

[G.R. No. 1092. February 18, 1904]

LUIS QUERIDO, PLAINTIFF AND APPELLEE, VS. RAMON FLORENDO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

It is very evident that this case is a special proceeding upon the allowance of the will of the late Doña Leona Ochoa at the instance of Don Luis Querido. The decision was that the will presented on August 20, 1901 (Exhibit A), is the last will of the said Doña Leona Ochoa, and "that all the wills executed by Doña Leona Ochoa are rescinded by virtue of the will marked 'Exhibit A.' " Ramon Florendo and Prudencio Espiritu, who appeared in this special proceeding to oppose the allowance of the will, as "executors under bond of the will of Doña Leona Ochoa de la Cruz y Dominga, already allowed prior to this allowance," excepted to the said decision and presented a bill of exceptions, which was printed for the purpose of the trial of the case in this court.

The bill only contains the will, its translation, and the testimony of Doroteo Alviar, Ramon Querubin, Monico Prudencio, and Francisco Josue, the latter three only being attesting witnesses.

With this, the judgment, the decision of the court, the bond and the exception of the opposing parties, Florendo and Espiritu, it is impossible for this court to form an exact opinion upon the decision appealed, and this is due to the fact that instead of a bill of exceptions the proper proceeding was an appeal in accordance with

section 781 of the Code of Civil Procedure, which provides that upon the filing of notice of appeal and a bond the clerk shall immediately transmit to the Supreme Court a certified copy of all the evidence taken at the hearing and the judgment of the court, and also the original of the will, in case there is any controversy concerning the identity of the writing. If these formalities had been complied with we should have had before us the testimony of the other two attesting witnesses, as well as the original will, for the purpose of determining the questions raised, among others that as to whether the attesting witnesses did or did not certify to their acquaintance with the testatrix.

The clerk is therefore ordered to comply with section 781 of the Code of Civil Procedure and to transmit a certified copy of all the evidence taken at the hearing and of the judgment of the court, as well as the original will, a certified copy of which will be kept among his records.

Torres, Cooper, Willard, and Mapa, JJ., concur.
McDonough, J., reserves his vote.