, and that they were really and are interested in the estate of deceased Linnie Jane Hodges*, it is requested of the Hon Court to insert the names of Aline Higdon and David Higdon, wife and son of deceased Roy Higdon, in the said order of the Hon. Court dated June 29, 1957." (pars. 1 to 3 Annex 2 of Magno's Answer - Record, p. 260)

As can be seen, these italicized allegations indicate, more or less, the real attitude of Hodges in regard to the testamentary dispositions of his wife.

In connection with this point of Hodges' intent, We note that there are documents, copies of which are annexed to respondent Magno's answer, which purportedly contain Hodges' own solemn declarations recognizing the right of his co-heirs, such as the alleged tax return he filed with the United States Taxation authorities, identified as Schedule M, (Annex 4 of her answer) and his supposed affidavit of renunciation, Annex 5. In said Schedule M, Hodges appears to have answered the pertinent question thus:

"2a. Had the surviving spouse the right to declare an election between (1) the provisions made in his or her favor by the will and (11) dower, curtesy, or a statutory interest? (X) Yes ( ) No

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"2d. *Does the surviving spouse contemplate renouncing the will and electing to take dower, curtesy, or a statutory interest?* (X) *Yes* ( ) No.

"3. According to the information and belief of the person or persons filing the return, is any action described under question 1 designed or contemplated? ( ) Yes (X) No"

(Annex 4, Answer - Record, p. 263)

and to have further stated under the item, "Description of property interests passing to surviving spouse" the following:

"None, except for purposes of administering the Estate, paying debts, taxes and other legal charges. *It is the intention of the surviving husband of deceased to distribute the remaining property and interests of the deceased in their Community Estate to the devisees and legatees named in the will when the debts, liabilities, taxes and expenses of administration are finally determined and paid.*" (Annex 4, Answer — Record, p. 263)

In addition, in the supposed affidavit of Hodges, Annex 5, it is stated:

"I, C. N. Hodges, being duly sworn, on oath affirm that at the time the United States Estate Tax Return was filed in the Estate of Linnie Jane Hodges on August 8, 1958, I renounced and disclaimed any and all right to receive the rents, emoluments and income from said estate, as shown by the statement contained in Schedule M at page 29 of said return, a copy of which schedule is attached to this affidavit and made a part hereof.

"*The purpose of this affidavit is to ratify and confirm, and I do hereby ratify and confirm, the declaration made in Schedule M of said return* and hereby formally disclaim and renounce any right on my part to receive any of the said rents, emoluments and income from the estate of my deceased wife, Linnie Jane Hodges. This affidavit is made to absolve me or my estate from any liability for the payment of income taxes on income which has accrued to the estate of Linnie Jane Hodges since the death of the said Linnie Jane Hodges on May 23, 1957." (Annex 5, Answer — Record, p. 264)

Although it appears that said documents were not duly presented as evidence in the court below, and We cannot,

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therefore, rely on them for the purpose of the present proceedings, still, We cannot close our eyes to their existence in the record nor fail to note that their tenor jibes with Our conclusion discussed above from the circumstances related to the orders of May 27 and December 14, 1957.[5] Somehow, these documents, considering they are supposed to be copies of their originals found in the official files of the governments of the United States and of the Philippines, serve to lessen any possible apprehension that Our conclusion from the other evidence of Hodges' manifest intent vis-a-vis the rights of his co-heirs is without basis in fact.

Verily, with such eloquent manifestations of his good intentions towards the other heirs of his wife, We find it very hard to believe that Hodges did ask the court and that the latter agreed that he be declared her sole heir and that her whole estate be adjudicated to him without so much as just annotating the contingent interest of her brothers and sisters in what would remain thereof upon his demise. On the contrary, it seems to us more factual and fairer to assume that Hodges was well aware of his position as executor of the will of his wife and, as such, had in mind the following admonition made by the Court in Pamittan *vs.* Lasam, et al., 60 Phil. 908, at pp. 913-914:

"Upon the death of Bernarda in September, 1908, said lands continued to be conjugal property in the hands of the defendant Lasam. It is provided in Article 1418 of the Civil Code that upon the dissolution of the conjugal partnership, an inventory shall

[5] It should be noted that in his affidavit, Hodges ratified and confirmed the "declaration made in Schedule M (of the inheritance tax return he filed in the U.S.)" wherein he declared that no property interests passed to him as the surviving spouse, except for purposes of administration and distribution to the devisees and legatees named in the will of his wife, and further disclaimed and renounced any right on his part to receive rents, emoluments and income therefrom because he wanted to be "absolved . . . from liability for the payment of income taxes on income that has accrued to the estate of" his wife. While We cannot make any definite ruling on the point now, We might at least express the impression that reading all these statements together, one can hardly escape the conclusion that in the literal sense the idea conveyed by them is that Hodges waived not only his rights to the fruits but to the properties themselves.

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immediately be made and this court in construing this provision in connection with Section 685 of the Code of Civil Procedure (prior to its amendment by Act No. 3176 of November 24, 1924) has repeatedly held that in the event of the death of the wife, the law imposes upon the husband the duty of liquidating the affairs of the partnership without delay (desde luego). (Alfonso *vs.* Natividad, 6 Phil. 240; Prado *vs.* Lagera, 7 Phil., 395; De la Rama *vs.* De la Rama, 7 Phil., 745; Enriquez *vs.* Victoria, 10 Phil., 10; Amancio *vs.* Pardo, 13 Phil., 297; Rojas *vs.* Singson Tongson, 17 Phil., 476; Sochayseng *vs.* Trujillo, 31 Phil., 153; Molera *vs.* Molera, 40 Phil., 566; Nable Jose *vs.* Nable Jose, 41 Phil., 713.)

"In the last mentioned case this court quoted with approval the case of Leatherwood *vs.* Arnold (66 Texas, 414, 416, 417), in which that court discussed the powers of the surviving spouse in the administration of the community property. Attention was called to the fact that the surviving husband, in the management of the conjugal property after the death of the wife, was a trustee of unique character who is liable for any fraud committed by him with relation to the property while he is charged with its administration. In the liquidation of the conjugal partnership, he had wide powers (as the law stood prior to Act No. 3176) and the high degree of trust reposed in him stands out more clearly in view of the fact that he was the owner of a half interest in his own right of the conjugal estate which he was charged to administer. He could therefore no more acquire a title by prescription against those for whom he was administering the conjugal estate than could a guardian against his ward or a judicial administrator against the heirs of estate. Section 38 of Chapter III of the Code of Civil Procedure, with relation to prescription, provides that 'this chapter shall not apply x x x in the case of a continuing and subsisting trust.' The surviving husband in the administration and liquidation of the conjugal estate occupies the position of a trustee of the highest order and is not permitted by the law to hold that estate or any portion thereof adversely to those for whose benefit the law imposes upon him the duty of administration and liquidation. No liquidation was ever made by Lasam — hence, the conjugal property which came into his possession on the death of his wife in September, 1908, still remains conjugal property, a continuing and subsisting trust. He should have made a liquidation immediately (desde luego). He cannot now be permitted to take advantage of his own wrong. One of the conditions of title by prescription (Section 41, Code of Civil Procedure) is possession

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'under a claim of title exclusive of any other right'. For a trustee to make such a claim would be a manifest fraud."

And knowing thus his responsibilities in the premises, We are not convinced that Hodges arrogated everything unto himself leaving nothing at all to be inherited by his wife's brothers and sisters.

PCIB insists, however, that to read the orders of May 27 and December 14, 1957, not as adjudicatory, but merely as approving past and authorizing future dispositions made by Hodges in a wholesale and general manner, would necessarily render the said orders void for being violative of the provisions of Rule 89 governing the manner in which such dispositions may be made and how the authority therefor and approval thereof by the probate court may be secured. If We sustained such a view, the result would only be that the said orders should be declared ineffective either way they are understood, considering We have already seen it is legally impossible to consider them as adjudicatory. As a matter of fact, however, what surges immediately to the surface, relative to PCIB's observations based on Rule 89, is that from such point of view, the supposed irregularity would involve no more than some non-jurisdictional technicalities of procedure, which have for their evident fundamental purpose the protection of parties interested in the estate, such as the heirs, its creditors, particularly the government on account of the taxes due it; and since it is apparent here that none of such parties are objecting to said orders or would be prejudiced by the unobservance by the trial court of the procedure pointed out by PCIB, We find no legal inconvenience in nor impediment to Our giving sanction to the blanket approval and authority contained in said orders. This solution is definitely preferable in law and in equity, for to view said orders in the sense suggested by PCIB would result in the deprivation of substantive rights to the brothers and sisters of Mrs. Hodges, whereas reading them the other way will not cause any prejudice to anyone, and, withal, will give peace of mind and stability of rights to the innocent parties who relied on them in good faith, in the light of the peculiar pertinent provisions of the will of said decedent.

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Now, the inventory submitted by Hodges on May 12, 1958 referred to the estate of his wife as consisting of "One-half of all the items designated in the balance sheet, copy of which is hereto attached and marked as 'Annex A'." Although, regrettably, no copy of said Annex A appears in the records before Us, We take judicial notice, on the basis of the undisputed facts in these cases, that the same consists of considerable real and other personal kinds of properties. And since, according to her will, her husband was to be the sole owner thereof during his lifetime, with full power and authority to dispose of any of them, provided that should there be any remainder upon his death, such remainder would go to her brothers and sisters, and furthermore, there is no pretension, much less any proof that Hodges had in fact disposed of all of them, and, on the contrary, the indications are rather to the effect that he had kept them more or less intact, it cannot truthfully be said that, upon the death of Hodges, there was no more estate of Mrs. Hodges to speak of. It is Our conclusion, therefore, that properties do exist which constitute such estate, hence Special Proceedings 1307 should not yet be closed.

Neither is there basis for holding that respondent Magno has ceased to be the Administratrix in said proceeding. There is no showing that she has ever been legally removed as such, the attempt to replace her with Mr. Benito Lopez without authority from the Court having been expressly held ineffective by Our resolution of September 8, 1972. Parenthetically, on this last point, PCIB itself is very emphatic in stressing that it is not questioning said respondent's status as such administratrix. Indeed, it is not clear that PCIB has any standing to raise any objection thereto, considering it is a complete stranger insofar as the estate of Mrs. Hodges is concerned.

It is the contention of PCIB, however, that as things actually stood at the time of Hodges' death, their conjugal partnership had not yet been liquidated and, inasmuch as the properties composing the same were thus commingled *pro indiviso* and, consequently, the properties pertaining to

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the estate of each of the spouses are not yet identifiable, it is PCIB alone, as administrator of the estate of Hodges, who should administer everything, and all that respondent Magno can do for the time being is to wait until the properties constituting the remaining estate of Mrs. Hodges have been duly segregated and delivered to her for her own administration. Seemingly, PCIB would liken the Testate Estate of Linnie Jane Hodges to a party having a claim of ownership to some properties included in the inventory of an administrator of the estate of a decedent, (here that of Hodges) and who normally has no right to take part in the proceedings pending the establishment of his right or title; for which as a rule it is required that an ordinary action should be filed, since the probate court is without jurisdiction to pass with finality on questions of title between the estate of the deceased, on the one hand, and a third party or even an heir claiming adversely against the estate, on the other.

We do not find such contention sufficiently persuasive. As We see it, the situation obtaining herein cannot be compared with the claim of a third party the basis of which is alien to the pending probate proceedings. In the present cases, what gave rise to the claim of PCIB of exclusive ownership by the estate of Hodges over all the properties of the Hodges spouses, including the share of Mrs. Hodges in the community properties, were the orders of the trial court issued in the course of the very settlement proceedings themselves, more specifically, the orders of May 27 and December 14, 1957 so often mentioned above. In other words, the root of the issue of title between the parties is something that the court itself has done in the exercise of its probate jurisdiction. And since in the ultimate analysis, the question of whether or not all the properties herein involved pertain exclusively to the estate of Hodges depends on the legal meaning and effect of said orders, the claim that respondent court has no jurisdiction to take cognizance of and decide the said issue is incorrect. If it was within the competence of the court to issue the root orders, why should it not be within its authority to declare

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their true significance and intent, to the end that the parties may know whether or not the estate of Mrs. Hodges had already been adjudicated by the court, upon the initiative of Hodges, in his favor, to the exclusion of the other heirs of his wife instituted in her will?

At this point, it bears emphasis again that the main cause of all the present problems confronting the courts and the parties in these cases was the failure of Hodges to secure, as executor of his wife's estate, from May, 1957 up to the time of his death in December, 1962, a period of more than five years, the final adjudication of her estate and the closure of the proceedings. The record is bare of any showing that he ever exerted any effort towards the early settlement of said estate. While, on the one hand, there are enough indications, as already discussed, that he had intentions of leaving intact her share of the conjugal properties so that it may pass wholly to his co-heirs upon his death, pursuant to her will, on the other hand, by not terminating the proceedings, his interests in his own half of the conjugal properties remained commingled *pro-indiviso* with those of his co-heirs in the other half. Obviously, such a situation could not be conducive to ready ascertainment of the portion of the inheritance that should appertain to his co-heirs upon his death. Having these considerations in mind, it would be giving a premium for such procrastination, and rather unfair to his co-heirs, if the administrator of his estate were to be given exclusive administration of all the properties in question, which would necessarily include the function of promptly liquidating the conjugal partnership, thereby identifying and segregating without unnecessary loss of time which properties should be considered as constituting the estate of Mrs. Hodges, the remainder of which her brothers and sisters are supposed to inherit equally among themselves.

To be sure, an administrator is not supposed to represent the interests of any particular party and his acts are deemed to be objectively for the protection of the rights of everybody concerned with the estate of the decedent,

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and from this point of view, it maybe said that even if PCIB were to act alone, there should be no fear of undue disadvantage to anyone. On the other hand, however, it is evidently implicit in Section 6 of Rule 78 fixing the priority among those to whom letters of administration should be granted that the criterion in the selection of the administrator is not his impartiality alone but, more importantly, the extent of his interest in the estate, so much so that the one assumed to have greater interest is preferred to another who has less. Taking both of these considerations into account, inasmuch as, according to Hodges' own inventory submitted by him as Executor of the estate of his wife, practically all their properties were conjugal which means that the spouses have equal shares therein, it is but logical that both estates should be administered jointly by the representatives of both, pending their segregation from each other. Particularly is such an arrangement warranted because the actuations so far of PCIB evince a determined, albeit groundless, intent to exclude the other heirs of Mrs. Hodges from their inheritance. Besides, to allow PCIB, the administrator of his estate, to perform now what Hodges was duty bound to do as executor is to violate the spirit, if not the letter, of Section 2 of Rule 78 which expressly provides that "The executor of an executor shall not, as such, administer the estate of the first testator." It goes without saying that this provision refers also to the administrator of an executor like PCIB here.

We are not unmindful of the fact that under Section 2 of Rule 73, "When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either." Indeed, it is true that the last sentence of this provision allows or permits the conjugal partnership of spouses who are both deceased to be settled or liquidated in the testate or intestate proceedings of either, but precisely because said sentence allows or permits that the liquidation

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be made in either proceeding, it is a matter of sound judicial discretion in which one it should be made. After all, the former rule referring to the administrator of the husband's estate in respect to such liquidation was done away with by Act 3176, the pertinent provisions of which are now embodied in the rule just cited.

Thus, it can be seen that at the time of the death of Hodges, there was already the pending judicial settlement proceeding of the estate of Mrs. Hodges, and, more importantly, that the former was the executor of the latter's will who had, as such, failed for more than five years to see to it that the same was terminated earliest, which was not difficult to do, since from ought that appears in the record, there were no serious obstacles on the way, the estate not being indebted and there being no immediate heirs other than Hodges himself. Such dilatory or indifferent attitude could only spell possible prejudice of his co-heirs, whose rights to inheritance depend entirely on the existence of any remainder of Mrs. Hodges' share in the community properties, and who are now faced with the pose of PCIB that there is no such remainder. Had Hodges secured as early as possible the settlement of his wife's estate, this problem would not have arisen. All things considered, We are fully convinced that the interests of justice will be better served by not permitting or allowing PCIB or any administrator of the estate of Hodges exclusive administration of all the properties in question. We are of the considered opinion and so hold that what would be just and proper is for both administrators of the two estates to act conjointly until after said estates have been segregated from each other.

At this juncture, it may be stated that we are not overlooking the fact that it is PCIB's contention that, viewed as a substitution, the testamentary disposition in favor of Mrs. Hodges' brothers and sisters may not be given effect. To a certain extent, this contention is correct. Indeed, legally speaking, Mrs. Hodges' will provides neither for a simple or vulgar substitution under Article 859 of the Civil Code nor for a fideicommissary substitution under Article 863

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thereof. There is no vulgar substitution therein because there is no provision for either (1) predecease of the testator by the designated heir or (2) refusal or (3) incapacity of the latter to accept the inheritance, as required by Article 859; and neither is there a fideicommissary substitution therein because no obligation is imposed thereby upon Hodges to preserve the estate or any part thereof for anyone else. But from these premises, it is not correct to jump to the conclusion, as PCIB does, that the testamentary dispositions in question are therefore inoperative and invalid.

