

JOSE MERZA, PETITIONER, VS. PEDRO LOPEZ PORRAS, RESPONDENT.

G. R. No. L-4888. May 25, 1953

Ponente: TUASON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/19dd5b68d965/>

TUASON, J.:

This is an appeal from the Court of Appeals which affirmed an order of the Court of First Instance of Zambales denying the probate of the last will and testament and a so-called codicil, identified as Exhibits A and B, of Pilar Montealegre, deceased. The testatrix was survived by her husband and collateral relatives, some of whom, along with the husband, were disinherited in Exhibit B for the reasons set forth therein.

The opposition to Exhibit A was predicated on alleged defects of the attestation clause. Written in the local dialect known to the testatrix, the attestation clause, as translated into English in the record on appeal, reads:

"The foregoing instrument consisting of three pages, on the date above-mentioned, was executed, signed and published by testatrix Pilar Montealegre and she declared that the said instrument is her last will and testament; that in our presence and also in the very presence of the said testatrix as likewise in the presence of two witnesses and the testatrix each of us three witnesses signed this testament."

The opponent objected that this clause did not state that the testatrix and the witnesses had signed each and every page of the will or that she had signed the instrument in the presence of the witnesses. The Appellate Court dismissed the first objection, finding that "failure to state in the attestation clause in question that the testatrix and/or the witnesses had signed each and every page of Exhibit A were cured by the fact that each one of the pages of the instrument appears to be signed by the testatrix and the three attesting witnesses (*Nayve vs. Mojal*, 47 Phil., 152, (1924); *Ticson vs. Gorostiza*, 57 Phil., 437, (1932); *Leynes vs. Leynes*, 40 Off. Gaz., 3rd Suppl. (October 18, 1939), 510, 528; *Rallos vs. Rallos*, 44 Off. Gaz., 4938, 4940)." But granting the correctness of the premise, the court held the second objection well taken and thus concluded: "The question whether the testatrix had signed in the presence of said witnesses can not be verified upon physical examination of the instrument. Hence, the absence of the required statement in said clause may not, pursuant to the decisions of the Supreme Court, be offset by proof aliunde even if admitted without objection."

The premise of this conclusion is, in our opinion, incorrect.

It must be admitted that the attestation clause was very poorly drawn, its language exceedingly ungrammatical to the point of being difficult to understand; but from a close examination of the whole context in relation to its purpose the implication seems clear that the testatrix signed in the presence of the witnesses. Considering that the witnesses' only business at hand was to sign and attest to the testatrix's signing of the document, and that the only actors in the proceeding were the maker and the witnesses acting and speaking collectively and in the first person, the phrase "in our presence," used as it was in connection with the process of signing, can not imply anything but that the testatrix signed before them. No other inference is possible. The prepositional phrase "in our presence" denotes an active verb and the verb a subject. The verb could be no other than signed and the subject no other than

the testatrix.

The use of the word "also" is no less enlightening. It denotes that, as each of the witnesses signed in the presence of the testatrix and of one another, so the testatrix signed in similar or like manner—in their presence.

In consonance with the principle of liberal interpretation, adhered to in numerous later decisions of this Court and affirmed and translated into enactment in the new Civil Code (Article 827), we are constrained to hold the attestation clause under consideration sufficient and valid.

"Precision of language in the drafting of the attestation clause is desirable. However, it is not imperative that a parrot-like copy of the words of the statute be made. It is sufficient if from the language employed it can reasonably be deduced that the attestation clause fulfills what the law expects of it." (*Ticson vs. Gorostiza*, *supra*.)

"It could not have been the intention of the legislature in providing for the essential safeguards in the execution of a will to shackle the very right of testamentary disposition which the law recognizes and holds sacred." (*Leynes vs. Leynes*, *supra*.)

With reference to Exhibit B the Court of Appeals agreed with the trial court that the document having been executed one day before Exhibit A could not be considered as a codicil "because a codicil, as the word implies, is only an addition to, or modification of, the will." The Court of Appeals added that "the contents of Exhibit B are couched in the language ordinarily used in a simple affidavit and as such, may not have the legal effect and force of a testamentary disposition." Furthermore, the Court of Appeals observed, disinheritance "may not be made in any instrument other than the will Exhibit A, as expressly provided for in article 849 of the Civil Code," and, "there being no disposition as to the disinheritance of the oppositor, Pedro Lopez Porras (the surviving spouse), in the said Exhibit A, it is quite clear that he can not be disinherited in any other instrument including Exhibit B, which is, as above stated, a simple affidavit."

Exhibit B does partake of the nature of a will. A will is defined in article 667 of the Civil Code of Spain as "the act by which a person disposes of all his property or a portion of it," and in article 783 of the new Civil Code as "an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death." Exhibit B comes within this definition.

Being of testamentary character and having been made with all the formalities of law, Exhibit B is entitled to probate as an independent testamentary disposition. In the absence of any legal provision to the contrary—and there is none in this jurisdiction—it is the general, well-established rule that two separate and distinct wills may be probated if one does not revoke the other (68 C. J., 885) and provided that the statutory requirements relative to the execution of wills have been complied with (*Id.* 881). As seen, Exhibit B embodies all the requisites of a will, even free of such formal or literary imperfections as are found in Exhibit A.

It also follows that Exhibit B is a legal and effective vehicle for excluding lawful heirs from testate or intestate succession. Article 849 of the Civil Code of Spain does not, as the appealed decision seems to insinuate, require that the disinheritance should be accomplished in the same instrument by which the maker provides for the disposition of his or her property after his or her death. This article merely provides that "disinheritance can be effected only by a will (any will) in which the legal cause upon which it is based is expressly stated."

It is our judgment therefore that the instruments Exhibits A and B should be admitted to probate, subject of course to the right of the disinherited person under article 850 to contest the disinheritance, and it is so ordered, with costs against the appellee.

Paras, C. J., Feria, Bengzon, Bautista Angelo and Labrador, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.