100 Phil. 635

[G.R. Nos. L-6601-02. December 29, 1956]

TESTAMENTARY PROCEEDINGS OF THE LATE JOSE V. RAMIREZ. JOSE EUGENIO RAMIREZ DE LA CAVADA, PETITIONER, ESPERANZA RAMIREZ DE CORTABITARTE, ELSA RAMIREZ DE CHAMBERS, LILY RAMIREZ VIUDA DE PFANNENSCHMIDT AND HORAGIO RAMIREZ, OPPOSITORS AND APPELLEES, JOSE MA. CAVANNA AS ATTORNEY-IN-FACT O£ BELEN T., RITA E., RAMON A., GEORGE P., AND JOSE E., ALL SURNAMED RAMIREZ, MOVANTS AND APPELLEES, VS. ANGELA M. BUTTE, LEGATEE AND APPELLANT.

TESTAMENTARY PROCEEDINGS OF THE LATE JOSE V. RAMIREZ. JOSE EUGENIO RAMIREZ DE LA CAVADA, PETITIONER, ANGELA M. BUTTE, HEIR-PROPOITENT AND APPELLANT, VS. ESPERANZA RAMIREZ DE CORTABITARTE, ELSA RAMIREZ DE CHAMBERS, LILY RAMIREZ VIUDA DE PFANNENSCHMIDT AND HORACIO RAMIREZ, OPPOSITORS AND APPELLEES.

D E C I S I O N

CONCEPCION, J.:

These are two appeals, taken by Angela M. Butte, from two different orders of the Court of First Instance of Manila, in Special Proceedings No. 15026 thereof, entitled “Testamentary Proceedings of the late Jose V. Ramirez, Jose Eugenio Ramirez de la Cavada, petitioner”. The first appeal (G. R. No. L-6601) is from an order of said court, dated November 18, 1952, appointing the Bank of the Philippine Islands as regular administrator of the estate of said deceased. The second appeal (G. R. No. L-6602) refers to an order of said court, dated January 21, 1953, denying the probate of Exhibit C, the alleged will and testament of the deceased.

The facts pertinent of the first appeal (G. R. No. L-6601) are: On October 30, 1952, Jose Ma. Cavanna, acting as attorney-in-fact of Belen T., Rita E., Ramon A., George P., and Jose E., all surnamed Ramirez, filed, in said testamentary proceedings, a motion stating that they are creditors of the late Jose V. Ramirez, who was their attorney-in-fact and, as such, had, in his possession, certain sums (“ciertas cantidades”) belonging to the movants, and that, in order that their claim against the decedent could be filed, a regular administrator

was necessary, for which reason they prayed that the Bank of the Philippine Islands, which was the special administrator of said estate, be appointed its regular administrator. On November 6, Angela M. Butte, who was named, in said Exhibit C, as heir to, or legatee of, the free portion of (one-third of) the estate of the deceased, filed a pleading alleging that she was not in a position to answer said motion of October 30,1952, owing to the failure thereof to specify the amounts therein referred to, and praying that action on said motion be deferred Until after Cavanna shall have submitted a bill of particulars and said Mrs. Butte shall have filed her answer to said motion. The next day, counsel for Esperanza Ramirez de Cortabitarte, Elsa Ramirez de Chambers, Lily Ramirez Vda. de Pfannenschmidt and Horacio Ramirez, the legitimate children of the deceased, who was a widower, filed a statement urging the court to grant Cavanna's aforementioned motion. This the lower court did in an order dated November 18, 1952. A reconsideration of this order having been denied, Mrs. Butte filed notice of her intention to appeal therefrom.

Upon the submission of her record on appeal, Cavanna and the children of the decedent objected to its approval, upon the ground that Mrs. Butte has no right to intervene in the case and that said record on appeal had been filed beyond the reglementary period. The lower court overruled this objection and approved said record on appeal. The appellees now insist that the appeal should not be entertained for the reasons above stated.

As regards the first, suffice it to say that, in said Exhibit C, one-third (1/3) of the estate of the decedent is bequeathed to Mrs. Butte. Although, when the order complained of was issued (November 18, 1952), Exhibit C had not, as yet, been probated as the last will and testament of the decedent, and, subsequently thereto (on January 21, 1953), the lower court refused to allow said instrument to probate, the order to this effect has not become final, owing to the other appeal

Appellees' second objection to the appeal is predicated upon the theory that appellants motion for reconsideration of the order appealed from does not suspend the running of the reglementary period to perfect the appeal, because said motion, according to the appellees, is not one for new trial. Said motion for reconsideration is premised, however, upon the theory that the appointment of a regular administrator, pending the probate of a will, violates Rule 81, section 1, of the Rules of Court, and, hence, is contrary to law. In short, it partakes of the nature of a motion for new trial (Rule 37, section 1, Rules of Court) and, as such, it suspended the running of the period to appeal.