The error in PCIB's position lies simply in the fact that it views the said disposition exclusively in the light of substitutions covered by the Civil Code section on that subject, (Section 3, Chapter 2, Title IV, Book III) when it is obvious that substitution occurs only when another heir is appointed in a will "so that he may enter into inheritance in default of the heir originally instituted," (Article 857, *Id.*) and, in the present case, no such possible default is contemplated. The brothers and sisters of Mrs. Hodges are not substitutes for Hodges because, under her will, they are not to inherit what Hodges cannot, would not or may not inherit, but what he would not dispose of from his inheritance; rather, therefore, they are also heirs instituted simultaneously with Hodges, subject, however, to certain conditions, partially resolutory insofar as Hodges was concerned and correspondingly suspensive with reference to his brothers and sisters-in-law. It is partially resolutory, since it bequeaths unto Hodges the whole of her estate to be owned and enjoyed by him as universal and sole heir with absolute dominion over them[6] only during his lifetime, which means that while he could completely and absolutely dispose of any portion thereof *inter vivos* to anyone other than himself, he was not free to do so *mortis causa*, and all his rights to what might remain upon his death would cease entirely upon the occurrence of that contingency, inasmuch as the right of

[6] With the exception of the limitations referring to the Texas properties.

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his brothers and sisters-in-law to the inheritance, although vested already upon the death of Mrs. Hodges, would automatically become operative upon the occurrence of the death of Hodges in the event of actual existence of any remainder of her estate then.

Contrary to the view of respondent Magno, however, it was not the usufruct alone of her estate, as contemplated in Article 869 of the Civil Code, that she bequeathed to Hodges during his lifetime, but the full ownership thereof, although the same was to last also during his lifetime only, even as there was no restriction whatsoever against his disposing or conveying the whole or any portion thereof to anybody other than himself. The Court sees no legal impediment to this kind of institution, in this jurisdiction or under Philippine law, except that it cannot apply to the legitime of Hodges as the surviving spouse, consisting of one-half of the estate, considering that Mrs. Hodges had no surviving ascendants nor descendants. (Arts. 872, 900, and 904, New Civil Code.)

But relative precisely to the question of how much of Mrs. Hodges' share of the conjugal partnership properties may be considered as her estate, the parties are in disagreement as to how Article 16 of the Civil Code[7] should be applied. On the one hand, petitioner claims that inasmuch as Mrs. Hodges was a resident of the Philippines at the time of her death, under said Article 16, construed in relation to the pertinent laws of Texas and the principle of *renvoi*, what should be applied here should be the rules of succession under the Civil Code of the Philippines, and, therefore, her estate could consist of no more than

[7] "Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found." (Article 16, Civil Code.)

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one-fourth of the said conjugal properties, the other fourth being, as already explained, the legitime of her husband (Art. 900, Civil Code) which she could not have disposed of nor burdened with any condition (Art. 872, Civil Code). On the other hand, respondent Magno denies that Mrs. Hodges died a resident of the Philippines, since allegedly she never changed nor intended to change her original residence of birth in Texas, United States of America, and contends that, anyway, regardless of the question of her residence, she being indisputably a citizen of Texas, under said Article 16 of the Civil Code, the distribution of her estate is subject to the laws of said State which, according to her, do not provide for any legitime, hence, the brothers and sisters of Mrs. Hodges are entitled to the remainder of the whole of her share of the conjugal partnership properties consisting of one-half thereof. Respondent Magno further maintains that, in any event, Hodges had renounced his rights under the will in favor of his co-heirs, as allegedly proven by the documents touching on the point already mentioned earlier, the genuineness and legal significance of which petitioner seemingly questions. Besides, the parties are disagreed as to what the pertinent laws of Texas provide. In the interest of settling the estates herein involved soonest, it would be best, indeed, if these conflicting claims of the parties were determined in these proceedings. The Court regrets, however, that it cannot do so, for the simple reason that neither the evidence submitted by the parties in the court below nor their discussion, in their respective briefs and memoranda before Us, of their respective contentions on the pertinent legal issues, of grave importance as they are, appear to Us to be adequate enough to enable Us to render an intelligent, comprehensive and just resolution. For one thing, there is no clear and reliable proof of what in fact the possibly applicable laws of Texas are.[7a] Then also, the genuineness of the documents relied upon by respondent

[7a] The question of what is the law of a foreign country is one of fact subject to proof like any other factual issue. (Sy Joc Lien *vs.* Sy Quia, 16 Phil. 137; Ching Huat *vs.* Co Heong, 77 Phil. 988.).

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Magno is disputed. And there are a number of still other conceivable related issues which the parties may wish to raise but which it is not proper to mention here. In Justice, therefore, to all the parties concerned, these and all other relevant matters should first be threshed out fully in the trial court in the proceedings hereafter to be held therein for the purpose of ascertaining and adjudicating and/or distributing the estate of Mrs. Hodges to her heirs in accordance with her duly probated will.

To be more explicit, all that We can and do decide in connection with the petition for *certiorari* and prohibition are: (1) that regardless of which corresponding laws are applied, whether of the Philippines or of Texas, and taking for granted either of the respective contentions of the parties as to provisions of the latter,[8] and regardless also of whether or not it can be proven by competent evidence that Hodges renounced his inheritance in any degree, it is easily and definitely discernible from the inventory submitted by Hodges himself, as Executor of his wife's estate, that there are properties which should constitute the estate of Mrs. Hodges and ought to be disposed of or distributed among her heirs pursuant to her will in said Special Proceedings 1307; (2) that, more specifically, inasmuch as the question of what are the pertinent laws of Texas applicable to the situation herein is basically one of fact, and, considering that the sole difference in the positions of the parties as to the effect of said laws has reference to the supposed legitime of Hodges — it being the stand of PCIB that Hodges had such a legitime whereas Magno claims the negative — it is now beyond controversy for all future purposes of these proceedings that whatever be the provisions actually of the laws of Texas applicable hereto, the estate of Mrs. Hodges is at least, one-fourth of the conjugal estate of the spouses; the existence and effects of foreign laws being questions of fact, and it being the position now of PCIB that the

[8] PCIB claims that pursuant to the laws of Texas, Mrs. Hodges' estate is only one fourth of the conjugal estate, while, on the other hand, Magno contends that under said laws, it is one-half of said estate since there is no legitime for the surviving spouse provided in said laws.

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estate of Mrs. Hodges, pursuant to the laws of Texas, should only be one-fourth of the conjugal estate, such contention constitutes an admission of fact, and consequently, it would be in estoppel in any further proceedings in these cases to claim that said estate could be less, irrespective of what might be proven later to be actually the provisions of the applicable laws of Texas; (3) that Special Proceedings 1307 for the settlement of the testate estate of Mrs. Hodges cannot be closed at this stage and should proceed to its logical conclusion, there having been no proper and legal adjudication or distribution yet of the estate therein involved; and (4) that respondent Magno remains and continues to be the Administratrix therein. Hence, nothing in the foregoing opinion is intended to resolve the issues which, as already stated, are not properly before the Court now, namely, (1) whether or not Hodges had in fact and in law waived or renounced his inheritance from Mrs. Hodges, in whole or in part, and (2) assuming there had been no such waiver, whether or not, by the application of Article 16 of the Civil Code, and in the light of what might be the applicable laws of Texas on the matter, the estate of Mrs. Hodges is more than the one-fourth declared above. As a matter of fact, even our finding above about the existence of properties constituting the estate of Mrs. Hodges rests largely on a general appraisal of the size and extent of the conjugal partnership gathered from reference made thereto by both parties in their briefs as well as in their pleadings included in the records on appeal, and it should accordingly yield, as to which exactly those properties are, to the more concrete and specific evidence which the parties are supposed to present in support of their respective positions in regard to the foregoing main legal and factual issues. In the interest of justice, the parties should be allowed to present such further evidence in relation to all these issues in a joint hearing of the two probate proceedings herein involved. After all, the court *a quo* has not yet passed squarely on these issues, and it is best for all concerned that it should do so in the first instance.

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Relative to Our holding above that the estate of Mrs. Hodges cannot be less than the remainder of one-fourth of the conjugal partnership properties, it may be mentioned here that during the deliberations, the point was raised as to whether or not said holding might be inconsistent with Our other ruling here also that, since there is no reliable evidence as to what are the applicable laws of Texas, U.S.A. "with respect to the order of succession and to the amount of successional rights" that may be willed by a testator which, under Article 16 of the Civil Code, are controlling in the instant cases, in view of the undisputed Texan nationality of the deceased Mrs. Hodges, these cases should be returned to the court *a quo*, so that the parties may prove what said law provides, it is premature for Us to make any specific ruling now on either the validity of the testamentary dispositions herein involved or the amount of inheritance to which the brothers and sisters of Mrs. Hodges are entitled. After mature reflection, We are of the considered view that, at this stage and in the state of the records before Us, the feared inconsistency is more apparent than real. Withal, it no longer lies in the lips of petitioner PCIB to make any claim that under the laws of Texas, the estate of Mrs. Hodges could in any event be less than that We have fixed above.

It should be borne in mind that as above-indicated, the question of what are the laws of Texas governing the matters here in issue is, in the first instance, one of fact, not of law. Elementary is the rule that foreign laws may not be taken judicial notice of and have to be proven like any other fact in dispute between the parties in any proceeding, with the rare exception in instances when the said laws are already within the actual knowledge of the court, such as when they are well and generally known or they have been actually ruled upon in other cases before it and none of the parties concerned do not claim otherwise. (5 Moran, Comments on the Rules of Court, p. 41, 1970 ed.) In Fluemer *vs.* Hix, 54 Phil. 610, it was held:

"It is the theory of the petitioner that the alleged will was executed in Elkins, West Virginia, on November 3, 1985, by Hix who had

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his residence in that jurisdiction, and that the laws of West Virginia govern. To this end, there was submitted a copy of Section 3868 of Acts 1882, c. 84 as found in West Virginia Code, Annotated, by Hogg, Charles E., Vol. 2, 1914, p. 1960, and as certified to by the Director of the National Library. But this was far from a compliance with the law. The laws of a foreign jurisdiction do not prove themselves in our courts. The courts of the Philippine Islands are not authorized to take judicial notice of the laws of the various States of the American Union. Such laws must be proved as facts. (In re Estate of Johnson [1918], 39 Phil. 156.) Here the requirements of the law were not met. There was no showing that the book from which an extract was taken was printed or published under the authority of the State of West Virginia, as provided in Section 300 of the Code of Civil Procedure. Nor was the extract from the law attested by the certificate of the officer having charge of the original, under the seal of the State of West Virginia, as provided in Section 301 of the Code of Civil Procedure. No evidence was introduced to show that the extract from the laws of West Virginia was in force at the time the alleged will was executed."

No evidence of the nature thus suggested by the Court may be found in the records of the cases at bar. Quite to the contrary, the parties herein have presented opposing versions in their respective pleadings and memoranda regarding the matter. And even if We took into account that in Aznar *vs.* Garcia, the Court did make reference to certain provisions regarding succession in the laws of Texas, the disparity in the material dates of that case and the present ones would not permit Us to indulge in the hazardous conjecture that said provisions have not been amended or changed in the meantime.

On the other hand, in In re Estate of Johnson, 39 Phil. 156, We held:

"Upon the other point — as to whether the will was executed in conformity with the statutes of the State of Illinois — we note that it does not affirmatively appear from the transcription of the testimony adduced in the trial court that any witness was examined with reference to the law of Illinois on the subject of the execution of will. The trial judge no doubt was satisfied that the will was properly executed by examining

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Section 1874 of the Revised Statutes of Illinois, as exhibited in Volume 3 of Starr & Curtis's Annotated Illinois Statutes, 2nd ed., p. 426; and he may have assumed that he could take judicial notice of the laws of Illinois under Section 275 of the Code of Civil Procedure. If so, he was in our opinion mistaken. That section authorizes the courts here to take judicial notice, among other things, of the acts of the legislative department of the United States. These words clearly have reference to Acts of the Congress of the United States; and we would hesitate to hold that our courts can, under this provision, take judicial notice of the multifarious laws of the various American States. Nor do we think that any such authority can be derived from the broader language, used in the same section, where it is said that our courts may take judicial notice of matters of public knowledge "similar" to those therein enumerated. The proper rule we think is to require proof of the statutes of the States of the American Union whenever their provisions are determinative of the issues in any action litigated in the Philippine courts.

Nevertheless, even supposing that the trial court may have erred in taking judicial notice of the law of Illinois on the point in question, such error is not now available to the petitioner, first, because the petition does not state any fact from which it would appear that the law of Illinois is different from what the court found, and, secondly, because the assignment of error and argument for the appellant in this court raises no question based on such supposed error. Though the trial court may have acted upon pure conjecture as to the law prevailing in the State of Illinois, its judgment could not be set aside, even upon application made within six months under Section 113 of the Code of Civil Procedure, unless it should be made to appear affirmatively that the conjecture was wrong. The petitioner, it is true, states in general terms that the will in question is invalid and inadequate to pass real and personal property in the State of Illinois, but this is merely a conclusion of law. The affidavits by which the petition is accompanied contain no reference to the subject, and we are cited to no authority in the appellant's brief which might tend to raise a doubt as to the correctness of the conclusion of the trial court. It is very clear, therefore, that this point cannot be urged as of serious moment."

It is implicit in the above ruling that when, with respect to certain aspects of the foreign laws concerned, the parties

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in a given case do not have any controversy or are more or less in agreement, the Court may take it for granted for the purposes of the particular case before it that the said laws are as such virtual agreement indicates, without the need of requiring the presentation of what otherwise would be the competent evidence on the point. Thus, in the instant cases wherein it results from the respective contentions of both parties that even if the pertinent laws of Texas were known and to be applied, the amount of the inheritance pertaining to the heirs of Mrs. Hodges is as We have fixed above, the absence of evidence to the effect that, actually and in fact, under said laws, it could be otherwise is of no longer of any consequence, unless the purpose is to show that it could be more. In other words, since PCIB, the petitioner-appellant, concedes that upon application of Article 16 of the Civil Code and the pertinent laws of Texas, the amount of the estate in controversy is just as We have determined it to be, and respondent-appellee is only claiming, on her part, that it could be more, PCIB may not now or later pretend differently.

To be more concrete, on pages 20-21 of its petition herein, dated July 31, 1967, PCIB states categorically:

"Inasmuch as Article 16 of the Civil Code provides that 'intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found,' while the law of Texas (the Hodges spouses being nationals of U.S.A., State of Texas), in its conflicts of law rules, provides that the domiciliary law (in this case Philippine law) governs the testamentary dispositions and successional rights over movables or personal properties, while the law of the situs (in this case also Philippine law with respect to all Hodges properties located in the Philippines), governs with respect to immovable properties, and applying therefore the 'renvoi doctrine' as enunciated and applied by this Honorable Court in the case of In re Estate of Christensen (G.R. No. L-16749, Jan. 31, 1963), there can be no question that Philippine law governs the testamentary

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dispositions contained in the Last Will and Testament of the deceased Linnie Jane Hodges, as well as the successional rights to her estate, both with respect to movables, as well as to immovables situated in the Philippines."

In its main brief dated February 26, 1968, PCIB asserts:

"*The law governing successional rights.*

As recited above, there is no question that the deceased, Linnie Jane Hodges, was an American citizen. There is also no question that she was a national of the State of Texas, U.S.A. Again, there is likewise no question that she had her domicile of choice in the City of Iloilo, Philippines, as this has already been pronounced by the above-cited orders of the lower court, pronouncements which are by now *res adjudicata* (par. [a], Sec. 49, Rule 39, Rules of Court; In re Estate of Johnson, 39 Phil. 156).

"Article 16 of the Civil Code provides:

'Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.'

Thus the aforecited provision of the Civil Code points towards the national law of the deceased, Linnie Jane Hodges, which is the law of Texas, as governing succession 'both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions x x x.' But the law of Texas, in its conflicts of law rules, provides that the domiciliary law governs the testamentary dispositions and successional rights over movables or personal property, while the law of the *situs* governs with respect to immovable property. Such that with respect to both movable property, as well as immovable property situated in the Philippines, the law of Texas points to the law of the Philippines.

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Applying, therefore, the so called "renvoi doctrine," as enunciated and applied by this Honorable Court in the case of "In re Christensen" (G.R. No. L-16749, Jan. 31, 1963), there can be no question that Philippine law governs the testamentary provisions in the Last Will and Testament of the deceased Linnie Jane Hodges, as well as the successional rights to her estate, both with respect to movables, as well as immovables situated in the Philippines.

The subject of successional rights.

Under Philippine law, as it is under the law of Texas, the conjugal or community property of the spouses, Charles Newton Hodges and Linnie Jane Hodges, upon the death of the latter, is to be divided into two, one-half pertaining to each of the spouses, as his or her own property. Thus, upon the death of Linnie Jane Hodges, one-half of the conjugal partnership property immediately pertained to Charles Newton Hodges as his own share, and not by virtue of any successional rights. There can be no question about this.

