46 Phil. 841

[G.R. No. 20366. August 30, 1923]

IN RE ESTATE OF WALTER NEUMARK, DECEASED. PAUL P. DANIELSEN, PROPONENT AND APPELLANT.

D E C I S I O N

STREET, J.:

This is an appeal from an order of the Court of First Instance of the City of Manila, denying probate to the document Exhibit B, which purports to be the last will and testament of W. Neumark. The will in question was typewritten at Manila in the German language upon a single sheet of legal-cap paper and bears the date of June 28, 1922. It is signed by the purporting testator and below his signature to the left are words which in English mean "signed in the presence of," followed by the names of three attesting witnesses M. Cruz, P. Medel, R. Petrich.

The document in question fulfils all the requirements of section 618 of the Code of Civil Procedure concerning the requisites to the due execution of a will in the Philippine Islands, with the sole exception that there is no formal attestation clause annexed to the will and containing the matter specified in the last sentence of section 618, as amended.

The trial judge denied probate to the document on the sole ground that the attestation clause is wanting, and notwithstanding the fact that he was fully convinced that the document is authentic and was executed with all the formalities required by law with the single exception of the absence of the attestation clause.

An earnest effort has been made in this court by the attorneys for the proponent of the will to procure a reversal of the order denying probate to the will, on the ground that the want of the attestation clause is immaterial where

the instrument submitted to probate is in fact otherwise executed in the manner required by law.

We are of opinion that the trial judge committed no error in refusing probate to this instrument. As section 618 of the Code of Civil Procedure originally stood it contains the following sentence at the end: "But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided." As the law thus stood the instrument before us was undeniably admissible to probate; but when Act No. 2645 was passed, the sentence above quoted was omitted and the last sentence of said section as it now stands reads as follows: "The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other."

In many cases that have arisen since Act No. 2645 went into effect, this court has uniformly held that there must be an attestation clause and that it must express the material matters mentioned in the foregoing quotation with substantial accuracy. Among the considerations conducing to this conclusion was the fact that the Legislature had suppressed the last sentence of the section as it originally stood, from which the intention was deduced that the Legislature intended that the requirement as to the presence of an attestation clause and as to its contents should be mandatory.

The admission of the document now before us to probate would abrogate a long line of decisions in which the point now in question has been under consideration by the court; and we are unable to bring ourselves to disturb a rule now generally known and accepted by the profession as embodying our interpretation of the statute.

The jugdment appealed from must be affirmed, and it is so ordered, without special pronouncement as to costs.

Araullo, C.J., Malcolm, Avanceña, Villamor, and *Romualdez, JJ.,* concur.

DISSENTING

JOHNS, J.:

For the reasons assigned in my dissenting opinion in G. R. No. 19680, decided by this court on March 3, 1923, in the case of Esconde *vs*. Belen,[1] I dissent in this case.

In the instant case, the will is all written on one side of one sheet of paper, and is signed by both the testator and the witnesses on the same side of the sheet. After it was signed, it was deposited by the testator with the German Consul for safe-keeping.

The purpose of the law is to prevent fraud in the making of wills.

Under the facts shown in the record, in the instant case fraud would be a physical impossibility. I am of the opinion that the will was legally executed under the existing law, and, for such reason, I dissent.

[1] Not reported.

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