Referring, now, to the merits of the appeal from the order appointing a regular

administrator, the question raised is whether said order contravenes Rule 81, section 1, of the Rules of Court, reading:

> "*Appointment of special administrator.*—When there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators thereupon appointed."

Appellees maintain the negative, upon the ground that this section applies only when the decedent has left a will directing the appointment of a particular person as executor thereof and that Exhibit C is silent thereon; but, such pretense is not borne out by the text of the above-quote provision. What is more, the authority therein given for the appointment of a special administrator, "when there is delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will"—which is precisely the situation obtaining in the case at bar—"or from any other cause", implies necessarily a denial of the power to appoint a regular administrator during the pendency of said appeal. Indeed, what need would there be to appoint a special administrator, if, at any rate, a regular administrator could, in the meanwhile, be properly appointed?

Appellees stress the fact that they represent, at least, two-thirds {2/3) of the estate of the deceased, and that, at best, appellant could have no more than one-third (1/3) thereof, and, hence, a minority interest therein. This is, however, immaterial to the issue before us, for, if Exhibit C were probated, such interest would be a factual reality and, hence, she would have an incontestable right to be heard on the choice of a regular administrator. In the present case, she was even denied the opportunity to take remedial measures for the preservation of said right. She prayed that action on Cavanna's motion of October 30, 1952, be deferred, because the allegations therein were not sufficiently concrete to enable her to answer thereto. It was alleged in said motion that the principals of Cavanna were creditors of the decedent, because the latter had in his possession "ciertas cantidades" (certain sums) belonging to them. No averment was made as to amount, time, place, transaction or other circumstances which would reasonably permit the identification of the credits or sums referred to in said motion. Upon the other hand, Cavanna's principals

had sued the appellant in civil case No. 17610 of the Court of First Instance of Manila, for the recovery of P38,333.20 allegedly due from her by way of rentals of a real property leased to her by the decedent and Ramon V. Ramirez, and damages. Appellant maintains that, if the sum of money involved in such civil case No. 17610 were the same object of said motion of October 30, 1952, then she could oppose the latter upon the ground that the movants are not creditors of the deceased. Hence, she sought a bill of particulars and urged the court to defer action until the filing thereof and of her answer to said motion. Instead, the court granted the motion, which was not even verified, in violation, not only of said Rule 81, Section 1, of the Rules of Court, but, also, of the due process clause.

With respect to the second appeal (G. R. No. L-6602), it appears that Jose V. Ramirez died in Zurich, Switzerland, on October 20, 1951. Four (4) days later, or on October 24, 1951, Atty. Resplandor Sobretodo filed with the Clerk of the Court of First Instance of Manila, the document Exhibit C. The same consists of five (5) sheets. On the first, which appears to be a cover, the following is typewritten:

"TESTAMENTO CERRADO Y ULTIMA VOLUNTAD
DE
JOSE V. RAMIREZ

(JOSE VIVENCIO RAMIREZ Y MIRANDA)"

About two (2) inches below is a handwritten note, with signatures and rubric at the foot thereof, reading:

> "NOTA:—Ademas de la hipoteca mencionada en la Clausula Tercera de este Testamento, debo ademas a Mrs. A. M. Butte otra de P12,500.00 y una ultima de P12,000.00 de Horacio garantizada por mi.
>
> Las tres obligaciones estan aim pendientes de pago hoy 31 Enero 1949.
>
> (Sgd.) J. V. RAMIREZ"

The other pages read as follows:

“ORIGINAL

Pagina, Primera (la)

TESTAMENTO CERRADO Y ULTIMA VOLUNTAD DE
JOSE V. RAMIREZ
……….(JOSE VIVENCIO RAMIREZ Y MIRANDA)…………

“EN EL NOMBRE DE DIOS TODOPODEROSO, AMEN:

“Yo, Jose V. Ramirez, de 69 anos de edad,, viudo, domiciliado temporalmente en mi oficina, cuarto No. 221 del Samanillo Bldg., Escolta No. 619, de la Ciudad de Manila, Islas Filipinas, hallandome en el cabal uso de mis facultades mentales, con la capacidad necesaria para testar y no obrando en virtud de amenza, fuerza 6 influencia extrana de persona alguna, por el presente, otorgo libre y voluntariamente mi ultima voluntad 6 disposicion para despues de mi muerte en este documento que declaro ser mi testamento cerrado, y atestiquot ………………………………………………………………………….. CAUSULA PRIMERA:—Declaro ser bijo de Don Jose Fausto Ramirez y Dona Dolores Miranda, ambos ya difuntos, haber nacido en esta Giudad de Manila, Islas Filipinas, de nacionalidad fiiilipina, y haber contraido unicas nupcias con mi esposa Dona Eloisa Eugenia de Marcaida, ya difunta, con quien he tenido cuatro hijos llamados Esperanza, Elsa, Lily y Horacio, todos vivo3 y inayores de edad. La primera se halla casada con Don Modesto de Cortabitarte, la segunda tambien casada con Don Hugo B. Chambers, la tercera viuda de Federico Ffannenschmidt; y eluarto soltero, todos residentes en la Ciudad de Manila ……………………………………………………………………….