Again, Philippine law, or more specifically, Article 900 of the Civil Code provides:

> "If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse, and the testator may freely dispose of the other half.
>
> If the marriage between the surviving spouse and the testator was solemnized in *articulo mortis*, and the testator died within three months from the time of the marriage, the legitime of the surviving spouse as the sole heir shall be one-third of the hereditary estate, except when they have been living as husband and wife for more than five years. In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph."

This legitime of the surviving spouse cannot be burdened by any fideicommisary substitution (Art. 864, Civil Code), nor by any charge, condition, or substitution (Art. 872, Civil Code). It is clear, therefore, that in addition to one-half of the conjugal partnership property as his own conjugal share, Charles Newton Hodges was also immediately entitled to one-half of the half conjugal share of the deceased, Linnie

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Jane Hodges, or one-fourth of the entire conjugal property, as his legitime.

One-fourth of the conjugal property therefore remains at issue."

In the summary of its arguments in its memorandum dated April 30, 1968, the following appears:

"Briefly, the position advanced by the petitioner is:

a. That the Hodges spouses were domiciled legally in the Philippines (pp. 19-20, petition). This is now a matter of *res adjudicata* (p. 20, petition).

b. That under Philippine law, Texas law, and the renvoi doctrine, Philippine law governs the successional rights over the properties left by the deceased, Linnie Jane Hodges (pp. 20-21, petition).

c.. That under Philippine as well as Texas law, one-half of the Hodges properties pertains to the deceased, Charles Newton Hodges (p. 21, petition). This is not questioned by the respondents.

d. That under Philippine law, the deceased, Charles Newton Hodges, automatically inherited one-half of the remaining one-half of the Hodges properties as his legitime (p. 21, petition).

e. That the remaining 25% of the Hodges properties was inherited by the deceased, Charles Newton Hodges, under the will of his deceased spouse (pp. 22-23, petition). Upon the death of Charles Newton Hodges, the substitution provision of the will of the deceased, Linnie Jane Hodges, did not operate because the same is void (pp. 23-25, petition).

Upon the death of Charles Newton Hodges, the substitution provision of the will of the deceased, Lennie Jane Hodges, did not operate because the same is void (pp. 23-25, petition).

f. That the deceased, Charles Newton Hodges, asserted his sole ownership of the Hodges properties and the probate court sanctioned such assertion (pp. 25-29, petition). He in fact assumed such ownership and such was the status of the properties as of the time of his death (pp. 29-34, petition)."

Of similar tenor are the allegations of PCIB in some of its pleadings quoted in the earlier part of this opinion.

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On her part, it is respondent-appellee Magno's posture that under the laws of Texas, there is no system of legitime, hence the estate of Mrs. Hodges should be one-half of all the conjugal properties.

It is thus unquestionable that as far as PCIB is concerned, the application to these cases of Article 16 of the Civil Code in relation to the corresponding laws of Texas would result in that the Philippine laws on succession should control. On that basis, as We have already explained above, the estate of Mrs. Hodges is the remainder of one-fourth of the conjugal partnership properties, considering that We have found that there is no legal impediment to the kind of disposition ordered by Mrs. Hodges in her will in favor of her brothers and sisters and, further, that the contention of PCIB that the same constitutes an inoperative testamentary substitution is untenable. As will be recalled, PCIB's position that there is no such estate of Mrs. Hodges is predicated exclusively on two propositions, namely: (1) that the provision in question in Mrs. Hodges' testament violates the rules on substitution of heirs under the Civil Code and (2) that, in any event, by the orders of the trial court of May 27, and December 14, 1957, the trial court had already finally and irrevocably adjudicated to her husband the whole free portion of her estate to the exclusion of her brothers and sisters, both of which poses, We have overruled. Nowhere in its pleadings, briefs and memoranda does PCIB maintain that the application of the laws of Texas would result in the other heirs of Mrs. Hodges not inheriting anything under her will. And since PCIB's representations in regard to the laws of Texas virtually constitute admissions of fact which the other parties and the Court are being made to rely and act upon, PCIB is "not permitted to contradict them or subsequently take a position contradictory to or inconsistent with them." (5 Moran, *id.*, p. 65, citing Cunanan *vs.* Amparo, 80 Phil. 227; Sta. Ana *vs.* Maliwat, L-23023, Aug. 31, 1968, 24 SCRA 1018).

Accordingly, the only question that remains to be settled in the further proceedings hereby ordered to be held in the court below is how much more than as fixed above is the estate of Mrs. Hodges, and this would depend on (1) whether or not the

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applicable laws of Texas do provide in effect for more, such as, when there is no legitime provided therein, and (2) whether or not Hodges has validly waived his whole inheritance from Mrs. Hodges.

In the course of the deliberations, it was brought out by some members of the Court that to avoid or, at least, minimize further protracted legal controversies between the respective heirs of the Hodges spouses, it is imperative to elucidate on the possible consequences of dispositions made by Hodges after the death of his wife from the mass of the unpartitioned estates without any express indication in the pertinent documents as to whether his intention is to dispose of part of his inheritance from his wife or part of his own share of the conjugal estate as well as of those made by PCIB after the death of Hodges. After a long discussion, the consensus arrived at was as follows: (1) any such dispositions made *gratuitously* in favor of third parties, whether these be individuals, corporations or foundations, shall be considered as intended to be of properties constituting part of Hodges' inheritance from his wife, it appearing from the tenor of his motions of May 27 and December 11, 1957 that in asking for general authority to make sales or other disposals of properties under the jurisdiction of the court, which include his own share of the conjugal estate, he was not invoking particularly his right over his own share, but rather his right to dispose of any part of his inheritance pursuant to the will of his wife; (2) as regards sales, exchanges or other *remunerative* transfers, the proceeds of such sales or the properties taken in by virtue of such exchanges, shall be considered as merely the products of "physical changes" of the properties of her estate which the will expressly authorizes Hodges to make, provided that whatever of said products should remain with the estate at the time of the death of Hodges should go to her brothers and sisters; (3) the dispositions made by PCIB after the death of Hodges must naturally be deemed as covering only the properties belonging to his estate considering that being only the administrator of the estate of Hodges, PCIB could not have disposed of properties belonging to the estate of his wife. Neither could such dispositions be considered as involving conjugal

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properties, for the simple reason that the conjugal partnership automatically ceased when Mrs. Hodges died, and by the peculiar provision of her will, under discussion, the remainder of her share descended also automatically upon the death of Hodges to her brothers and sisters, thus outside of the scope of PCIB's administration. Accordingly, these construction of the will of Mrs. Hodges should be adhered to by the trial court in its final order of adjudication and distribution and/or partition of the two estates in question.

THE APPEALS

A cursory examination of the seventy-eight assignments of error in appellant PCIB's brief would readily reveal that all of them are predicated mainly on the contention that inasmuch as Hodges had already adjudicated unto himself all the properties constituting his wife's share of the conjugal partnership, allegedly with the sanction of the trial court per its order of December 14, 1957, there has been, since said date, no longer any estate of Mrs. Hodges of which appellee Magno could be administratrix, hence the various assailed orders sanctioning her actuations as such are not in accordance with law. Such being the case, with the foregoing resolution holding such posture to be untenable in fact and in law and that it is in the best interest of justice that for the time being the two estates should be administered conjointly by the respective administrators of the two estates, it should follow that said assignments of error have lost their fundamental reasons for being. There are certain matters, however, relating peculiarly to the respective orders in question, if commonly among some of them, which need further clarification. For instance, some of them authorized respondent Magno to act alone or without concurrence of PCIB. And with respect to many of said orders, PCIB further claims that either the matters involved were not properly within the probate jurisdiction of the trial court or that the procedure followed was not in accordance with the rules. Hence, the necessity of dealing separately with the merits of each of the appeals.

Indeed, inasmuch as the said two estates have until now remained commingled *pro-indiviso*, due to the failure of Hodges

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and the lower court to liquidate the conjugal partnership, to recognize appellee Magno as Administratrix of the Testate Estate of Mrs. Hodges which is still unsegregated from that of Hodges is not to say, without any qualification, that she was therefore authorized to do and perform all her acts complained of in these appeals, sanctioned though they might have been by the trial court. As a matter of fact, it is such commingling *pro-indiviso* of the two estates that should deprive appellee of freedom to act independently from PCIB, as administrator of the estate of Hodges, just as, for the same reason, the latter should not have authority to act independently from her. And considering that the lower court failed to adhere consistently to this basic point of view, by allowing the two administrators to act independently of each other, in the various instances already noted in the narration of facts above, the Court has to look into the attendant circumstances of each of the appealed orders to be able to determine whether any of them has to be set aside or they may all be legally maintained notwithstanding the failure of the court *a quo* to observe the pertinent procedural technicalities, to the end only that graver injury to the substantive rights of the parties concerned and unnecessary and undesirable proliferation of incidents in the subject proceedings may be forestalled. In other words, We have to determine, whether or not, in the light of the unusual circumstances extant in the record, there is need to be more pragmatic and to adopt a rather unorthodox approach, so as to cause the least disturbance in rights already being exercised by numerous innocent third parties, even if to do so may not appear to be strictly in accordance with the letter of the applicable purely adjective rules.

Incidentally, it may be mentioned, at this point, that it was principally on account of the confusion that might result later from PCIB's continuing to administer all the community properties, notwithstanding the certainty of the existence of the separate estate of Mrs. Hodges, and to enable both estates to function in the meantime with a relative degree of regularity, that the Court ordered in the resolution of September 8, 1972 the modification of the injunction issued pursuant to the resolutions of August 8, October 4 and December 6, 1967, by virtue of which respondent Magno was completely barred from

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any participation in the administration of the properties herein involved. In the September 8 resolution, We ordered that, pending this decision, Special Proceedings 1307 and 1672 should proceed jointly and that the respective administrators therein "act conjointly — none of them to act singly and independently of each other for any purpose." Upon mature deliberation, We felt that to allow PCIB to continue managing or administering all the said properties to the exclusion of the administratrix of Mrs. Hodges' estate might place the heirs of Hodges at an unduly advantageous position which could result in considerable, if not irreparable, damage or injury to the other parties concerned. It is indeed to be regretted that apparently, up to this date, more than a year after said resolution, the same has not been given due regard, as may be gleaned from the fact that recently, respondent Magno has filed in these proceedings a motion to declare PCIB in contempt for alleged failure to abide therewith, notwithstanding that its repeated motions for reconsideration thereof have all been denied soon after they were filed.[9]

Going back to the appeals, it is perhaps best to begin first with what appears to Our mind to be the simplest, and then proceed to the more complicated ones in that order, without regard to the numerical sequence of the assignments of error in appellant's brief or to the order of the discussion thereof by counsel.

Assignments of error Numbers LXXII, LXXVII and LXXVIII.

These assignments of error relate to (1) the order of the trial court of August 6, 1965 providing that "the deeds of sale (therein referred to involving properties in the name of Hodges) should be signed jointly by the PCIB, as Administrator of Testate Estate of C.N. Hodges, and Avelina A. Magno, as Administratrix of the Testate Estate of Linnie Jane Hodges, and to this effect, the PCIB should take the necessary steps so that Administratrix Avelina A. Magno could sign the deeds of sale," (p. 248, Green Rec. on Appeal) (2) the order of October 27, 1965 denying the motion for reconsideration of the foregoing order, (pp. 276-

[9] The motion for contempt will be separately taken up in due time.

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277, *id.*) (3) the other order also dated October 27, 1965 enjoining *inter alia*, that "(a) all cash collections should be deposited in the joint account of the estate of Linnie Jane Hodges and estate of C. N. Hodges, (b) that whatever cash collections (that) had been deposited in the account of either of the estates should be withdrawn and since then (sic) deposited in the joint account of the estate of Linnie Jane Hodges and the estate of C. N. Hodges; . . . (d) (that) Administratrix Magno — allow the PCIB to inspect whatever records, documents and papers she may have in her possession, in the same manner that Administrator PCIB is also directed to allow Administratrix Magno to inspect whatever records, documents and papers it may have in its possession" and "(e) that the accountant of the estate of Linnie Jane Hodges shall have access to all records of the transactions of both estates for the protection of the estate of Linnie Jane Hodges; and in like manner, the accountant or any authorized representative of the estate of C. N. Hodges shall have access to the records of transactions of the Linnie Jane Hodges estate for the protection of the estate of C. N. Hodges," (pp. 292-295, *id.*) and (4) the order of February 15, 1966, denying, among others, the motion for reconsideration of the order of October 27, 1965 last referred to. (pp. 455-456, *id.*)

As may be readily seen, the thrust of all these four impugned orders is in line with the Court's above-mentioned resolution of September 8, 1972 modifying the injunction previously issued on August 8, 1967, and, more importantly, with what We have said the trial court should have always done pending the liquidation of the conjugal partnership of the Hodges spouses. In fact, as already stated, that is the arrangement We are ordering, by this decision, to be followed. Stated differently, since the questioned orders provide for joint action by the two administrators, and that is precisely what We are holding out to have been done and should be done until the two estates are separated from each other, the said orders must be affirmed. Accordingly, the foregoing assignments of error must be, as they are hereby overruled.

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Assignments of error Numbers LXVIII to LXXI and LXXIII to LXXVI.

The orders complained of under these assignments of error commonly deal with expenditures made by appellee Magno, as Administratrix of the Estate of Mrs. Hodges, in connection with her administration thereof, albeit additionally, assignments of error Numbers LXIX to LXXI put into question the payment of attorneys fees provided for in the contract for the purpose, as constituting, in effect, premature advances to the heirs of Mrs. Hodges.

More specifically, assignment Number LXXIII refers to reimbursement of overtime pay paid to six employees of the court and three other persons for services in copying the court records to enable the lawyers of the administration to be fully informed of all the incidents in the proceedings. The reimbursement was approved as proper legal expenses of administration per the order of December 19, 1964, (pp. 221-222, *id.*) and repeated motions for reconsideration thereof were denied by the orders of January 9, 1965, (pp. 231-232, *id.*) October 27, 1965, (p. 277, *id.*) and February 15, 1966, (pp. 455-456, *id.*) On the other hand, Assignments Numbers LXVIII to LXXI, LXXIV and LXXV question the trial court's order of November 3, 1965 approving the agreement of June 6, 1964 between Administratrix Magno and James L. Sullivan, attorney-in-fact of the heirs of Mrs. Hodges, as Parties of the First Part, and Attorneys Raul Manglapus and Rizal R. Quimpo, as Parties of the Second Part, regarding attorneys fees for said counsel who had agreed "to prosecute and defend their interests (of the Parties of the First Part) in certain cases now pending litigation in the Court of First Instance of Iloilo —, more specifically in Special Proceedings 1307 and 1672 — ", (pp. 126-129, *id.*) and directing Administratrix Magno "to issue and sign whatever check or checks maybe needed to implement the approval of the agreement annexed to the motion" as well as the "administrator of the estate of C. N. Hodges — to countersign the said check or checks as the case maybe." (pp. 313-320, *id.*), reconsideration of which order of approval was denied in the order of February 16, 1966, (p. 456, *id.*)

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Assignment Number LXXVI imputes error to the lower court's order of October 27,1965, already referred to above, insofar as it orders that "PCIB should countersign the check in the amount of P250 in favor of Administratrix Avelina A. Magno as her compensation as administratrix of Linnie Jane Hodges estate chargeable to the Testate Estate of Linnie Jane Hodges only." (p. 294, *id.*)

Main contention again of appellant PCIB in regard to these eight assigned errors is that there is no such estate as the estate of Mrs. Hodges for which the questioned expenditures were made, hence what were authorized were in effect expenditures from the estate of Hodges. As We have already demonstrated in Our resolution above of the petition for *certiorari* and prohibition, this posture is incorrect. Indeed, in whichever way the remaining issues between the parties in these cases are ultimately resolved,[10] the final result will surely be that there are properties constituting the estate of Mrs. Hodges of which Magno is the current administratrix. It follows, therefore, that said appellee had the right, as such administratrix, to hire the persons whom she paid overtime pay and to be paid for her own services as administratrix. That she has not yet collected and is not collecting amounts as substantial as that paid to or due appellant PCIB is to her credit.

Of course, she is also entitled to the services of counsel and to that end had the authority to enter into contracts for attorney's fees in the manner she had done in the agreement of June 6, 1964. And as regards to the reasonableness of the amount therein stipulated, We see no reason to disturb the discretion exercised by the probate court in determining the same. We have gone over the agreement, and considering the obvious size of the estate in question and the nature of the issues between the parties as well as the professional standing of counsel, We cannot

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[10] The issues We have expressly reserved for later resolution. (See pp. 111-114 of this opinion.).

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say that the fees agreed upon require the exercise by the Court of its inherent power to reduce it.

PCIB insists, however, that said agreement of June 6, 1964 is not for legal services to the estate but to the heirs of Mrs. Hodges, or, at most, to both of them, and such being the case, any payment under it, insofar as counsels' services would redound to the benefit of the heirs, would be in the nature of advances to such heirs and a premature distribution of the estate. Again, We hold that such posture cannot prevail.

