

## TESTATE ESTATE OF THE LATE PAULA TORAY. EUSTAQUIA TENEFRANCIA, PETITIONER AND APPELLANT, VS. ROSA ABAJA, OPPOSITOR AND APPELLEE.

*G.R. No. L-2415. July 31, 1950*

Ponente: REYES, J.

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### REYES, J.:

This is an appeal from an order of the Court of First Instance of Negros Occidental denying probate of a will.

The will in question purports to have been executed in August, 1943, by Paula Toray, who died the following month. Presented for probate by one of the legatees, the herein appellant Eustaquia Tenefrancia, it was opposed by Rosa Abaja, daughter of the deceased Eulogia Abaja, instituted heir in an earlier will executed by the same testatrix and her deceased husband. The lower court disallowed the will on the ground that it was not executed in accordance with law in that the attestation clause did not state that the testatrix signed the will in the presence of the instrumental witnesses.

Among the formalities prescribed by law (Section of Act 190, as amended by Act 2645) to a valid will is the requirement that the attestation clause should state "the fact that the testator signed the will and every page thereof, or cause some other person to write his name, under his express direction, in the presence of three witnesses." This requirement was not complied with in the present case, for the attestation clause fails to state that fact. This is obvious from the following agreed translation of the said attestation clause:

"Nosotros Antonio T. Abanilla, Juan G. Mission y Juan Tullao", todos vecinos del Barrio Inayauan, Cawayan, Negros Occidental, Filipinas, testigos de este testamento, testificamos que Paula Toray, la testadora nos declare que este es su testamento o ultima voluntad y que cuando otorgo este testamento, ella estaba en su sano y cabal juicio, habiendo hecho constar el mismo, en dos pliegos de papel, firmados por nosotros en presencia de la testadora, y de nosotros tres testigos en todos los pliegos de este testamento."

It is pointed out, however, that the attestation clause states that the testatrix declared in the presence of the three witnesses that the document in question was her last will or testament, and it is argued that this statement taken together with the preceding clause which reads: "En fe de todo lo cual firmo con mi nombre este mi testamento o ultima voluntad, escrito en dialecto visayo que es el dialecto que poseo y hablo, en Inayauan, comprension de Cawayan, Filipinas, hoy a 16 de Agosto de 1943," expresses the idea that the testatrix signed the will in the presence of the witnesses. The argument is not only far-fetched but it also overlooks the fact that it is in the attestation clause itself where we must look for a statement that the testator signed the will in the presence of the subscribing witnesses, since that is one of the statements by law required to be embodied in the attestation clause. The words above quoted, which, in the will in question, are written above the signature of the testator and come before the attestation clause, do not form a part of the latter. By the attestation clause is meant "that clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same." (Black, Law Dictionary.) It is signed not by the testator but by the witnesses, for it is a declaration

made by the witnesses and not by the testator. And the law is clear that it is the attestation clause that must contain a statement, among others, that the testator signed the will in the presence of the witnesses. Without that statement, the attestation clause is fatally defective.

This defect is not cured by proof aliunde, or even by a judicial finding based upon such proof that the testator did in fact sign the will in the presence of the subscribing witnesses. That is a fact required by law to be stated in the attestation clause itself, and it is settled that where it is not so stated it cannot be established by evidence aliunde, and that where such evidence has been admitted, even without opposition, it should not be given the effect intended. (*Uy Coque vs. Navas L. Sioca*, 43 Phil. 405; *Quinto vs. Morata*, 54 Phil. 481.) In the case last cited this Court had the following to say:

"It is vigorously contended on behalf of the appellant, that the alleged defect of the attestation clause[1] has been cured by oral evidence, which was admitted without opposition on the part of the appellee. This contention cannot be sustained. The doctrine of this court with reference to statute of frauds is not applicable to wills. The statute of frauds relates to contracts and agreements. The subject of wills and testaments and the formalities surrounding their execution are governed by separate and specific provisions of Act No. 190.

"An examination of section 618 of Act No. 190, prior to, and after its amendment by Act No. 2645, shows clearly that the Legislature intended to exclude evidence aliunde, tending to establish that the will has been executed and attested in conformity with the requirements of the law, where such compliance does not appear on the face of the will itself, prior to its amendment, section 618 contained the following saving clause: '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.'

"The most outstanding feature of the amendment of said section 618 by Act No. 2645 is the elimination of said saving clause and the greater emphasis laid on the formalities as to signatures and the attestation clause. There can be no doubt, therefore, that the intention of the Legislature, in eliminating said clause, was to exclude evidence aliunde and that where such evidence was admitted without opposition, it should not be given effect and thus defeat the manifest intention of the Legislature in amending said section 618,

"Section 618 of Act No. 190, as amended, should be given a strict interpretation. In the case of *Uy Coque vs. Navas L. Sioca* (43 Phil., 405) this court, speaking of the construction to be given to said section, said:

"Statutes prescribing the formalities to be observed in the execution of wills are very strictly construed. As stated in 40 Cyc., at page 1097, 'A will must be executed in accordance with the statutory requirements; otherwise it is entirely void. All these requirements stand as of equal importance and must be observed, and courts cannot supply the defective execution of a will. No power or discretion is vested in them, either to super add other conditions or dispense with those enumerated in the statutes.' " (*Uy Coque vs. Navas L. Sioca*, 43 Phil. 405, 407.)

It is also urged that the lower court should not have entertained the opposition of Rosa Abaja, who had no legal interest in the proceeding. But it does not appear that timely objection to the said opposition was made in the court below, and it is settled that the mere fact that a stranger has been permitted to oppose the allowance of a will is not a reversible error and does not invalidate the proceedings where no objection is interposed by any of the parties in interest. (*Paras vs. Narciso*, 35 Phil. 244.) It is true that in the course of Rosa Abaja's declaration, counsel for appellant made some manifestation tending to question the admissibility of her testimony. But it is not clear that the remark was meant to be an objection to the opposition itself. Arid in any event, even without opposition, the lower court could not have legally allowed the will in question, - for under section 618 of Act No. 190, as amended by Act No. 2645, no will shall be valid to pass any estate, real or personal, nor charge or affect the same, unless the attestation clause conforms to the requirements therein provided, and the imperative language of the Rules of Court (Rule 77, Section 9 [a]) directs that the will "shall be disallowed" if not executed and

"attested as required by law."

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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[1] The attestation clause fails to state that every page of .the will, was signed by the testators and the witnesses and that the witnesses signed in the presence of the testators.

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