CLAUSULA SEGUNDA—Declaro tambien que he nacido, he vivido y quiero morir en el seno de la Iglesia Catolica Apostolica Romana, y eft mi deseo y asi ruego lue a mi muerte, mi entierro sea muy modesto, se celebre una misa de cuerpo presente en la Parroquia de mi ninez, la Iglesia de Binondo, y se me entierre si muero en mi actual viudez, en el Lote qu«e poseemos en el Cementerio Cat61ico de la Loma, y si muriera estando casado por segunda vez,

deberan enterrarme donde mi viuda designare. Si mi muerte occurriese en Europa, deseo que me entierren en el Mausoleo de la familia Ramirez en Asnieres Seino, Francia, al lado de mi querido Padre

"ORIGINAL

Pagina Segunda (2a)

Don Jose Fausto Ramirez; todos estos actos deben celebrarse de acuerdo con las reglas y ritos de la Iglesia Catolica Apostolica Romana. Deseo que una vez que mi cadaver este colocado en su ataud, se cierre este asi como la ventanilla de cristal si hubiere enterrarme donde mi viuda designare. Si mi muerte oeeurriese en a los curiosos la faz del que ya se fue. Al ido, dejarle en paz.

CLAUSULA TERCERA—Declare que poseo actualmente acciones de *Central Luzon Milling Co. Inc.* y una participacion de *una* sexta parte 1/6 de la finca situada en la calle Escolta Nos. 161 al 169 y Plaza de Santa Cruz Nos. 1 al 31, de esta Ciudad de Manila, detalladamente descrita en el Certificado de Transferencia de Titulo No. 69363 del Registro de Titulos de Manila, y que estos y otros que pueda adquirir en lo sucesivo, y existan a mi nombre al tiempo de mi muerte, ser4n el caudal de mis propiedades, incluso los creditos y debitos que existan anotados en mis Libros de contabilidad, asf como las obligaciones (obligaciones) debidamente escrituradas ante Notario Publico *aunque no estuviesen registradas, pues actualmente* tengo una obligaci6n hipotecaria no registrada 4 favor de Dona Angela Montenegro viuda de Butte, que pudiera no estar pagada si yo muriera antes del vencimiento convenido para el pago."

CLAUSULA CUARTA.—Nombro e instituyo como mis herederos;

> … amis ya nombrados cuatro hijos Esperanza, Elsa, Lily y Horacio el primer UN tercio (1/3) de la legitima, que les corresponde por partes iguales."
>
> „.. a mis, hijo Horacio y cuatro nietes, llamados Sonia y Aitor apellidados Cortabitarte, Doreen y Maureen appellidados Chambers, el segundo UN

> tercio (1/3) de la legitima para mejora, *en la proportion siguiente;* Una tercera parte de dicho UN tercio para mejora, para Horacio; la otra tercera parte, para Sonia y Aitor; y la ultima tercera parte, para Doreen y Maureen, en partes iguales los cuatro nietos, o para mayor claridad, *una aexta* (1/6) del UN tercio, para cada uno de mis nietos."

> …. a mi apreciada amiga Dona Angela Montegro viuda de Butte, el restante un tercio (1/3) de libre disposicion, como sincero agradecimiento por las desinteresadas y grandes ateneiones que he mereddo y sigo mereciendo de ella, asi como por el apoyo moral y material que me ha brindado en los momento mas

"ORIGINAL

Pagina Tercera (3a)

> criticos de mi vida. Expontaneamente declaro que las atenciones referidas me han servido para poder vivir y sobrellevar con menos dolor, los sinsabores que he experimentado y sigo experimentado en estos ultimos dias de mi existenda."

….*CLAUSULA QUINTA*.—Unego 4 la caritativa Dona Angela Montenegro viuda de Butte, haga la caridad de atender 4 mis desamparados primos carnales Josefa y Vicente apellidados Butron y Miranda, ya de avanzada edad, 4 quienes siempre he dado una ayuda mensual, ruego repito, les de si es posible una ayuda ¦mensual de viente pesos (P20.00) a la primera y dies pesos (P10.00) al segundo, mientras vivan, como e3 mi proposito xnientras yo viva………..