Upon the premise We have found plausible that there is an existing estate of Mrs. Hodges, it results that juridically and factually the interests involved in her estate are distinct and different from those involved in her estate of Hodges and vice versa. Insofar as the matters related exclusively to the estate of Mrs. Hodges, PCIB, as administrator of the estate of Hodges, is a complete stranger and it is without personality to question the actuations of the administratrix thereof regarding matters not affecting the estate of Hodges. Actually, considering the obviously considerable size of the estate of Mrs. Hodges, We see no possible cause for apprehension that when the two estates are segregated from each other, the amount of attorney's fees stipulated in the agreement in question will prejudice any portion that would correspond to Hodges' estate. And as regards the other heirs of Mrs. Hodges who ought to be the ones who should have a say on the attorney's fees and other expenses of administration assailed by PCIB, suffice it to say that they appear to have been duly represented in the agreement itself by their attorney-in-fact, James L. Sullivan and have not otherwise interposed any objection to any of the expenses incurred by Magno questioned by PCIB in these appeals. As a matter of fact, as ordered by the trial court, all the expenses in question, including the attorney's fees, may be paid without awaiting the determination and segregation of the estate of Mrs. Hodges.

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Withal, the weightiest consideration in connection with the point under discussion is that at this stage of the controversy among the parties herein, the vital issue refers to the existence or non-existence of the estate of Mrs. Hodges. In this respect, the interest of respondent Magno, as the appointed administratrix of the said estate, is to maintain that it exists, which is naturally common and identical with and inseparable from the interest of the brothers and sisters of Mrs. Hodges. Thus it should not be wondered why both Magno and these heirs have seemingly agreed to retain but one counsel. In fact, such an arrangement should be more convenient and economical to both. The possibility of conflict of interest between Magno and the heirs of Mrs. Hodges would be, at this stage, quite remote and, in any event, rather insubstantial. Besides, should any substantial conflict of interest between them arise in the future, the same would be a matter that the probate court can very well take care of in the course of the independent proceedings in Case No. 1307 after the corresponding segregation of the two subject estates. We cannot perceive any cogent reason why, at this stage, the estate and the heirs of Mrs. Hodges cannot be represented by a common counsel.

Now, as to whether or not the portion of the fees in question that should correspond to the heirs constitutes premature partial distribution of the estate of Mrs. Hodges is also a matter in which neither PCIB nor the heirs of Hodges have any interest. In any event, since, as far as the records show, the estate has no creditors and the corresponding estate and inheritance taxes, except those of the brothers and sisters of Mrs. Hodges, have already been paid,[11] no

[11] If it should be found by the court later that Hodges did renounce his inheritance from Mrs. Hodges, as seems to be indicated in the documents mentioned in the opinion, Schedule M of the Inheritance Tax Return filed by Hodges in the United States, Annex 4 of the Answer in G.R. Nos. L-27860 & L-27896, and the affidavit of Hodges, Annex 5 also of the same answer, it is likely that Hodges did not have to pay any inheritance tax, and it would only be after these proceedings are finally terminated with a judgment favorable to the brothers and sisters of Mrs. Hodges that

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prejudice can be caused to anyone by the comparatively small amount of attorney's fees in question. And in this connection, it may be added that, although strictly speaking, the attorney's fees of the counsel of an administrator is in the first instance his personal responsibility, reimbursable later on by the estate, in the final analysis, when, as in the situation on hand, the attorney-in-fact of the heirs has given his conformity thereto, it would be idle effort to inquire whether or not the sanction given to said fees by the probate court is proper.

For the foregoing reasons, Assignments of Error LXVIII to LXXI and LXXII to LXXVI should be as they are hereby overruled.

Assignments of error I to IV, XIII to XV, XXII to XXV, XXXV to XXXVI, XLI to XLIII and L.

These assignments of error deal with the approval by the trial court of various deeds of sale of real properties registered in the name of Hodges but executed by appellee Magno, as Administratrix of the Estate of Mrs. Hodges, purportedly in implementation of corresponding supposed written "Contracts to Sell" previously executed by Hodges during the interim between May 23, 1957, when his wife died, and December 25, 1962, the day he died. As stated on pp. 118-120 of appellant's main brief, "These are: the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Pepito G. Iyulores, executed on February 5, 1961; the contract to sell between the deceased, Charles Newton Hodges, and the appellant Esperidion Partisala, executed on April 20, 1960; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Winifredo C. Espada, executed on April 18, 1960; the contract to sell between the deceased, Charles Newton Hodges, and the appellee,

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taxes could be assessed against them according to their respective individual shares.

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Rosario Alingasa, executed on August 25, 1958; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Lorenzo Carles, executed on June 17, 1958; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Salvador S. Guzman, executed on September 13, 1960; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Florenia Barrido, executed on February 21, 1958; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Pruficacion Coronado, executed on August 14, 1961; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Graciano Lucero, executed on November 27, 1961; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Ariteo Thomas Jamir, executed on May 26, 1961; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Melquiades Batisanan, executed on June 9, 1959; the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Belcezar Causing, executed on February 10, 1959; and the contract to sell between the deceased, Charles Newton Hodges, and the appellee, Adelfa Premaylon, executed on October 31, 1959, re Title No. 13815."

Relative to these sales, it is the position of appellant PCIB that, inasmuch as pursuant to the will of Mrs. Hodges, her husband was to have dominion over all her estate during his lifetime, it was as absolute owner of the properties respectively covered by said sales that he executed the aforementioned contracts to sell, and consequently, upon his death, the implementation of said contracts may be undertaken only by the administrator of his estate and not by the administratrix of the estate of Mrs. Hodges. Basically, the same theory is invoked with particular reference to five other sales, in which the respective "contracts to sell" in favor of these appellees were executed by Hodges before the death of his wife, namely, those in favor of appellee Santiago Pacaonsis, Alfredo Catedral, Jose Pablico, Western Institute of Technology and Adelfa Premaylon.

Anent those deeds of sale based on promises or contracts to sell executed by Hodges after the death of his wife, those

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enumerated in the quotation in the immediately preceding paragraph, it is quite obvious that PCIB's contention cannot be sustained. As already explained earlier,[11a] all proceeds of remunerative transfers or dispositions made by Hodges after the death of his wife should be deemed as continuing to be parts of her estate and, therefore, subject to the terms of her will in favor of her brothers and sisters, in the sense that should there be no showing that such proceeds, whether in cash or property, have been subsequently conveyed or assigned subsequently by Hodges to any third party by acts *inter vivos*, with the result that they could not thereby belong to him anymore at the time of his death, they automatically became part of the inheritance of said brothers and sisters. The deeds here in question involve transactions which are exactly of this nature. Consequently, the payments made by the appellees should be considered as payments to the estate of Mrs. Hodges which is to be distributed and partitioned among her heirs specified in the will.

The five deeds of sale predicated on contracts to sell executed by Hodges during the lifetime of his wife, present a different situation. At first blush, it would appear that as to them, PCIB's position has some degree of plausibility. Considering, however, that the adoption of PCIB's theory would necessarily have tremendous repercussions and would bring about considerable disturbance of property rights that have somehow accrued already in favor of innocent third parties, the five purchasers aforenamed, the Court is inclined to take a pragmatic and practical view of the legal situation involving them by overlooking the possible technicalities in the way, the non-observance of which would not, after all, detract materially from what should substantially correspond to each and all of the parties concerned.

To start with, these contracts can hardly be ignored. *Bona fide* third parties are involved; as much as possible, they should not be made to suffer any prejudice on account of judicial controversies not of their own making. What is more, the transactions they rely on were submitted by them to the probate

[11a] See page 114-I ante.

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court for approval, and from already known and recorded actuations of said court then, they had reason to believe that it had authority to act on their motions, since appellee Magno had, from time to time prior to their transactions with her, been allowed to act in her capacity as administratrix of one of the subject estates either alone or conjointly with PCIB. All the sales in question were executed by Magno in 1966 already, but before that, the court had previously authorized or otherwise sanctioned expressly many of her acts as administratrix involving expenditures from the estate made by her either conjointly with or independently from PCIB, as Administrator of the Estate of Hodges. Thus, it may be said that said buyers-appellees merely followed precedents in previous orders of the court. Accordingly, unless the impugned orders approving those sales indubitably suffer from some clearly fatal infirmity the Court would rather affirm them.

It is quite apparent from the record that the properties covered by said sales are equivalent only to a fraction of what should constitute the estate of Mrs. Hodges, even if it is assumed that the same would finally be held to be only one-fourth of the conjugal properties of the spouses as of the time of her death or, to be more exact, one-half of her estate as per the inventory submitted by Hodges as executor, on May 12, 1958. In none of its numerous, varied and voluminous pleadings, motions and manifestations has PCIB claimed any possibility otherwise. Such being the case, to avoid any conflict with the heirs of Hodges, the said properties covered by the questioned deeds of sale executed by appellee Magno may be treated as among those corresponding to the estate of Mrs. Hodges, which would have been actually under her control and administration had Hodges complied with his duty to liquidate the conjugal partnership. Viewing the situation in that manner, the only ones who could stand to be prejudiced by the appealed orders referred to in the assignment of errors under discussion and who could, therefore, have the requisite interest to question

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them would be only the heirs of Mrs. Hodges, definitely not PCIB.

It is of no moment in what capacity Hodges made the "contracts to sell" after the death of his wife. Even if he had acted as executor of the will of his wife, he did not have to submit those contracts to the court nor follow the provisions of the rules, (Sections 2, 4, 5, 6, 8 and 9 of Rule 89 quoted by appellant on pp. 125 to 127 of its brief) for the simple reason that by the very orders, much relied upon by appellant for other purposes, of May 27, 1957 and December 14, 1957, Hodges was "allowed or authorized" by the trial court "to continue the business in which he was engaged and to perform acts which he had been doing while the deceased was living," (Order of May 27) which according to the motion on which the court acted was "of buying and selling personal and real properties," and "to execute subsequent sales, conveyances, leases and mortgages of the properties left by the said deceased Linnie Jane Hodges in consonance with the wishes conveyed in the last will and testament of the latter." (Order of December 14) In other words, if Hodges acted then as executor, it can be said that he had authority to do so by virtue of these blanket orders, and PCIB does not question the legality of such grant of authority; on the contrary, it is relying on the terms of the order itself for its main contention in these cases. On the other hand, if, as PCIB contends, he acted as heir-adjudicatee, the authority given to him by the aforementioned orders would still suffice.

As can be seen, therefore, it is of no moment whether the "contracts to sell" upon which the deeds in question were based were executed by Hodges before or after the death of his wife. In a word, We hold, for the reasons already stated, that the properties covered by the deeds being assailed pertain or should be deemed as pertaining to the estate of Mrs. Hodges; hence, any supposed irregularity attending the actuations of the trial court may be invoked only by her heirs, not by PCIB, and since the said heirs are not objecting, and the defects pointed out

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not being strictly jurisdictional in nature, all things considered, particularly the unnecessary disturbance of rights already created in favor of innocent third parties, it is best that the impugned orders are not disturbed.

In view of these considerations, We do not find sufficient merit in the assignments of error under discussion.

Assignments of error V to VIII, XVI to XVIII, XXVI to XXIX, XXXVII to XXXVIII, XLIV to XLVI and LI.

All these assignments of error commonly deal with alleged non-fulfillment by the respective vendees, appellees herein, of the terms and conditions embodied in the deeds of sale referred to in the assignments of error just discussed. It is claimed that some of them never made full payments in accordance with the respective contracts to sell, while in the cases of the others, like Lorenzo Carles, Jose Pablico, Alfredo Catedral and Salvador S. Guzman, the contracts with them had already been unilaterally cancelled by PCIB pursuant to automatic rescission clauses contained in them, in view of the failure of said buyers to pay arrearages long overdue. But PCIB's posture is again premised on its assumption that the properties covered by the deeds in question could not pertain to the estate of Mrs. Hodges. We have already held above that, it being evident that a considerable portion of the conjugal properties, much more than the properties covered by said deeds, would inevitably constitute the estate of Mrs. Hodges, to avoid unnecessary legal complications, it can be assumed that said properties form part of such estate. From this point of view, it is apparent again that the questions, whether or not it was proper for appellee Magno to have disregarded the cancellations made by PCIB, thereby reviving the rights of the respective buyers-appellees, and, whether or not the rules governing new dispositions of properties of the estate were strictly followed, may not be raised by PCIB but only by the heirs of Mrs. Hodges as the persons

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designated to inherit the same, or perhaps the government because of the still unpaid inheritance taxes. But, again, since there is no pretense that any objections were raised by said parties or that they would necessarily be prejudiced, the contentions of PCIB under the instant assignments of error hardly merit any consideration.

Assignments of error IX to XII, XIX to XXI, XXX to XXXIV, XXXIX to XL, XLVII to XLIX, LII and LIII to LXI.

PCIB raises under these assignments of error two issues which according to it are fundamental, namely: (1) that in approving the deeds executed by Magno pursuant to contracts to sell already cancelled by it in the performance of its functions as administrator of the estate of Hodges, the trial court deprived the said estate of the right to invoke such cancellations it (PCIB) had made and (2) that in so acting, the court "arrogated unto itself, while acting as a probate court, the power to determine the contending claims of third parties against the estate of Hodges over real property," since it has in effect determined whether or not all the terms and conditions of the respective contracts to sell executed by Hodges in favor of the buyers-appellees concerned were complied with by the latter. What is worse, in the view of PCIB, is that the court has taken the word of the appellee Magno, "a total stranger to his estate as determinative of the issue".

Actually, contrary to the stand of PCIB, it is this last point regarding appellee Magno's having agreed to ignore the cancellations made by PCIB and allowed the buyers-appellees to consummate the sales in their favor that is decisive. Since We have already held that the properties covered by the contracts in question should be deemed to be portions of the estate of Mrs. Hodges and not that of Hodges, it is PCIB that is a complete stranger in these incidents. Considering, therefore, that the estate of Mrs. Hodges and her heirs who are the real parties in interest having the right to oppose the consummation of the impugned sales are not objecting, and that they are the ones who are

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precisely urging that said sales be sanctioned, the assignments of error under discussion have no basis and must accordingly be as they are hereby overruled.

With particular reference to assignments LIII to LXI, assailing the orders of the trial court requiring PCIB to surrender the respective owner's duplicate certificates of title over the properties covered by the sales in question and otherwise directing the Register of Deeds of Iloilo to cancel said certificates and to issue new transfer certificates of title in favor of the buyers-appellees, suffice it to say that in the light of the above discussion, the trial court was within its rights to so require and direct, PCIB having refused to give way, by withholding said owners' duplicate certificates, of the corresponding registration of the transfers duly and legally approved by the court.

Assignments of error LXII to LXVII.

All these assignments of error commonly deal with the appeal against orders favoring appellee Western Institute of Technology. As will be recalled, said institute is one of the buyers of real property covered by a contract to sell executed by Hodges prior to the death of his wife. As of October, 1965, it was in arrears in the total amount of P92,691.00 in the payment of its installments on account of its purchase, hence it received under date of October 4, 1965 and October 20, 1965, letters of collection, separately and respectively, from PCIB and appellee Magno, in their respective capacities as administrators of the distinct estates of the Hodges spouses, albeit, while in the case of PCIB it made known that "no other arrangement can be accepted except by paying all your past due account", on the other hand, Magno merely said she would "appreciate very much if you can make some remittance to bring this account up-to-date and to reduce the amount of the obligation." (See pp. 295-311, Green R. on A.) On November 3, 1965, the Institute filed a motion in which, after alleging that it was ready and willing to pay P20,000 on account of its overdue installments but uncertain whether it should pay

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PCIB or Magno, it prayed that it be "allowed to deposit the aforesaid amount with the court pending resolution of the conflicting claims of the administrators." Acting on this motion, on November 23, 1965, the trial court issued an order, already quoted in the narration of facts in this opinion, holding that payment to both or either of the two administrators is "proper and legal", and so "movant — can pay to both estates or either of them", considering that "in both cases (Special Proceedings 1307 and 1672) there is as yet no judicial declaration of heirs nor distribution of properties to whomsoever are entitled thereto."

The arguments under the instant assignments of error revolve around said order. From the procedural standpoint, it is claimed that PCIB was not served with a copy of the Institute's motion, that said motion was heard, considered and resolved on November 23, 1965, whereas the date set for its hearing was November 20, 1965, and that what the order grants is different from what is prayed for in the motion. As to the substantive aspect, it is contended that the matter treated in the motion is beyond the jurisdiction of the probate court and that the order authorized payment to a person other than the administrator of the estate of Hodges with whom the Institute had contracted.

The procedural points urged by appellant deserve scant consideration. We must assume, absent any clear proof to the contrary, that the lower court had acted regularly by seeing to it that appellant was duly notified. On the other hand, there is nothing irregular in the court's having resolved the motion three days after the date set for hearing the same. Moreover, the record reveals that appellants' motion for reconsideration wherein it raised the same points was denied by the trial court on March 7, 1966 (p. 462, Green R. on A.). Withal, We are not convinced that the relief granted is not within the general intent of the Institute's motion.