….*CLAUSULA SEXTA*.—Declaro que este es el primer testamento que otorgo y por consiguiente, declaro nulo y sin efecto, cualquier otro testamento que apareciese con anterioridad a esta fecha, siendo mi deliberada voluntad que al presente testamento, hasta que no se haya modificado por mi, se tenga como el unico testamento que exprese mi ultima voluntad, la cual deseo se cumpla exacta y fielmente en todas y cada una de sus clausulas…………

"En Testimonio de todo lo cual, y a los efectos que tuviere lagar, firmo esta ultima ' voluntad y testamento, extendido en espanol que es el idioma que mas hablo y escribo a maquinilla por mi mismo, integrado de cuatro paginas utiles incluyendb la pagina final del atestiguamiento; firmo y rubrico al pie del mismo asi como al margen izquierdo de todas y cada una de las referidad cuatro paginas, en preseneia de los testigos mas abajo aelacionados, quienes atestiguan todas y cada una de las cuatro paginas del mismo, suscribiendo al pie del atestiguamiento y en al margen izquierdo de todas y cada una de la paginas en mi preseneia yen preseneia de todas y cada uno de ellos, hoy veintiocho (28) de Agosto de mil novecientos cuarenta y cuatro (1944), k las 11 de la mafiana, en esta Ciudad de Manila, Islas Filipinas…………

(Sgd.) "J. V. RAMIREZ
Firma del Testador"

"ATESTIGUA-

"ORIGINAL

Pagina, Cuarta (4a)

"MIENTO.

"Nosotros, Josi Ha. Cavanna, Juan Blanco y Arsenio Ventosa, todos mayores de edad y de esta Ciudad de Manila, declaramos y aflrmamos solemnemente que en el documento preinserto conocido como ultima voluntad y testamento de Don JOSE V. RAMIREZ ha sido otorgado por este Sefior, conocido por nosotros, sin que haya mediado violencia, intimidaci6n ni influencia extrana de ningun genero, hallandose dicho testador en el pleno y cabal uso de sus f acultades mentales, habiendose redactado dicho testamento en espanol que es idioma que el y nosotros conocemos.

"Atestiguamos que Don Jose V. Ramirez ha suserito su nombre al pie de este testamento y ha fiimado en el margen izquierdo de todas y cada una de la cuatro paginas induyendo esta, en preseneia de todos y cada uno de nosotros. Las paginas de este documento van numeradas correlativamente en la parte

superior con numeros.

> "EN TESTIMONIO DE TODO CUAL, lo suscribimoa tambien nosotros y lo finnamos al pie y al margen izquierdo de todas y cada ona de las cuatro paginas de que consta este documento en presencia del testador y en la de todos y cada uno de nosotros, hoy a veintioeho (28) de Agosto de mil nuevecientos cuarenta y cuatro (1944.)"

"(Sgd.) Jose M. Cavanna
Jose Ma. Cavanna

(Sgd.) J. Blanco
Juan Blanco

(Sgd.) Aksenio Ventosa
Arsenio Ventosa"

On the left hand margin of each one of these four (4) pages (excluding the cover) the signatures and rubrics purporting to be those of Jose V. Ramirez, Jose Ma. Cavanna, Juan Blanco and Arsenio Ventosa appear in the order given, from the bottom to the top. As already adverted to, a signature and rubric, purporting to be those of the deceased Jose V. Ramirez, appears, also, at the foot of the above quoted handwritten note on the cover of Exhibit C.

On October 27,1951, Jose Eugenio Ramirez de la Cavada, a brother of the deceased, filed, with said court, a petition for the probate of the aforementioned Exhibit C, as the last will and testament of said decedent. His aforementioned legitimate children objected to the petition, upon the ground that Exhibit C does not have the conditions essential to its validity and has not been executed with the requisite formalities. At the hearing of said petition, the following appeared: (*a.*) Attys. Eiguren and Alcuaz, for the petitioner; (*b*) Atty. Joaquin Ramirez, for the children and grandchildren of the decedent; and (*c*) Attys. Delgado and Flores, for appellant herein. Oral and documentary evidence were introduced, the most important for purposes of this appeal, being the testimony of Juan Blanco, Arsenio J. Ventosa, Jose Ma. Cavanna, Vicente Alvarez and Amadeo Cabe.

As soon as Exhibit C was shown to Juan Blanco, he said—without examining its contents—that he did not remember having seen it before. Upon being confronted with the signatures, on Exhibit C, reading "J. Blanco", the witness admitted that they seem to be his signatures, adding, however, that he remembers nothing about it ("no tengo idea de esto"). He testified, also, that he had been an employee of the decedent for many years; that he (witness) was working in the office of the decedent, at the Samanillo Building, Escolta, Manila, on August 28, 1944, the date of Exhibit C; that the decedent was then in

full possession of his mental faculties; that the signatures,, on Exhibit C, reading J. V. Ramirez, are genuine signatures of the decedent; that the "nota" on the cover of Exhibit C is in decedent's handwriting; that the signatures on Exhibit C reading Jose M. Cavanna and Arsenio Ventosa seem to be the genuine signatures of these persons. Upon further questioning by appellant's counsel, the witness admitted that the signatures on Exhibit C reading F, Blanco and Jose M. Cavanna are his genuine signatures and those of Atty. Cavanna, respectively, but Blanco added that some one, whose identity he does not recall, brought the document to his desk, in the aforesaid office, and that he signed Exhibit C without reading it and without knowing what it was.

Arsenio J. Ventosa declared that the signatures on Exhibit C, reading Arsenio Ventosa, look like, and seem to be, his signatures; that he neither admits nor denies the genuineness thereof; and that there is no difference between said signatures and his genuine signatures, except that the former do not bear the initial "J" which he writes between his name and surname. It appears, however, that he, also, used to sign without said initial—as indicated in the samples of his signatures, at different times, prepared by the witness in open court, and marked as Exhibit D-l—although he claimed to have given up such practice many years before August 28, 1944.

Jose M. Cavanna identified his signatures and those of the decedent on Exhibit C, but said that he remembered none of the details surrounding its execution, although he assumed that the legal formalities must have been complied with, for otherwise he would not have affixed his signatures thereon.

Testifying for the appellant, Vicente Alvarez declared that he was a messenger of the decedent on August 28, 1944 and many years prior thereto; that, on said date, the decedent signed Exhibit C in his office, at Samanillo Building, at the foot of the third page of the body thereof and on the left hand margin of the four (4) pages of which it consists (excluding the cover, but including the attestation clause) in his presence and that of Jose M. Cavanna, Juan Blanco and Arsenio Ventosa; and that these attesting witnesses signed on the left hand margin of said four (4) pages and at the foot of the attestation clause, in the presence of each other and of the testator, as well as in his (Alvarez') own presence.

Appellant introduced, also, the testimony of Major Amadeo Cabe, handwriting expert of the Manila Police Department, who asserted that the signatures on Exhibit C reading Arsenio Ventosa and the sample signatures of the latter on Exhibit D-l had been written by one and the same hand.

In the light of the foregoing evidence, the lower court concluded that “the requirements of the law had not been complied with” in the execution of. Exhibit C and, accordingly, denied the admission thereof to probate. Upon a review of the record, we find ourselves unable to agree with said conclusion for the following reasons, to wit:

1. It is clear from the testimony of Juan Blanco, Jose M. Cavanna and Vicente Alvarez that the signatures on Exhibit C, reading “J. V. Ramirez”, are authentic signatures oi the decedent. Indeed, in opposing the probate of Exhibit C, his children do not question the genuineness of the signatures thereon of their deceased father. What is more, the latter’s own brother applied for the admission of Exhibit C to probate, thus indicating ^that he believed these signatures to be authentic.

2. The signatures on Exhibit C, reading “J. Blanco” and “Jose M. Cavanna” are, likewise, genuine. Both admitted this fact, although reluctantly, on the part of Juan Blanco.

3. The signatures on Exhibit 0, reading “Arsenio Ventosa” are, also, authentic. Arsenio J. Ventosa declared that they look like, and seem to be, his signatures. He even admitted that there is no difference between the former and the latter, except that his middle initial “J” does not appear in the former. It appears, however, that he used to sign without said middle initial, and, although he claims to have given up such practice many years ago, the testimony of Major Cabe, and a comparison of Ventosa’s admittedly genuine signatures on Exhibits D-l, E and E-l, with the aforementioned signatures on Exhibit C, leave no room for doubt on the latter’s genuineness.

4. Jose M. Cavanna stated that he assumed that the requisites formalities must have been complied with, for, otherwise, he would not have affixed his1 signatures on Exhibit C. Indeed, the decedent, Juan Blanco and Arsenio Ventosa were, on August 28, 1944, working in the same office, at the Samanillo Building, Escolta, Manila. Moreover, the first used to send for his, counsel, Jose M. Cavanna, whenever the services of the latter were needed. Hence, in the ordinary course of events, Atty. Cavanna would have been called, and would have gone, to the office of the decedent. In short,, inasmuch as each and every one of them were in the same place, at the time of the execution of Exhibit C, and both the testator and Atty. Cavanna were well posted on the formalities essential to the validity of wills, it was only natural and

logical for the testator and the attesting witnesses to sign on Exhibit C in the presence of each other.