Insofar as the substantive issues are concerned, all that need be said at this point is that they are mere reiterations

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of contentions We have already resolved above adversely to appellants' position. Incidentally, We may add, perhaps, to erase all doubts as to the propriety of not disturbing the lower court's orders sanctioning the sales questioned in all these appeals by PCIB, that it is only when one of the parties to a contract to convey property executed by a deceased person raises substantial objections to its being implemented by the executor or administrator of the decedent's estate that Section 8 of Rule 89 may not apply and, consequently, the matter has, to be taken up in a separate action outside of the probate court; but where, as in the cases of the sales herein involved, the interested parties are in agreement that the conveyance be made, it is properly within the jurisdiction of the probate court to give its sanction thereto pursuant to the provisions of the rule just mentioned. And with respect to the supposed automatic rescission clauses contained in the contracts to sell executed by Hodges in favor of herein appellees, the effect of said clauses depend on the true nature of the said contracts, despite the nomenclature appearing therein, which is not controlling, for if they amount to actual contracts of sale instead of being mere unilateral accepted "promises to sell", (Art. 1479, Civil Code of the Philippines, 2nd paragraph) the *pactum commissorium* or the automatic rescission provision would not operate, as a matter of public policy, unless there has been a previous notarial or judicial demand by the seller (10 Manresa 263, 2nd ed.), neither of which have been shown to have been made in connection with the transactions herein involved.

Consequently, We find no merit in the assignments of error Number LXII to LXVII.

SUMMARY

Considering the fact that this decision is unusually extensive and that the issues herein taken up and resolved are rather numerous and varied, what with appellant making seventy-eight assignments of error affecting no less than thirty separate orders of the court *a quo*, if only to facilitate proper understanding of the import and

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extent of our rulings herein contained, it is perhaps desirable that a brief restatement of the whole situation be made together with our conclusions in regard to its various factual and legal aspects.

The instant cases refer to the estate left by the late Charles Newton Hodges as well as that of his wife, Linnie Jane Hodges, who predeceased him by about five years and a half. In their respective wills which were executed on different occasions, each one of them provided mutually as follows: "I give, devise and bequeath all of the rest, residue and remainder (after funeral and administration expenses, taxes and debts) of my estate, both real and personal, wherever situated or located, to my beloved (spouse) to have and to hold unto (him/her) — during (his/her) natural lifetime," subject to the condition that upon the death of whoever of them survived the other, the remainder of what he or she would inherit from the other is "give(n), devise(d) and bequeath(ed)" to the brothers and sisters of the latter.

Mrs. Hodges died first, on May 23, 1957. Four days later, on May 27, Hodges was appointed special administrator of her estate, and in a separate order of the same date, he was "allowed or authorized to continue the business in which he was engaged, (buying and selling personal and real properties) and to perform acts which he had been doing while the deceased was living." Subsequently, on December 14, 1957, after Mrs. Hodges' will had been probated and Hodges had been appointed and had qualified as Executor thereof, upon his motion in which he asserted that he was "not only part owner of the properties left as conjugal, but also, the successor to all the properties left by the deceased Linnie Jane Hodges", the trial court ordered that "for the reasons stated in his motion dated December 11, 1957, which the Court considers well taken, . . . all the sales, conveyances, leases and mortgages of all properties left by the deceased Linnie Jane Hodges executed by the Executor, Charles Newton Hodges are hereby APPROVED. The said Executor is further authorized to execute subsequent sales, conveyances,

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leases and mortgages of the properties left by the said deceased Linnie Jane Hodges in consonance with the wishes contained in the last will and testament of the latter."

Annually thereafter, Hodges submitted to the court the corresponding statements of account of his administration, with the particularity that in all his motions, he always made it a point to urge that "no person interested in the Philippines of the time and place of examining the herein accounts be given notice, as herein executor is the only devisee or legatee of the deceased, in accordance with the last will and testament already probated by the Honorable Court." All said accounts were invariably approved as prayed for.

Nothing else appears to have been done either by the court *a quo* or by Hodges until December 25, 1962. Importantly to be noted, despite the provision in the will of Mrs. Hodges that her share of the conjugal partnership was to be inherited by her husband "to have and to hold unto him, my said husband, during his natural lifetime" and that "at the death of my said husband, I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, wherever situated or located, to be equally divided among my brothers and sisters, share and share alike", which provision naturally made it imperative that the conjugal partnership be promptly liquidated, in order that the "rest, residue and remainder" of his wife's share thereof, as of the time of Hodges' own death, may be readily known and identified, no such liquidation was ever undertaken. The record gives no indication of the reason for such omission, although relatedly, it appears therein:

1. That in his annual statement submitted to the court of the net worth of C. N. Hodges and the Estate of Linnie Jane Hodges, Hodges repeatedly and consistently reported the combined income of the conjugal partnership and then merely divided the same equally between himself and the estate of the deceased wife, and, more importantly, he also, as consistently, filed corresponding separate income tax returns for each calendar year for each resulting half of such combined income, thus reporting that the estate of Mrs. Hodges had its own income distinct from his own.

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2. That when the court *a quo* happened to inadvertently omit in its order probating the will of Mrs. Hodges, the name of one of her brothers, Roy Higdon, then already deceased, Hodges lost no time in asking for the proper correction "in order that the heirs of deceased Roy Higdon may not think or believe they were omitted, and that they were really interested in the estate of the deceased Linnie Jane Hodges."

3. That in his aforementioned motion of December 11, 1957, he expressly stated that "deceased Linnie Jane Hodges died leaving no descendants or ascendants except brothers and sisters and herein petitioner as the surviving spouse, to inherit the properties of the decedent", thereby indicating that he was not excluding his wife's brothers and sisters from the inheritance.

4. That Hodges allegedly made statements and manifestations to the United States inheritance tax authorities indicating that he had renounced his inheritance from his wife in favor of her other heirs, which attitude he is supposed to have reiterated or ratified in an alleged affidavit subscribed and sworn to here in the Philippines and in which he even purportedly stated that his reason for so disclaiming and renouncing his rights under his wife's will was to "absolve (him) or (his) estate from any liability for the payment of income taxes on income which has accrued to the estate of Linnie Jane Hodges," his wife, since her death.

On said date, December 25, 1962, Hodges died. The very next day, upon motion of herein respondent and appellee, Avelina A. Magno, she was appointed by the trial court as Administratrix of the Testate Estate of Linnie Jane Hodges, in Special Proceedings No. 1307 and as Special Administratrix of the estate of Charles Newton Hodges, "in the latter case, because the last will of said Charles Newton Hodges is still kept in his vault or iron safe and that the real and personal properties of both spouses may be lost, damaged or go to waste, unless a Special Administratrix is appointed," (Order of December 26, 1962, p. 27, Yellow R. on A.) although, soon enough, on December 29, 1962, a certain Harold K. Davies was appointed as her Co-Special Administrator

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and when Special Proceedings No. 1672, Testate Estate of Charles Newton Hodges, was opened, Joe Hodges, as next of kin of the deceased, was in due time appointed as Co-Administrator of said estate together with Atty. Fernando P. Mirasol, to replace Magno and Davies, only to be in turn replaced eventually by petitioner PCIB alone.

At the outset, the two probate proceedings appear to have been proceeding jointly, with each administrator acting together with the other, under a sort of *modus operandi*. PCIB used to secure at the beginning the conformity to and signature of Magno in transactions it wanted to enter into and submitted the same to the court for approval as their joint acts. So did Magno do likewise. Somehow, however, differences seem to have arisen, for which reason, each of them began acting later on separately and independently of each other, with apparent sanction of the trial court. Thus, PCIB had its own lawyers whom it contracted and paid handsomely, conducted the business of the estate independently of Magno and otherwise acted as if all the properties appearing in the name of Charles Newton Hodges belonged solely and only to his estate, to the exclusion of the brothers and sisters of Mrs. Hodges, without considering whether or not in fact any of said properties corresponded to the portion of the conjugal partnership pertaining to the estate of Mrs. Hodges. On the other hand, Magno made her own expenditures, hired her own lawyers, on the premise that there is such an estate of Mrs. Hodges, and dealt with some of the properties, appearing in the name of Hodges, on the assumption that they actually correspond to the estate of Mrs. Hodges. All of these independent and separate actuations of the two administrators were invariably approved by the trial court upon submission. Eventually, the differences reached a point wherein Magno, who was more cognizant than anyone else about the ins and outs of the businesses and properties of the deceased spouses because of her long and intimate association with them, made it difficult for PCIB to perform normally its functions as administrator separately from her. Thus, legal complications arose and the present judicial controversies came about.

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Predicating its position on the tenor of the orders of May 27 and December 14, 1957 as well as the approval by the court *a quo* of the annual statements of account of Hodges, PCIB holds to the view that the estate of Mrs. Hodges has already been in effect closed with the virtual adjudication in the mentioned orders of her whole estate to Hodges, and that, therefore, Magno had already ceased since then to have any estate to administer and the brothers and sisters of Mrs. Hodges have no interests whatsoever in the estate left by Hodges. Mainly upon such theory, PCIB has come to this Court with a petition for *certiorari* and prohibition praying that the lower court's orders allowing respondent Magno to continue acting as administratrix of the estate of Mrs. Hodges in Special Proceedings 1307 in the manner she has been doing, as detailed earlier above, to set aside. Additionally, PCIB maintains that the provision in Mrs. Hodges' will instituting her brothers and sisters in the manner therein specified is in the nature of a testamentary substitution, but inasmuch as the purported substitution is not, in its view, in accordance with the pertinent provisions of the Civil Code, it is ineffective and may not be enforced. It is further contended that, in any event, inasmuch as the Hodges spouses were both residents of the Philippines, following the decision of this Court in Aznar *vs.* Garcia, or the case of Christensen, 7 SCRA 95, the estate left by Mrs. Hodges could not be more than one-half of her share of the conjugal partnership, notwithstanding the fact that she was a citizen of Texas, U.S.A., in accordance with Article 16 in relation to Articles 900 and 872 of the Civil Code. Initially, We issued a preliminary injunction against Magno and allowed PCIB to act alone.

At the same time, PCIB has appealed several separate orders of the trial court approving individual acts of appellee Magno in her capacity as administratrix of the estate of Mrs. Hodges, such as, hiring of lawyers for specified fees and incurring expenses of administration for different purposes and executing deeds of sale in favor of her co-appellees covering properties which are still registered in the name of Hodges, purportedly, pursuant

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to corresponding "contracts to sell" executed by Hodges. The said orders are being questioned on jurisdictional and procedural grounds directly or indirectly predicated on the principal theory of appellant that all the properties of the two estates belong already to the estate of Hodges exclusively.

On the other hand, respondent-appellee Magno denies that the trial court's orders of May 27 and December 14, 1957 were meant to be finally adjudicatory of the hereditary rights of Hodges and contends that they were no more than the court's general sanction of past and future acts of Hodges as executor of the will of his wife in due course of administration. As to the point regarding substitution, her position is that what was given by Mrs. Hodges to her husband under the provision in question was a lifetime usufruct of her share of the conjugal partnership, with the naked ownership passing directly to her brothers and sisters. Anent the application of Article 16 of the Civil Code, she claims that the applicable law to the will of Mrs. Hodges is that of Texas under which, she alleges, there is no system of legitime, hence, the estate of Mrs. Hodges cannot be less than her share or one-half of the conjugal partnership properties. She further maintains that, in any event, Hodges had as a matter of fact and of law renounced his inheritance from his wife and, therefore, her whole estate passed directly to her brothers and sisters effective at the latest upon the death of Hodges.

In this decision, for the reasons discussed above, and upon the issues just summarized, We overrule PCIB's contention that the orders of May 27, 1957 and December 14, 1957 amount to an adjudication to Hodges of the estate of his wife, and We recognize the present existence of the estate of Mrs. Hodges, as consisting of properties, which, while registered in the name of Hodges, do actually correspond to the remainder of the share of Mrs. Hodges in the conjugal partnership, it appearing that pursuant to the pertinent provisions of her will, any portion of said share still existing and undisposed of by her husband at the time

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of his death should go to her brothers and sisters share and share alike. Factually, We find that the proven circumstances relevant to the said orders do not warrant the conclusion that the court intended to make thereby such alleged final adjudication. Legally, We hold that the tenor of said orders furnish no basis for such a conclusion, and what is more, at the time said orders were issued, the proceedings had not yet reached the point when a final distribution and adjudication could be made. Moreover, the interested parties were not duly notified that such disposition of the estate would be done. At best, therefore, said orders merely allowed Hodges to dispose of portions of his inheritance in advance of final adjudication, which is implicitly permitted under Section 2 of Rule 109, there being no possible prejudice to third parties, inasmuch as Mrs. Hodges had no creditors and all pertinent taxes have been paid.

More specifically, We hold that, on the basis of circumstances presently extant in the record, and on the assumption that Hodges' purported renunciation should not be upheld, the estate of Mrs. Hodges inherited by her brothers and sisters consists of one-fourth of the community estate of the spouses at the time of her death, minus whatever Hodges had gratuitously disposed of therefrom during the period from, May 23, 1957, when she died, to December 25, 1962, when he died provided, that with regard to remunerative dispositions made by him during the same period, the proceeds thereof, whether in cash or property, should be deemed as continuing to be part of his wife's estate, unless it can be shown that he had subsequently disposed of them *gratuitously*.

At this juncture, it may be reiterated that the question of what are the pertinent laws of Texas and what would be the estate of Mrs. Hodges under them is basically one of fact, and considering the respective positions of the parties in regard to said factual issue, it can already be deemed as settled for the purposes of these cases that, indeed, the free portion of said estate that could possibly descend to her brothers and sisters by virtue of her will may not be less than one-fourth of the conjugal estate, it appearing

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that the difference in the stands of the parties has reference solely to the legitime of Hodges, PCIB being of the view that under the laws of Texas, there is such a legitime of one-fourth of said conjugal estate and Magno contending, on the other hand, that there is none. In other words, hereafter, whatever might ultimately appear, at the subsequent proceedings, to be actually the laws of Texas on the matter would no longer be of any consequence, since PCIB would anyway be in estoppel already to claim that the estate of Mrs. Hodges should be less than as contended by it now, for admissions by a party related to the effects of foreign laws, which have to be proven in our courts like any other controverted fact, create estoppel.

In the process, We overrule PCIB's contention that the provision in Mrs. Hodges' will in favor of her brothers and sisters constitutes ineffective hereditary substitutions. But neither are We sustaining, on the other hand, Magno's pose that it gave Hodges only a lifetime usufruct. We hold that by said provision, Mrs. Hodges simultaneously instituted her brothers and sisters as co-heirs with her husband, with the condition, however, that the latter would have complete rights of dominion over the whole estate during his lifetime and what would go to the former would be only the remainder thereof at the time of Hodges' death. In other words, whereas they are not to inherit only in case of default of Hodges, on the other hand, Hodges was not obliged to preserve anything for them. Clearly then, the essential elements of testamentary substitution are absent; the provision in question is a simple case of conditional simultaneous institution of heirs, whereby the institution of Hodges is subject to a partial resolutory condition the operative contingency of which is coincidental with that of the suspensive condition of the institution of his brothers and sisters-in-law, which manner of institution is not prohibited by law.

We also hold, however, that the estate of Mrs. Hodges inherited by her brothers and sisters could be

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more than just stated, but this would depend on (1) whether upon the proper application of the principle of *renvoi* in relation to Article 16 of the Civil Code and the pertinent laws of Texas, it will appear that Hodges had no legitime as contended by Magno, and (2) whether or not it can be held that Hodges had legally and effectively renounced his inheritance from his wife. Under the circumstances presently obtaining and in the state of the record of these cases, as of now, the Court is not in a position to make a final ruling, whether of fact or of law, on any of these two issues, and We, therefore, reserve said issues for further proceedings and resolution in the first instance by the court *a quo*, as hereinabove indicated. We reiterate, however, that pending such further proceedings, as matters stand at this stage, Our considered opinion is that it is beyond cavil that since, under the terms of the will of Mrs. Hodges, her husband could not have anyway legally adjudicated or caused to be adjudicated to himself her whole share of their conjugal partnership, albeit he could have disposed any part thereof during his lifetime, the resulting estate of Mrs. Hodges, of which Magno is the uncontested administratrix, cannot be less than one-fourth of the conjugal partnership properties, as of the time of her death, minus what, as explained earlier, have been *gratuitously* disposed of therefrom, by Hodges in favor of third persons since then, for even if it were assumed that, as contended by PCIB, under Article 16 of the Civil Code and applying *renvoi* the laws of the Philippines are the ones ultimately applicable, such one-fourth share would be her free disposable portion, taking into account already the legitime of her husband under Article 900 of the Civil Code.

The foregoing considerations leave the Court with no alternative than to conclude that in predicating its orders on the assumption, albeit unexpressed therein, that there is an estate of Mrs. Hodges to be distributed among her brothers and sisters and that respondent Magno is the legal administratrix thereof, the trial court acted correctly

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and within its jurisdiction. Accordingly, the petition for *certiorari* and prohibition has to be denied. The Court feels, however, that pending the liquidation of the conjugal partnership and the determination of the specific properties constituting her estate, the two administrators should act conjointly as ordered in the Court's resolution of September 8, 1972 and as further clarified in the dispositive portion of this decision.