5. According to Mr. Cavanna, he was very careful in the observance of the legal requirements, so much so that, as a matter of policy, he saw to it that attesting witnesses signed in the following order, namely: first—immediately after the testator—the youngest; then the oldest; and last, the one whose age is intermediate between both. The signatures on the left hand margin of the four (4) pages of Exhibit C (excluding the cover) appear to have been written in such order, from the bottom to the top—the decedent's at the bottom; then comes that of Cavanna, 53 years of age; next is the signature of Blanco, 74 years of age; and last the signature of Ventosa, 68 years of age. These witnesses signed, also, at the foot of the attestation clause in the same order: on the left (immediately below said clause), Cavanna; on the right, Blanco; and midway between, but below, both, Ventosa. It is apparent that the aforementioned practice of Cavanna was strictly adhered to in Exhibit C and that, accordingly, he must have supervised its execution and seen to it that the same took place in accordance with law.

6. The signatures of the attesting witnesses, appear to have been written with the same pen and ink, thus indicating that they were affixed on the same occasion and in the presence of each one of the signatories to Exhibit C.

7. According to Cavanna, the decedent was a very cautious and methodical, and this is fully born out by the record. Thus:

(*a*) He typed Exhibit C personally.

(*b*) On the cover and on "*Pagina Primera* (1-a)" thereof, he specified that it was a closed ("Cerrado") will.

(*c*) Below his name "Jose V. Ramirez" (in both fcages) he typed, in parenthesis, his full names and surnames " (Jose Vivencio Ramirez y Miranda)".

(*d*) On the upper margin of each one of the four (4) pages (excluding the cover), he affixed, in lavender ink, a rubber stamp reading "original".

(*e*) On the right side of said margin he typed, uniformly, the page number, in words and figures: "Pdgina

Primera (l-*a*)"t *Pagina Segunda* (2*a*)", *Pagina Tercera*

(3*a*)" and *Pagina Quarta* (4*a*)", all underlined, Capitalizing the first letter of each word, with an accent on the first "a" of "Pagina", and a dot under the letter "a" in (l*a*), (2*a*), (3*a*), and (4*a*).

(*f*) The wording of Exhibit C is carefully chosen.

(*g*) In the opening paragraph thereof, he set forth the circumstances establishing his capacity to make a will.

(*h*.) in its first clause, he stated the facts pertinent to his birth, marriage and children.

(*i*) The second clause, dealing with the arrangements for his funeral, contained special provisions for the event of his death, either while a widower, or should he contract a second marriage, or while abroad, with the express direction that his casket, including its glass opening, if any, be closed "y no se abra mas, evitando asi la irreverente costumbre de exponer a los curiosos, la faz del que ya se fue", .al ido, dejarle en paz * * *.

(*j*) The third clause described his estate, without overlooking such property as may subsequently be acquired and may exist at the time of his death, as well as his debts, including his obligations

> "debidamente escrituradas ante Notario Publico *aunque no estuviesen registradas,* pues actualmente tengo una obligation hipotecaria *no registrada* a favor de Dona Angela Montenegro Viuda de Butte, que pudiera no estar pagada si yo muriera antes del vencimiento convenido para el pago".

(*k*) In. the fourth clause, he named his heirs and their respective shares: (1) one-third of his estate, or the strict legitime, to be divided equally among his four children, (2) his only son and his four (4) grandchildren shall get the "mejora" portion, in the proportion of one-third (1/3) for the former, and one (1/6) for each one of the latter; and (3) the appellant

shall inherit the free portion.

(*l*) In the fifth clause, he asked appellant to help his poor relatives therein named.

(*m*) In the sixth and last clause, he declared explicitly that Exhibit C is the first and only will ever executed by him.

(*n*) The closing paragraph describes in detail the formalities with which Exhibit C was executed, strictly in accordance with law.

(*o*) This was reiterated in the attesting clause.

(*p*) Each paragraph of Exhibit C is closed with dashes, evidently, to forestall, insertions therein.

(*q*) Obviously, for the same purpose, dashes precede the opening phrase of each clause.

(*r*) He typed the incomplete word "atestigua" at the foot of "P&gina Tercera (3a)", and placed the last two syllables ("miento") of said word on the left top margin of "Pagina Ctuarta (4d)", likewise to avoid substitution of the last page.