Anent the appeals from the orders of the lower court sanctioning payment by appellee Magno, as administratrix, of expenses of administration and attorney's fees, it is obvious that, with our holding that there is such an estate of Mrs. Hodges, and for the reasons stated in the body of this opinion, the said orders should be affirmed. This We do on the assumption We find justified by the evidence of record, and seemingly agreed to by appellant PCIB, that the size and value of the properties that should correspond to the estate of Mrs. Hodges far exceed the total of the attorney's fees and administration expenses in question.

With respect to the appeals from the orders approving transactions made by appellee Magno, as administratrix, covering properties registered in the name of Hodges, the details of which are related earlier above, a distinction must be made between those predicated on contracts to sell executed by Hodges before the death of his wife, on the one hand, and those premised on contracts to sell entered into by him after her death. As regards the latter, We hold that inasmuch as the payments made by appellees constitute proceeds of sales of properties belonging to the estate of Mrs. Hodges, as may be implied from the tenor of the motions of May 27 and December 14, 1957, said payments continue to pertain to said estate, pursuant to her intent obviously reflected in the relevant provisions of her will, on the assumption that the size and value of the properties to correspond to the estate of Mrs. Hodges would exceed the total value of all the properties covered by the impugned deeds of sale, for which reason, said properties may be deemed as

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pertaining to the estate of Mrs. Hodges. And there being no showing that thus viewing the situation, there would be prejudice to anyone, including the government, the Court also holds that, disregarding procedural technicalities in favor of a pragmatic and practical approach as discussed above, the assailed orders should be affirmed. Being a stranger to the estate of Mrs. Hodges, PCIB has no personality to raise the procedural and jurisdictional issues raised by it. And inasmuch as it does not appear that any of the other heirs of Mrs. Hodges or the government has objected to any of the orders under appeal, even as to these parties, there exists no reason for said orders to be set aside.

DISPOSITIVE PART

IN VIEW OF ALL THE FOREGOING PREMISES, judgment is hereby rendered DISMISSING the petition in G.R. Nos. L-27860 and L-27896, and AFFIRMING, in G.R. Nos. L27936-37 and the other thirty-one numbers hereunder ordered to be added after payment of the corresponding docket fees, all the orders of the trial court under appeal enumerated in detail on pages 35 to 37 and 80 to 82 of this decision; the existence of the Testate Estate of Linnie Jane Hodges, with respondent-appellee Avelina A. Magno, as administratrix thereof is recognized, and it is declared that, until final judgment is ultimately rendered regarding (1) the manner of applying Article 16 of the Civil Code of the Philippines to the situation obtaining in these cases and (2) the factual and legal issue of whether or not Charles Newton Hodges had effectively and legally renounced his inheritance under the will of Linnie Jane Hodges, the said estate consists of one-fourth of the community properties of the said spouses, as of the time of the death of the wife on May 23, 1957, minus whatever the husband had already gratuitously disposed of in favor of third persons from said date until his death, provided, first, that with respect to remunerative dispositions, the proceeds thereof shall continue to be part of the wife's estate, unless subsequently disposed of gratuitously to third parties by the husband, and second, that should

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the purported renunciation be declared legally effective, no deductions whatsoever are to be made from said estate; in consequence, the preliminary injunction of August 8, 1967, as amended on October 4 and December 6, 1967, is lifted, and the resolution of September 8, 1972, directing that petitioner-appellant PCIB, as Administrator of the Testate Estate of Charles Newton Hodges, in Special Proceedings 1672, and respondent-appellee Avelina A. Magno, as Administratrix of the Testate Estate of Linnie Jane Hodges, in Special Proceedings 1307, should act thenceforth always conjointly, never independently from each other, as such administrators, is reiterated, and the same is made part of this judgment and shall continue in force, pending the liquidation of the conjugal partnership of the deceased spouses and the determination and segregation from each other of their respective estates, provided, that upon the finality of this judgment, the trial court should immediately proceed to the partition of the presently combined estates of the spouses, to the end that the one-half share thereof of Mrs. Hodges may be properly and clearly identified; thereafter, the trial court should forthwith segregate the remainder of the one-fourth herein adjudged to be her estate and cause the same to be turned over or delivered to respondent for her exclusive administration in Special Proceedings 1307, while the other one-fourth shall remain under the joint administration of said respondent and petitioner under a joint proceedings in Special Proceedings 1307 and 1672, whereas the half unquestionably pertaining to Hodges shall be administered by petitioner exclusively in Special Proceedings 1672, without prejudice to the resolution by the trial court of the pending motions for its removal as administrator;[12] and this arrangement shall be maintained until the final resolution of the two issues of *renvoi* and renunciation hereby reserved for further hearing and determination, and the corresponding complete segregation and partition of the two estates in the proportions that may result from the said resolution.

[12] See page 89-A of this decision.

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Generally and in all other respects, the parties and the court *a quo* are directed to adhere henceforth, in all their actuations in Special Proceedings 1307 and 1672, to the views passed and ruled upon by the Court in the foregoing opinion.

Appellant PCIB is ordered to pay, within five (5) days from notice hereof, thirty-one additional appeal docket fees, but this decision shall nevertheless become final as to each of the parties herein after fifteen (15) days from the respective notices to them hereof in accordance with the rules.

Costs against petitioner-appellant PCIB.

Zaldivar, Ruiz Castro, Esguerra, and *Fernandez, JJ.*, concur.

Fernando, J., concurs on the basis of the procedural pronouncements in the opinion.

Makasiar, Antonio, Muñoz Palma, and *Aquino, JJ.*, concur in the result.

TEEHANKEE, *J., separate opinion:*

I concur in the result of dismissal of the petition for *certiorari* and prohibition in Cases L-27860 and L-27896 and with the affirmance of the appealed orders of the probate court in Cases L-27936-37.

I also concur with the portion of the dispositive part of the judgment penned by Mr. Justice Barredo decreeing the *lifting* of the Court's writ of preliminary injunction of August 8, 1967

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[1] This writ enjoined respondent court from acting in Sp. Proc. No. 1307 (Testate Estate of Linnie Jane Hodges) and respondent-appellee Avelina A. Magno from interfering and intervening therein, *pending* determination of the main issue raised by petitioner-appellant PCIB as to whether or not Mrs. Hodges' estate continued to exist as such so as to require the services of said Avelina A. Magno as administratrix thereof in view of PCIB's contention that her (Mrs. Hodges') entire estate had been adjudicated in 1957 by the probate court to her surviving husband C. N. Hodges as "the only devisee or legatee" under her will, which contention has *now* been *rejected* in the Court's decision at bar.

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as amended on October 4, and December 6, 1967[1] and ordering in lieu thereof that the Court's resolution of September 8, 1972[2] which directed that *petitioner-appellant* PCIB as administrator of C. N. (Charles Newton) Hodges' estate (Sp. Proc. No. 1672 and respondent-appellee Avelina A. Magno as administratrix of Linnie Jane Hodges' estate (Sp. Proc. No. 1307) should act always *conjointly*, never independently from each other, as such administrators, is reiterated and shall continue in force and made part of the judgment.

It is manifest from the record that petitioner-appellant PCIB's primal contention in the cases at bar belatedly *filed* by it with this Court on *August 1, 1967* (over ten (10) years after Linnie Jane Hodges' death on *May 23, 1957* and over five (5) years after her husband C.N. Hodges' death on *December 25, 1962* — during which time both estates have been *pending* settlement and distribution to the decedents' respective rightful heirs all this time up to now) — that the probate court per its order of December 14, 1957 (supplementing an earlier order of May 25, 1957)[3] in granting C. N. Hodges' motion as Executor of his wife Linnie's estate to *continue* their "*business* of buying and selling personal and real properties" and approving "all sales, conveyances, leases and mortgages" made and to be made by him as such executor under his obligation to submit his *yearly accounts* in effect declared him as sole heir of his wife's estate and nothing remains to be done except to formally close her estate (Sp. Proc. No. 1307) as her estate was thereby merged with his own so that

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[2] This resolution was based on "the inherent *fairness* of allowing the administratrix of the estate of Mrs. Hodges [Avelina A. Magno] to *jointly* administer the properties, rights and interests comprising both estates [Linnie Jane Hodges' and that of her husband C. N. Hodges] until they are separated from each other" in order to give adequate *protection* to the rights and interests of their respective brothers and sisters as their designated heirs rather than "if the whole [both] proceedings were to be under the administration of the estate of Mr. Hodges [PCIB] to the exclusion of any representative of the heirs of Mrs. Hodges."

[3] See page 5 *et seq* of main opinion.

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nothing remains of it that may be adjudicated to her brothers and sisters as her designated heirs after him,[4] — is wholly untenable and deserves scant consideration.

Aside from having been put forth as an obvious afterthought much too late in the day, this contention of PCIB that there no longer exists any separate estate of Linnie Jane Hodges after the probate court's order of December 14, 1957 goes against the very acts and judicial *admissions* of C.N. Hodges as her executor whereby he consistently recognized the *separate existence and identity* of his wife's estate apart from his own separate estate and from his own share of their conjugal partnership and estate and "never considered the whole estate as a single one belonging exclusively to himself" during the entire period that he survived her for over five (5) years up to the time of his own death on December 25, 1962[5] and against the identical acts and judicial *admissions* of PCIB as administrator of C.N. Hodges' estate until PCIB sought in 1966 to take over *both* estates as pertaining to its sole administration.

PCIB is now barred and estopped from contradicting or taking a belated position contradictory to or inconsistent with its previous admissions[6] (as well as those of C.N. Hodges himself in his lifetime and of whose estate PCIB is merely an administrator) recognizing the existence and identity of Linnie Jane Hodges' *separate* estate and the legal rights and interests therein of her brothers and sisters as her designated heirs in her will.

PCIB's petition for *certiorari* and prohibition to declare all acts of the probate court in Linnie Jane Hodges' estate subsequent to its order of December 14, 1957 as

[4] See page 91 *et seq.* of main opinion.

[5] See page 100 of main opinion.

[6] "Sec. 2. *Judicial Admissions.* — Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake." (Rule 129). See also 5 Moran's 1970 Ed. 65 and cases cited.

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"null and void for having been issued without jurisdiction" must therefore be dismissed with the rejection of its belated and untenable contention that there is no longer any estate of Mrs. Hodges of which respondent Avelina A. Magno is the duly appointed and acting administratrix.

PCIB's appeal[7] from the probate court's various orders recognizing respondent Magno as administratrix of Linnie's estate (Sp. Proc. No. 1307) and sanctioning her acts of administration of said estate and approving the sales contracts executed by her with the various individual appellees, which involve basically the same primal issue raised in the petition as to whether there still exists a separate estate of Linnie of which respondent-appellee Magno may continue to be the administratrix, must necessarily fail — as a result of the Court's main opinion at bar that there *does* exist such an estate and that the *two* estates (husband's and wife's) must be administered *conjointly* by their respective administrators (PCIB and Magno).

The dispositive portion of the main opinion

The main opinion disposes that:

"IN VIEW OF ALL THE FOREGOING PREMISES, judgment is hereby rendered DISMISSING the petition in G.R. Nos. L-27860 and L-27896, and AFFIRMING, in G.R. Nos. L-27936-37 and the other thirty-one numbers hereunder ordered to be added after payment of the corresponding docket fees, all the orders of the trial court under appeal enumerated in detail on pages 35 to 37 and 80 to 82 of this decision:

"The *existence* of the Testate Estate of Linnie Jane Hodges, with respondent-appellee Avelina A. Magno, as administratrix thereof is *recognized*, and

"It is declared that, *until* final judgment is ultimately rendered regarding (1) the manner of applying Article 16 of the Civil Code of the Philippines to the situation obtaining in these cases and (2) the factual and legal issues of whether or not Charles Newton Hodges has effectively and legally renounced his inheritance under the will of Linnie Jane

[7] See p. 114-1 *et seq.* of main opinion.

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Hodges, the said estate consists of *one-fourth* of the community properties of the said spouses, as of the time of the death of the wife on May 23, 1957, *minus* whatever the husband had already *gratuitously* disposed of in favor of third persons from said date until his death, provided, first, that with respect to *remunerative* dispositions, the proceeds thereof shall continue to be *part* of the *wife's estate*, *unless* subsequently disposed of *gratuitously* to third parties by the husband, and second, that should the purported *renunciation* be declared legally effective, *no deductions* whatsoever are to be made from said estate;

"In consequence, the *preliminary injunction* of August 8, 1967, as amended on October 4 and December 6, 1967, is *lifted*, and the *resolution* of September 8, 1972, directing that petitioner-appellant PCIB, as Administrator of the Testate Estate of Charles Newton Hodges, in Special Proceedings 1672, and respondent-appellee Avelina A. Magno, as Administratrix of the Testate Estate of Linnie Jane Hodges, in Special Proceedings 1307, should act thenceforth always *conjointly*, never independently from each other, as such administrators, is *reiterated* and the same is *made part* of *this judgment* and shall continue in force, *pending* the *liquidation* of the conjugal partnership of the deceased spouses and the *determination* and *segregation* from each other of their respective estates; *provided*, that upon the finality of this judgment, the trial court should immediately proceed to the *partition* of the presently combined estates of the spouses, to the end that the *one-half* share thereof of Mrs. Hodges may be properly and clearly identified;

"*Thereafter*, the trial court should forthwith *segregate* the remainder of the *one-fourth* herein adjudged to be her estate and cause the same to be turned over or delivered to respondent for her *exclusive administration* in Special Proceedings 1307, while the *other one-fourth* shall remain under the *joint administration* of said respondent and petitioner under a joint proceedings in Special Proceedings 1307 and 1672, whereas the *half* unquestionably pertaining to *Hodges* shall be *administered* by *petitioner exclusively* in Special Proceedings 1672, *without prejudice* to the resolution by the trial court of the *pending* motions for *its removal* as administrator.

"And this arrangement shall be maintained *until* the *final resolution* of the two issues of *renvoi* and *renunciation* hereby

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reserved for further hearing and determination, and the corresponding *complete* segregation and partition of the two estates in the proportions that may result from the said resolution.

"Generally and in all other respects, the parties and the court *a quo* are directed to adhere henceforth, in all their actuations in Special Proceedings 1307 and 1672, to the views passed and ruled upon by the Court in the foregoing opinion."[8]

Minimum estimate of Mrs. Hodges' estate: One-fourth of conjugal properties.

The main opinion in declaring the existence of a *separate estate* of Linnie Jane Hodges which shall pass to her brothers and sisters with right of representation (by their heirs) as her duly designated heirs declares that her estate consists as a *minimum* (i.e. *assuming* (1) that under Article 16 of the Philippine Civil Code C. N. Hodges as surviving husband was entitled to one-half of her estate as *legitime* and (2) that he had *not* effectively and legally *renounced* his inheritance under her will) of "*one-fourth* of the community properties of the said spouses, as of the time of the death of the wife on May 23, 1957, *minus* whatever the husband had already *gratuitously* disposed of in favor of third persons from said date until his death," with the proviso that proceeds of *remunerative* dispositions or sales for valuable consideration made by C. N. Hodges after his wife Linnie's death shall continue to be part of her estate *unless* subsequently disposed of by him *gratuitously* to third parties subject to the condition, however, that if he is held to have validly and effectively *renounced* his inheritance under his wife's will, *no deductions* of any dispositions made by Hodges even if *gratuitously* are to be made from his wife Linnie's estate which shall pass *intact* to her brothers and sisters as her designated heirs called in her will to succeed to her estate upon the death of her husband C. N. Hodges.

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[8] At pp. 136-137 of main opinion; paragraphing and italics supplied.

[9] At page 121 of main opinion.

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Differences with the main opinion

I do not share the main opinion's view that Linnie Jane Hodges instituted her husband as her heir under her will "to have dominion over all her estate during his lifetime . . . as *absolute owner* of the properties . . ."[9] and that she bequeathed "the whole of her estate to be owned and enjoyed by him as universal and sole heir with *absolute dominion* over them only during his lifetime, which means that while he could completely and absolutely dispose of any portion thereof *inter vivos* to anyone other than himself, he was not free to do so *mortis causa*, and all his rights to what might remain upon his death would cease entirely upon the occurrence of that contingency, inasmuch as the right of his brothers-and sisters-in-law to the inheritance, although vested already upon the death of Mrs. Hodges, would automatically become operative upon the occurrence of the death of Hodges in the event of actual existence of any remainder of her estate then."[10]

As will be amplified hereinafter, I do not subscribe to such a view that Linnie Jane Hodges willed "full and absolute ownership" and "absolute dominion" over her estate to her husband, but rather that she named her husband C. N. Hodges *and* her brothers and sisters as instituted heirs *with a term* under Article 885 of our Civil Code, to wit, Hodges as instituted heir with a *resolutory* term whereunder his right to the succession *ceased in diem* upon arrival of the *resolutory* term of his death on December 25, 1962 and her brothers and sisters as instituted heirs with a *suspensive* term whereunder their right to the succession *commenced ex die* upon arrival of the *suspensive* term of the death of C. N. Hodges on December 25, 1962.