(*s*) Upon its execution, Exhibit C was placed in the envelope Exhibit C-3, which was sealed with a sealing wax. A carbon copy of Exhibit C, marked Exhibit S, on which a rubber stamp, reading "duplicado", appears, was placed in another envelope (Exhibit S-1), which was similarly sealed. On both envelopes he had typed the following:

> "TESTAMENTO CERRADO Y ULTIMA VOLUNTAD DE JOSE V. RAMIREZ (JOSE VIVENCIO RAMIREZ Y MIRANDA)

Para ser abierto solamente despues de mi muerte"

His signature appears, also, at the foot of these inscriptions. The two (2) envelopes were

kept in decedent's safe in the Samanillo Building.

(*t*) On January 31, 1949, he opened said envelopes at one end thereof, without breaking the aforementioned wax seals. Thereupon, he wrote, on the cover of Exhibit C, the "nota" transcribed on page seven (7) hereof. Then he placed Exhibit C insides Exhibit C-3, -and Exhibit S inside Exhibit S-1, and wrote, below the above- quoted inscriptions on said Exhibits C-3 and S-1:

> "Abierto por mi hoy 31 Enero 1949 para inscribir una Nota en la cubierta del mismo.

(SGD) J. V, RAMIREZ"

Thereafter, Exhibit C-3, containing Exhibit C, was placed in another envelope, marked Exhibit C-2, on which he typed:

> "TESTAMENTO CERADO Y ULTIMA VOLUNTAD DE JOSE V. RAMIREZ (JOSE VIVENCIO RAMIREZ Y MIRANDA)

Para ser abierto solamente despues de mi muerte.

Then, he signed at the foot thereof, and wrote "31 Enero 1949" under his signature.

Exhibit S-1, containing Exhibit S, was, in turn, placed inside the envelope Exhibit S-2, on which the following appears, in his handwriting:

> "Duplicado del Testamento Cerrado de J. V. Ramirez para ser abierto solamente' despues de mi nraerte. El Original esta en poder de Mrs. A. M. Butte.
>
> (Sgd.) J. V. Ramirez
> 31 Enero 1949″

Said Exhibits C-2 and S-2, were, likewise, sealed with sealing wax.

(*u*) Before his last trip to Europe, for medical treat' ment, the decedent delivered Exhibit C-2 (with Exhibits C and C-l therein) to Atty. Resplandor Sobretodo, with instructions to act in accordance with law, in the event of his death. The decedant left Exhibit S-2 (containing Exhibits S and S-l) in the possession of his son-in-law and attorney-ih-fact, Modesto de Cortabitarte.

It is inconceivable that one who prepared Exhibits C and S and handled it with such extreme care, should fail to observe the very formalities which he described in said instrument with scrupulous accuracy.

8. The decedent had a high sense of honor and integrity. He had no possible reason to state one thing in Exhibit C, in order to do something else. He had a perfect legal right to dispose of his estate in the manner therein set forth. He could have had no motive, therefore, to advisedly commit irregularities in the execution thereof.
9. In an effort to approach the subject from all conceivable angles, we have even considered the question whether he may have prepared Exhibit C for the sole purpose of pleasing the appellant, with no intent, on his part, of executing it as his last will and testament, and, for such reason, refrained purposely from complying with the formalities essential to its validity. Such possibility cannot reasonably be entertained, however, without detracting from his established probity and decency. Besides, he would not have taken pains in inserting the details appearing in Exhibit C, had he not meant the same to be his last will. Neither would he have displayed the caution adverted to above, in placing Exhibits C and S in the envelopes, Exhibits C-3 and S-l; in sealing the same; in later opening both envelopes; in writing the note3 already referred to on Exhibits C, C-3 and S-l; in placing Exhibits C and C-3 inside Exhibit C-2, and Exhibits S and S-l inside S-2; in sealing Exhibits C-2 and S-2; and in writing on Exhibit S-l the inscription appearing thereon. Again, before his last trip to Europe, he wotdd not have delivered said envelope, Exhibit S-3 containing Exhibit Cs duplicate, Exhibit S, and its envelope Exhibit S-l; to his son-in-law and attomey-in-fact, Modesto Cortabitarte. This particular act clearly evinced the intent of the decedent to give due course to Exhibit C as his last will and testament.
10. Despite the testimony of Juan Blanco, to the effect that he signed Exhibit C on his own desk, without knowing its contents, and, presumably, without the presence of the testator and the other attesting witnesses, we are satisfied, from all the evidence presented, that said instrument was executed in the manner required by law.

Indeed, the very appellees assert that Juan Blanco has committed numerous contradictions, which is a fact (appellees' brief, p. 37). Moreover, the decedent, Blanco and Ventosa were working in the same office and Atty. Cavanna had evidently gone thereto, upon the request of the first, his client. Thus, being together, it would be absurd to believe that the decedent did not cause Exhibit C to be signed by them, in the presence of each other. Again, the genuineness of the signatures on Exhibit C has been established beyond any possible doubt. This and the fact that the testator and Atty. Cavanna were well posted on the formalities essential to the validity of wills, suffice to raise the presumption that said formalities have been complied with.

> "With respect to the will now in question a *prima facie* case for the establishment of the document was made out when it appeared that the instrument itself was properly drawn and attested and that all of the signatures thereto are authentic. These facts raise a presumption of regularity; and upon these facts alone the will should be admitted to probate in the absenee of proof showing that some fatal irregularities occurred. And such irregualrity must, be proved by a preponderance of the evidence before probate can be denied." (Fernandez *vs.* Tantoco, 49 Phil., 380, 385.)
>
> "* * * When it appears from the evidence that the signatures to a will is the genuine signature of the testator and that the attesting witnesses subscribed in his presence, a *prima facie* case is made in favor of the due execution of the will; and this *prima facie* case is not overcome by the mere fact that the subscribing witnesses testify that they failed to notice whether or not the will was signed." (I Alexander's Commentaries on Wills, pp. 694-695.)
>
> "A rebuttable presumption of the due execution of a will which purports to be signed by the testator and the requisite number of attesting witnesses arises on proof of the genuinensess of the signatures of the testator and the witnesses, at least where the will contains a complete attestation clause reciting an observance of all statutory requirements in the execution of wills. * * *.
>
> * * * * * *
>
> "The presumption of due execution which arises on proof of the signatures of the testator and the witnesses to a will containing an attestation clause which recites an observance of the statutory requirements for the execution of a will

> exists, notwithstanding there is a failure of memory on the part of the witnesses as to the facts of execution. As stated, the presumption does not need the support of the affirmative memory of a subscribing witness." (57 Am. Jur., pp. 576-577.))"

This presumption has been abundantly bolstered up by the other circumstances adverted to above.

Upon the other hand, the attitude of the attesting witnesses is readily understandable. Appellant is a stranger to the family of the deceased, whereas said attesting witnesses have a special attachment to the members thereof. Thus, Juan Blanco and his wife were first cousins of the deceased wife of Don Jose V. Ramirez, and, hence, are uncles of his children. Apart from having been an employee of the deceased, Arsenio J. Ventosa used to work for his (decedent's) son-in-law, Modesto de Cortabitarte. In fact, when Ventosa took the witness stand, one of his children was an employee of Mr. Cortabitarte. Atty. Cavanna had, for many years, been counsel for the Ramirez family. He still treats Mr. Cortabitarte as his "jefe". What is more, Horacio Ramirez, one of the children of the deceased, is a business partner of Mr. Cavanna. As pointed out above, Mr. Cavanna is, also, the attorney-in-fact for other relatives of the deceased. Under these conditions, it is only natural that they should be biased against the appellant—whom they evidently regard as an intruder— and against the legacy in her favor, which they, in "all probability, consider immoral. In fact, Mr. Cavanna was critical of the very private life of the decedent, whom he characterized as not being a practical Catholic.

However, the decedent had a perfect legal right, to dispose of the free portion of his estate in favor of whomsoever he shall choose, subject to the limitations imposed by law, none of which are applicable to the case at bar. Besides, it is our bounden duty to enforce such law and it would be immoral—apart from illegal—for us not to do so, if we felt, as we do, that the requisite formalities had been complied with.

In Florentino *vs.* Francisco (57 Phil., 742, 750-751), it was held:

> "When a will is contested it is the duty of the proponent to call all of the attesting witnesses, if available, but the validity of the will in no wise depends upon the united support of the will by all of those witnesses. A will may be admitted to probate notwithstanding the fact that one or more of the subscribing

> witnesses do not unite with the other, or others, in proving all the facts upon which the validity of the will rests. (Fernandez *vs.* Tantoco, 49 Phil., 380). It is sufficient if the court is satisfied from all the proof that the will was executed and attested in the manner required by law. In this case we feel well assured that the contested will was properly executed and the order admitting it to probate was entirely proper."

This view was, in effect, incorporated in Rule 77, section 11, of the Rules of Court, reading:

> "If the will is contested, all the subscribing witnesses present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of the subscribing witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must.be taken. If all or some of the subscribing witnesses produced and examined testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law."

In line with the foregoing, we are of the opinion, and so hold, that the lower court erred in denying the admission of Exhibit C to probate, and that the latter should be allowed.

Wherefore, the orders appealed from are hereby reversed and said Exhibit C is hereby admitted to probate, as the last will and testament of the deceased Jose V. Ramirez, with the costs of both instances against the appellees. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endenda, and *Felix, JJ.,* concur.

Date created: October 13, 2014