Hence, while agreeing with the main opinion that the proceeds of all remunerative dispositions made by C. N. Hodges after his wife's death remain an integral part of his wife's estate which she willed to her brothers and sisters, I submit that C. N. Hodges could *not* validly make *gratuitous* dispositions of any part or all of his wife's

[10] At pages 110-11 of main opinion.

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estate — "completely and absolutely dispose of any portion thereof *inter vivos* to anyone other than himself" in the language of the main opinion, *supra* — and thereby render ineffectual and nugatory her institution of her brothers and sisters as her designated heirs to succeed to her *whole* estate "at the death of (her) husband." If according to the main opinion, Hodges could not make such gratuitous "complete and absolute dispositions" of his wife Linnie's estate "*mortis causa*," it would seem that by the same token and rationale he was likewise proscribed by the will from making such dispositions of Linnie's estate *inter vivos*.

I believe that the two questions of *renvoi* and *renunciation* should be resolved *preferentially* and *expeditiously* by the probate court *ahead* of the partition and segregation of the *minimum* one-fourth of the conjugal or community properties constituting Linnie Jane Hodges' *separate* estate, which task considering that it is now seventeen (17) years since Linnie Jane Hodges' death and her conjugal estate with C. N. Hodges has remained *unliquidated* up to now might take a similar number of years to unravel with the numerous items, transactions and details of the sizable estates involved.

Such partition of the minimum one-fourth would *not* be final, since if the two prejudicial questions of *renvoi* and *renunciation* were resolved favorably to Linnie's estate (meaning to say that if it should be held that C. N. Hodges is not entitled to any legitime of her estate and at any rate he had totally renounced his inheritance under the will), then Linnie's estate would consist not only of the minimum *one-fourth* but one-half of the conjugal or community properties of the Hodges spouses, which would require again the partition and segregation of still another one-fourth of said properties to *complete* Linnie's *separate* estate.

My differences with the main opinion involve further the legal concepts, effects and consequences of the testamentary dispositions of Linnie Jane Hodges in her will and the question of how best to reach a solution of the pressing question

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of expediting the closing of the estates which after all do not appear to involve any outstanding debts nor any dispute between the heirs and should therefore be promptly settled now after all these years without any further undue complications and delays and distributed to the heirs for their full enjoyment and benefit. As no consensus appears to have been reached thereon by a majority of the Court, I propose to state these views as concisely as possible with the sole end in view that they may be of some assistance to the probate court and the parties in reaching an expeditious closing and settlement of the estates of the Hodges spouses.

Two Assumptions

As indicated above, the declaration of the *minimum* of Mrs. Hodges' estate as one-fourth of the conjugal properties is based on two assumptions most favorable to C. N. Hodges' estate and his heirs, namely (1) that the probate court must accept the *renvoi* or "reference back"[11] allegedly provided by the laws of the State of Texas (of which state the Hodges spouses were citizens) whereby the civil laws of the Philippines as the *domicile* of the Hodges spouses would govern their succession *notwithstanding* the provisions of Article 16 of our Civil Code (which provides that the national law of the decedents, in this case, of Texas, shall govern their succession) with the result that her estate would consist of *no more* than one-fourth of the conjugal properties since the *legitime* of her husband (the other one-fourth of said conjugal properties or one-half of *her* estate, under Article 900 of *our* Civil Code) could not then be disposed of nor burdened with any condition by her and (2) that C.N. Hodges had *not* effectively and legally *renounced* his inheritance under his wife's will.

These two assumptions are of course flatly disputed by respondent-appellee Magno as Mrs. Hodges' administratrix,

[11] See In re: Testate Estate of Edward E. Christiansen, deceased, Aznar *vs.* Garcia, 7 SCRA 95, 103, 107 (1963).

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who avers that the law of the State of Texas governs her succession and does *not* provide for any legitime, hence, her brothers and sisters are entitled to succeed to the whole of her share of the conjugal properties which is *one-half* thereof and that in any event, Hodges had totally *renounced* all his rights under the will.

The main opinion concedes that "(I)n the interest of settling the estates herein involved soonest, it would be best, indeed, if these conflicting claims of the parties were determined in these proceedings." It observes however that this cannot be done due to the inadequacy of the evidence submitted by the parties in the probate court and of the parties' discussion, *viz*, "there is no clear and reliable proof of what the possibly applicable laws of Texas are. Then also, the genuineness of the documents relied upon by respondent Magno [re Hodges' renunciation] is disputed."[12]

Hence, the main opinion expressly reserves resolution and determination on these two conflicting claims and issues which it deems "are not properly before the Court now,"[13] and specifically holds that "(A)ccordingly, the *only* question that remains to be settled in the further proceedings hereby ordered to be held in the court below is *how much more* than as fixed above is the estate of Mrs. Hodges, and this would *depend* on (1) whether or not the applicable laws of Texas do provide in effect for more, such as, when there is no *legitime* provided therein, and (2) whether or not Hodges has validly *waived* his whole inheritance from Mrs. Hodges."[14]

Suggested guidelines

Considering that the *only* unresolved issue has thus been narrowed down and in consonance with the ruling spirit of

[12] At p. 112, main opinion. See also p. 103, where the main opinion refers to still other documents *evidencing Hodges' renunciation* and observes that "*we cannot close our eyes* to their existence in the record." (italics supplied).

[13] At p. 113, main opinion.

[14] At p. 114-1, main opinion, italics supplied.

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our probate law calling for the prompt settlement of the estates of deceased persons for the benefit of creditors and those entitled to the residue by way of inheritance — considering that the estates have been long pending settlement *since 1957 and 1962*, respectively — it was felt that the Court should lay down specific guidelines for the guidance of the probate court towards the end that it may expedite the closing of the protracted estates proceedings below to the mutual satisfaction of the heirs and without need of a dissatisfied party elevating its resolution of this *only* remaining issue once more to this Court and dragging out indefinitely the proceedings.

After all, the *only* question that remains depends for its determination on the resolution of the two questions of *renvoi* and *renunciation*, i.e. as to whether C. N. Hodges can claim a *legitime* and *whether* he had *renounced* the inheritance. But as already indicated above, the Court without reaching a consensus which would finally resolve the conflicting claims here and now in this case opted that "these and other relevant matters should first be threshed out fully in the trial court in the proceedings hereinafter to be held for the purpose of ascertaining and/or distributing the estate of Mrs. Hodges to her heirs in accordance with her duly probated will.[14a]

The writer thus feels that laying down the premises and principles governing the nature, effects and consequences of Linnie Jane Hodges' testamentary dispositions in relation to her conjugal partnership and co-ownership of properties with her husband C. N. Hodges and "thinking out" the end results, depending on whether the evidence directed to be formally received by the probate court would bear out that under *renvoi* C. N. Hodges was or was not entitled to claim a *legitime* of one-half of his wife Linnie's estate and/or that he had or had not effectively and validly *renounced* his inheritance should help clear the decks, as it were, and assist the probate court in resolving the *only* remaining question of *how much more* than the *minimum* one-fourth of the community properties of the Hodges spouses *herein finally determined* should be awarded

[14a] At page 112, main opinion.

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as the *separate estate* of Linnie, particularly since the views expressed in the main opinion have not gained a consensus of the Court. Hence, the following suggested guidelines, which needless to state, represent the *personal* opinion and views of the writer:

1. To begin with, as pointed out in the main opinion, "according to Hodges' own inventory submitted by him as executor of the estate of his wife, practically *all* their properties were *conjugal* which means that the spouses have *equal shares* therein."[15]

2. Upon the death of Mrs. Hodges on *May 23, 1957*, and the dissolution thereby of the marriage, the law imposed upon Hodges as surviving husband the duty of inventorying, administering and liquidating the conjugal or community property.[16] Hodges failed to discharge this duty of *liquidating* the conjugal partnership and estate. On the contrary, he sought and obtained authorization from the probate court to *continue* the *conjugal* partnership's *business* of buying and selling real and personal properties.

In his *annual accounts* submitted to the probate court as *executor of Mrs. Hodges estate*, Hodges thus *consistently* reported the considerable *combined* income (in six figures) of the *conjugal partnership or coownership* and then divided the same *equally* between himself and Mrs. Hodges' estate and as consistently filed *separate income tax returns* and paid the income taxes for *each* resulting half of such *combined* income corresponding to his own and to Mrs. Hodges' estate.[17] (Parenthetically, he could not in law do this, had he adjudicated Linnie's entire estate to himself, thus supporting the view

[15] At page 109, main opinion; italics supplied.

[16] "SEC. 2. *Where estate settled upon dissolution of marriage.* — When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either." (Rule 73)

[17] At pp. 129-130, main opinion.

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advanced even in the main opinion that "Hodges *waived* not only his rights to the fruits but to the properties themselves."[18]

By operation of the law of trust[19] as well as by his own acknowledgment and acts, therefore, all transactions made by Hodges after his wife's death were deemed for and on behalf of their *unliquidated conjugal* partnership and *community* estate and were so reported and treated by him.

3. With this premise established that all transactions of Hodges after his wife's death were for and on behalf of their *unliquidated* conjugal partnership and community estate, share and share alike, it should be clear that no *gratuitous* dispositions, if any, made by C. N. Hodges from his wife Linnie's estate should be *deducted* from her *separate* estate as held in the main opinion. On the contrary, any such gratuitous dispositions should be charged to his own share of the conjugal estate since he had *no* authority or right to make any *gratuitous* dispositions of Linnie's properties to the *prejudice* of her brothers and sisters whom she called to her succession upon his death, not to mention that the very authority obtained by him from the probate court per its orders of May 25, and December 14, 1957 was to *continue* the *conjugal partnership's* business of buying and selling real properties for the account of their unliquidated conjugal estate and coownership, share and share alike and *not* to make any *free* dispositions of Linnie's estate.

4. All transactions as well *after* the death on *December 25, 1962* of Hodges himself appear perforce and necessarily to have been conducted, on the same premise, for and on behalf of their *unliquidated conjugal partnership*

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[18] At page 103, main opinion, fn. 5.

[19] Pamittan *vs.* Lasam, 60 Phil. 908 (1934), where the Court stressed the "*high degree of trust*" reposed in the surviving husband as "owner of a half interest in his own right of the conjugal estate which he was charged to administer" and that the conjugal property which thus comes into his possession upon his wife's death "*remains conjugal property*, a *continuing and subsisting trust*" for as long as it remains *unliquidated*.

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and/or coownership, *share and share alike* — since the conjugal partnership remained *unliquidated* — which is another way of saying that such transactions, purchases and sales, mostly the latter, must be deemed in effect to have been made for the respective estates of C. N. Hodges and of his wife Linnie Jane Hodges, as both estates continued to have an equal stake and share in the conjugal partnership which was not only left *unliquidated but continued* as a coownership or joint business with the probate court's approval by Hodges during the five-year period that he survived his wife.

This explains the probate court's action of requiring that deeds of sale executed by PCIB as Hodges' estate's administrator be "*signed jointly*" by respondent Magno as Mrs. Hodges' estate's administratrix,[20] as well as its order authorizing payment by lot purchasers from the Hodges to *either* estate, since "there is as yet no judicial declaration of heirs nor distribution of properties to whomsoever are entitled thereto."[21]

And this equally furnishes the rationale of the main opinion for continued *conjoint* administration by the administrators of the two estates of the deceased spouses, "*pending the liquidation of the conjugal partnership*,"[22] since "it is but logical that both estates should be administered jointly by the representatives of both, pending their segregation from each other. Particularly . . . because the actuations so far of PCIB evince a determined, albeit groundless, intent to exclude the other heirs of Mrs. Hodges from their inheritance."[23]

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[20] Order of August 6, 1965, p. 248 Green Record on Appeal; see p. 30, main opinion.

[21] Appealed order of November 23, 1965 against Western Institute of Technology, Inc. as purchaser-appellee, pp. 334-335, Green Rec. on App.; see pp. 33-34, main opinion.

[22] At p. 137, main opinion.

[23] At pp. 108-109, main opinion.

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5. As stressed in the main opinion, the determination of the *only* unresolved issue of how much more than the minimum of *one-fourth* of the community or conjugal properties of the Hodges spouses pertains to Mrs. Hodges' estate depends on the twin questions of *renunciation* and *renvoi*. It directed consequently that "a joint hearing of the two probate proceedings herein involved" be held by the probate court for the reception of "further evidence" in order to finally resolved these twin questions.[24]

(a) On the question of *renunciation*, it is believed that all that the probate court has to do is to receive formally in evidence the various documents annexed to respondent Magno's answer at bar,[25] namely: Copy of the U.S. Estate Tax Return filed on August 8, 1958 by C. N. Hodges for his wife Linnie's estate wherein he purportedly declared that he was *renouncing* his inheritance under his wife's will in favor of *her* brothers and sisters as co-heirs designated with him and that it was his "intention (as) surviving husband of the deceased to distribute the remaining property and interests of the deceased in their community estate to the *devisees and legatees named in the will* when the debts, liabilities, taxes and expenses of administration are finally determined and paid";[26] and

The affidavit of *ratification* of such *renunciation* (which places him in *estoppel*) allegedly executed on *August 9, 1962* by C. N. Hodges in Iloilo City wherein he re-affirmed that "x x x on August 8, 1958, I *renounced* and disclaimed any and all right to receive the rents, emoluments and income from said estate" and further declared that "(T)he purpose of this affidavit is to *ratify* and *confirm*, and I do hereby ratify and confirm, the declaration made in

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[24] At p. 114, main opinion, which notes that "the question of what are the laws of Texas governing the matter here in issue is . . . one of fact not of law."

[25] See p. 102 *et seq.* main opinion; Annexes 4 and 5 Answer, pp. 263-264 of *Rollo*.

[26] Annex 4, Answer, p. 263 of *Rollo*; italics supplied.

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schedule M of said return and hereby formally *disclaim and renounce any right on my part to receive any of the said rents, emoluments and income* from the estate of my deceased wife, Linnie Jane Hodges. This affidavit is made to *absolve me or my estate* from any liability for the payment of income taxes on *income* which has accrued to the estate of Linnie Jane Hodges since the death of the said *Linnie Jane Hodges* on May 23, 1957."[27]

(b) On the question of *renvoi*, all that remains for the probate court to do is to formally receive in evidence duly authenticated copies of the laws of the State of Texas governing the succession of Linnie Jane Hodges and her husband C. N. Hodges as citizens of said State at the time of their respective deaths on *May 23, 1957* and *December 25, 1962*.[28]

6. The text and tenor of the declarations by C. N. Hodges of *renunciation* of his inheritance from his wife in favor of her other named heirs in her will (her brothers and sisters and their respective heirs) as ratified and reiterated *expressly* in his affidavit of renunciation executed four years later for the avowed purpose of *not* being held liable for payment of income taxes on income which has accrued to his wife's estate *since* her death indicate a valid and effective renunciation.

Once the evidence has been formally admitted and its genuineness and legal effectivity established by the probate court, the renunciation by C. N. Hodges must be given due effect with the result that C. N. Hodges therefore acquired *no part* of his wife's *one-half* share of the community properties since he removed himself as an heir by virtue of his renunciation. By simple substitution then under Articles 857 and 859 of our Civil Code[29] and by

[27] Annex 5, Answer, see p. 103, main opinion; italics supplied.

[28] See pp. 114 *et seq.* main opinion.

[29] "ART. 857. Substitution is the appointment of another heir so that he may enter into the inheritance in default of the heir originally instituted." (Civil Code).

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virtue of the will's institution of heirs, since "the heir originally instituted (C. N. Hodges) does not become an heir"[30] by force of his renunciation, Mrs. Hodges' brothers and sisters whom she designated as her heirs *upon* her husband's death are called immediately to her succession.

Consequently, the said community and conjugal properties would then pertain *pro indiviso share and share alike* to their respective estates, with each estate, however, shouldering its own expenses of administration, estate and inheritance taxes, if any remain unpaid, attorneys' fees and other like expenses and the *net* remainder to be adjudicated directly to the decedents' respective brothers and sisters (and their heirs) as the heirs duly designated in their respective wills. The question of *renvoi* becomes immaterial since most laws and our laws *permit* such *renunciation* of inheritance.

7. If there were no *renunciation* (or the same may somehow be declared to have not been valid and effective) by C. N. Hodges of his inheritance from his wife, however, what would be the consequence?

(a) If the laws on succession of the State of Texas *do* provide for *renvoi* or "reference back" to Philippine law as the domiciliary law of the Hodges' spouses governing their succession, then petitioners' view that Mrs. Hodges' estate would consist only of the minimum of "*one-fourth* of the community properties of the said spouses, as of the time of (her) death on May 23,1957" would have to be sustained and C. N. Hodges' estate would consist of *three-fourths* of the community properties, comprising his own one-half (or two-fourths) share and the other fourth of

"ART. 859. The testator may designate one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him, or *should not wish*, or should be incapacitated to accept the inheritance.

"A *simple* substitution, *without* a statement of the cases to which it refers, shall comprise the three mentioned in the preceding paragraph, unless the testator has otherwise provided." (Civil Code, italics supplied)

[30] 6 Manresa 116, cited in III Padilla's Civil Code 1973 Ed., p. 241.

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Mrs. Hodges' estate as the legitime granted him as *surviving spouse* by *Philippine law* (Article 900 of the Civil Code) which could *not* be disposed of nor burdened with any condition by Mrs. Hodges as testatrix.

(b) If the laws on succession of the State of Texas do *not* provide for such *renvoi* and respondent Magno's assertion is correct that the Texas law which would then prevail, provides for *no legitime* for C. N. Hodges as the surviving spouse, then respondent Magno's assertion that Mrs. Hodges' estate would consist of *one-half* of the community properties (with the other half pertaining to C. N. Hodges) would have to be sustained. The community and conjugal properties would then pertain *share and share alike* to their respective estates, with each estate shouldering its own expenses of administration in the same manner stated in the last paragraph of paragraph 6 hereof.

8. As to the nature of the institution of heirs made by Mrs. Hodges in her will, the main opinion holds that "(T)he brothers and sisters of Mrs. Hodges are *not substitutes* for Hodges; rather, they are also heirs instituted *simultaneously* with Hodges," but goes further and holds that "it was not the usufruct alone of her estate . . . that she bequeathed to Hodges *during his lifetime*, but the full *ownership* thereof, *although the same was to last also during his lifetime only*, even as there was no *restriction* against his disposing or conveying the whole or any portion thereof *anybody other than himself*" and describes Hodges "as *universal and sole heir* with *absolute dominion*" over Mrs. Hodges' estate (except over their Lubbock, Texas property),[31] adding that "Hodges was not obliged to preserve anything for them" (referring to Mrs. Hodges' brothers and sisters as instituted co-heirs).[32]

Contrary to this view of the main opinion, the writer submits that the provisions of Mrs. Hodges' will did *not* grant to C. N.

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[31] At pp. 110-112, main opinion; italics supplied.

[32] At p. 134, main opinion.

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Hodges "full ownership" nor "absolute dominion" over her estate, such that he could as "universal and sole heir" by the mere expedient of *gratuitously* disposing to third persons her *whole* estate during his lifetime *nullify* her institution of her brothers and sisters as his co-heirs to succeed to her *whole* estate "*at the death of (her) husband*," *deprive* them of any inheritance and make his own brothers and sisters in effect *sole* heirs not only of *his* own estate but of his *wife's* estate as well.

Thus, while Linnie Jane Hodges did not expressly name her brothers and sisters as substitutes for Hodges because she willed that they would enter into the succession upon his death, still it cannot be gainsaid, as the main opinion concedes, "that they are *also heirs* instituted *simultaneously* with Hodges, subject however to certain conditions, partially *resolutory* insofar as Hodges was concerned and correspondingly *suspensive* with reference to his brothers- and sisters-in-law."[33]

Hence, if Hodges is found to have validly renounced his inheritance, there would be a substitution of heirs in fact and in law since Linnie's brothers and sisters as the heirs "simultaneously instituted" with a *suspensive* term would be called *immediately* to her succession instead of waiting for the arrival of the *suspensive* term of Hodges' death, since as the heir originally instituted he does not become an heir by force of his renunciation and therefore they would "enter into the inheritance in default of the heir originally instituted" (Hodges) under the provisions of Articles 857 and 859 of our Civil Code, *supra*,[34] thus accelerating their succession to her estate as a consequence of Hodges' renunciation.

Consequently, Linnie Jane Hodges willed that her husband C. N. Hodges would "during his natural lifetime . . . *manage*, *control*, *use* and *enjoy* said estate" and that only "all *rents*,

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[33] At page 110, main opinion.

[34] Text reproduced in fn. 29 hereof.

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emoluments and *income*" *alone* shall belong to him. She further willed that while he could *sell* and *purchase* properties of her estate, and "*use* any part of the principal of said estate," such principal notwithstanding "any *changes* in the *physical properties* of said estate" (i.e. new properties acquired or exchanged) would still pertain to *her* estate, which at the time of his *death* would pass in full dominion to her brothers and sisters as the *ultimate sole and universal heirs* of her estate.[35]

The testatrix Linnie Jane Hodges in her will thus principally provided that "I give, devise and bequeath all of the rest, residue and remainder of my estate, both personal and real . . . to my beloved *husband*, Charles Newton Hodges, to have and to hold with him . . . *during his natural lifetime*";[36] that "(he) shall have the right to *manage*, *control*, *use* and *enjoy* said estate *during his lifetime*, x x x to make any *changes* in the *physical properties* of said estate, by *sale* x x x and the *purchase* of any other or additional property as he may think best x x x. *All rents, emoluments* and *income* from said estate shall *belong to him* and he is further authorized to *use* any part of the principal of said estate as he may need or desire, x x x he shall not sell or otherwise dispose of any of the improved property now owned by us, located at . . . the City of Lubbock, Texas x x x. He shall have the right to *subdivide* any *farm* land and sell lots therein, and may sell *unimproved town* lots";[37] that "*(A)t the death of my said husband*, Charles Newton, I give, devise and bequeath all of the rest, residue and remainder of my estate, both personal and real, x x x to be *equally divided* among my brothers and sisters,

[35] C. N. Hodges' own will contained *identical* provisions in favor of his wife, Linnie Jane Hodges to *manage, control, use* and *enjoy* (his) estate during her lifetime" and making specific bequests of his whole estate to his full and half-brothers and sisters in clauses Fifth to Tenth thereof all "*at the death of my said wife*, Linnie Jane Hodges." At p. 18 *et seq.* main opinion.

[36] Second of seven clauses of will, italics supplied.

[37] Third clause of will, *idem*.

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share and share alike, namely: Esta Higdon, Emma Howell, Leonard Higdon, Roy Higdon, Sadie Rascoe, Era Roman and Nimroy Higdon;"[38] and that "*(I)n case of the death* of *any* of my brothers and/or sisters . . . *prior to the death* of my husband . . . the heirs of such deceased *brother or sister* shall take *jointly* the share which would have gone to such brother or sister had she or he survived."[39]

Such provisions are wholly consistent with the view already fully expounded above that all transactions and sales made by Hodges *after* his wife Linnie's death were by operation of the law of *trust* as well as by *his* own *acknowledgment* and *acts* deemed for and on behalf of their *unliquidated* conjugal partnership and community estate, share and share alike, with the express *authorization* of the probate court per its orders of May 25, and December 14, 1957 granting Hodges' motion to *continue* the conjugal partnership business of buying and selling real estate even after her death. By the same token, Hodges could *not* conceivably be deemed to have had any authority or right to dispose *gratuitously* of any portion of her estate to whose succession she had called her brothers and sisters *upon his death*.

9. Such institutions of heirs *with a term* are expressly recognized and permitted under Book III, Chapter 2, Section 4 of our Civil Code dealing with "conditional testamentary dispositions and testamentary dispositions *with a term*."[40]

Thus, Article 885 of our Civil Code expressly provides that:

"ART. 885. The designation of the day or time when the effects of the institution of an heir shall *commence* or *cease* shall be *valid*.

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[38] Fourth clause of will, *idem*.

[39] Fifth clause of will, *idem*.

[40] Art. 871, Civil Code provides that "(T)he institution of an heir may be made conditionally, or for a certain purpose or cause."

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"In both cases, the legal heir shall be considered as called to the succession until the arrival of the period or its expiration. But in the first case he shall not enter into possession of the property until after having given sufficient security, with the intervention of the instituted heir."

Accordingly, under the terms of Mrs. Hodges' will, her husband's right to the succession as the instituted heir ceased *in diem*, i.e. upon the arrival of the *resolutory* term of his *death* on December 25, 1962, while her brothers' and sisters' right to the succession also as instituted heirs commenced *ex die*, i.e. upon the expiration of the suspensive term (as far as they were concerned) of the *death* of C. N. Hodges on December 25,1962.[41]

As stated in Padilla's treatise on the Civil Code, "A term is a period whose arrival is certain although the exact date thereof may be uncertain. A term may have either a suspensive or a resolutory effect. The designation of the day when the legacy 'shall commence' is *ex die*, or a term with a suspensive effect, *from* a certain day. The designation of the day when the legacy 'shall cease' is *in diem* or a term with a resolutory effect, *until* a certain day." He adds that "A legacy based upon a certain age or upon the *death* of a person is not a condition but a *term*. If the arrival of the term would commence the right of the heir, it is suspensive. If the arrival of the term would terminate his right, it is resolutory" and that "upon the arrival of the period, in case of a suspensive term, the *instituted* heir is entitled to the succession, and in case of a resolutory term, his right terminates."[42]

10. The sizable estates herein involved have now been pending settlement for a considerably protracted period (of

[41] An analogous case is found in Crisologo *vs.* Singson, 4 SCRA 491(1962) where the testatrix provided that the property willed by her to a grandniece was to pass to her brothers "to be effective or to take place upon the *death* of the (grandniece)" — whether this happens before or after the testatrix' own death.

[42] Padilla's Civil Code, 1973 Ed. p. 284. The main opinion at pp. 110-111 also concedes the suspensive and resolutory effects of Mrs. Hodges' institution of heirs.

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seventeen years counted from Linnie's death in 1957), and all that is left to be done is to resolve the *only* remaining issue (involving the two questions of *renunciation* and *renvoi*) hereinabove discussed in order to close up the estates and finally effect distribution to the deceased spouses' respective brothers and sisters and their heirs as the heirs duly instituted in their wills long admitted to probate. Hence, it is advisable for said instituted heirs and their heirs in turn[43] to come to terms for the adjudication and distribution to them *pro-indiviso* of the up to now *unliquidated* community properties of the estates of the Hodges spouses (derived from their *unliquidated* conjugal partnership) rather than to get bogged down with the formidable task of *physically segregating* and *partitioning* the two estates with the numerous transactions, items and details and physical changes of properties involved. The estates proceedings would thus be closed and they could then name their respective attorneys-in-fact to work out the details of segregating, dividing or partitioning the *unliquidated* community properties or liquidating them — which can be done then on their own without further need of intervention on the part of the probate court as well as allow them meanwhile to enjoy and make use of the income and cash and liquid assets of the estates in such manner as may be agreed upon between them.

Such a settlement or *modus vivendi* between the heirs of the *unliquidated* two estates for the mutual benefit of all of them should not prove difficult, considering that it appears as stated in the main opinion that 22.968149% of the share or undivided estate of C. N. Hodges have already been acquired by the heirs of Linnie Jane Hodges from certain heirs of her husband, while certain other heirs representing 17.34375% of Hodges' estate were joining cause with Linnie's heirs in their pending and unresolved motion for the removal of petitioner PCIB as administrator of Hodges' estate,[44] apparently impatient with

[43] Linnie Jane Hodges' brothers and sisters at her death on *May 23, 1957* had ages ranging from *62 to 74 yrs.* (except for Nimroy Higdon who was then 50 yrs. old) and most likely have all passed away or are already too old to enjoy their inheritance. Green Rec. on Appeal, p. 2.

[44] At page 89-a, main opinion.

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the situation which has apparently degenerated into a running battle between the administrators of the two estates to the common prejudice of *all* the heirs.

11. As earlier stated, the writer has taken the pain of suggesting these guidelines which may serve to guide the probate court as well as the parties towards expediting the winding up and closing of the estates and the distribution of the net estates to the instituted heirs and their successors duly entitled thereto. The probate court should exert all effort towards this desired objective pursuant to the mandate of our probate law, bearing in mind the Court's admonition in previous cases that "courts of first instance should exert themselves to close up estate within twelve months from the time they are presented, and *they may refuse to allow any compensation* to executors and administrators *who do not actively labor* to that end, and they may even adopt *harsher measures*."[45]

Timeliness of appeals and imposition of thirty-one (31) additional docket fees

Two appeals were docketed with this Court, as per the two records on appeal submitted (one with a green cover and the other with a yellow cover). As stated at the outset, these appeals involve basically the same primal issue raised in the petition for *certiorari* as to whether there still exists a separate estate of Linnie Jane Hodges which has to continue to be administered by respondent Magno. Considering the main opinion's ruling in the affirmative and that her estate and that of her husband (since they jointly comprise *unliquidated* community properties) must be administered *conjointly* by their respective administrators (PCIB and Magno), the said appeals (involving thirty-three different orders of the probate court approving sales contracts and other acts of administration executed and performed by respondent Magno on behalf of Linnie's estate) have been necessarily overruled by the Court's decision at bar.

(a) The "priority question" raised by respondent Magno as to the patent failure of the two records on appeal to show on

[45] Medina et al. *vs.* C.A., L-34760, September 28, 1973, citing Lizarraga Hnos. *vs.* Abada, 40 Phil. 124 and other cases.

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their face and state the material data that the appeals were timely taken within the 30-day reglementary period as required by Rule 41, Section 6 of the Rules of Court, has been brushed aside by the main opinion with the statement that it is "not necessary to pass upon the timeliness of any of said appeals" since they "revolve around practically the same main issues and . . . it is admitted that some of them have been timely taken."[46] The main opinion thus proceeded with the determination of the thirty-three appealed orders despite the grave defect of the appellant PCIB's records on appeal and their failure to state the required material data showing the timeliness of the appeals.

Such disposition of the question of timeliness deemed as "mandatory and jurisdictional" in a number of cases merits the writer's concurrence in that the question raised has been subordinated to the paramount considerations of substantial justice and a "liberal interpretation of the rules" applied so as not to derogate and detract from the primary intent and purpose of the rules, *viz* "the proper and just determination of a litigation"[47] — which calls for "adherence to a liberal construction of the procedural rules in order to attain their objective of substantial justice and of avoiding denials of substantial justice due to procedural technicalities."[48]

Thus, the main opinion in consonance with the same paramount considerations of substantial justice has likewise overruled respondents' objection to petitioner's taking the recourse of "the present remedy of *certiorari* and prohibition" — "despite the conceded availability of appeal" — on the ground that "there is a common thread among the basic issues involved in all these thirty-three appeals — (which) deal with practically

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[46] At p. 90, main opinion.

[47] Ronquillo *vs.* Marasigan, 5 SCRA 304, cited in Berkenkotter *vs.* C.A., L-36629, September 28, 1973, per Esguerra, *J.*

[48] See the writer's concurring op. in Sison *vs.* Gatchalian, L-34709, June 15, 1973 and dissenting op. in Velasco *vs.* C.A., L-31018, June 29, 1973.

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the same basic issues that can be more expeditiously resolved or determined in a single special civil action. . ."[49]

(b) Since the basic issues have been in effect resolved in the special civil action at bar (as above stated) with the dismissal of the petition by virtue of the Court's judgment as to the continued existence of a *separate* estate of Linnie Jane Hodges and the *affirmance* as a necessary consequence of the appealed orders approving and sanctioning respondent Magno's sales contracts and acts of administration, some doubt would arise as to the propriety of the main opinion requiring the payment by PCIB of thirty-one (31) *additional* appeal docket fees. This doubt is further enhanced by the question of whether it would make the cost of appeal unduly expensive or prohibitive by requiring the payment of a separate appeal docket fee for *each* incidental order questioned when the resolution of *all* such incidental questioned orders involve basically *one* and the same main issue (in this case, the existence of a separate estate of Linnie Jane Hodges) and can be more expeditiously resolved or determined in a *single* special civil action" (for which a *single* docket fee is required) as stated in the main opinion.[50] Considering the importance of the basic issues and the magnitude of the estates involved, however, the writer has *pro hac vice* given his concurrence to the assessment of the said thirty-one (31) Additional appeal docket fees.

MAKALINTAL, *C.J., concurring*:

I concur in the separate opinion of Justice Teehankee, which in turn agrees with the dispositive portion of the main opinion of Justice Barredo insofar as it dismisses the petition for *certiorari* and prohibition in Cases L-27860 and L-27896 and affirms the appealed orders of the probate court in cases L-27936-37.

[49] At pp. 90-91, main opinion.

[50] At p. 91, main opinion.

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However, I wish to make one brief observation for the sake of accuracy. Regardless of whether or not C. N. Hodges was entitled to a legitime in his deceased wife's estate — which question, still to be decided by the said probate court, may depend upon what is the law of Texas and upon its applicability in the present case — the said estate consists of one-half, not one-fourth, of the conjugal properties. There is neither a minimum of one-fourth nor a maximum beyond that. It is important to bear this in mind because the estate of Linnie Hodges consists of her share in the conjugal properties, is still under administration and until now has not been distributed by order of the court.

The reference in both the main and separate opinions to a one-fourth portion of the conjugal properties as Linnie Hodges' minimum share is a misnomer, and is evidently meant only to indicate that if her husband should eventually be declared entitled to a legitime, then the disposition made by Linnie Hodges in favor of her collateral relatives would be valid only as to one-half of her share, or one-fourth of the conjugal properties, since the remainder, which constitutes such legitime, would necessarily go to her husband in absolute ownership, unburdened by any substitution, term or condition, resolutory or otherwise. And until the estate is finally settled and adjudicated to the heirs who may be found entitled to it, the administration must continue to cover Linnie's entire conjugal share.