

## IN THE MATTER OF THE SUMMARY SETTLEMENT OF THE ESTATE OF THE DECEASED ANACLETA ABELLANA. LUCIO BALONAN, PETITIONER AND APPELLEE, VS. EUSEBIA ABELLANA, ET AL., OPPOSITORS AND APP...

*G.R. No. L-15153. August 31, 1960*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/30e8ff1a211f/>

---

### LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Zamboanga City admitting to probate the will of one Anacleta Abellana. The case was originally appealed to the Court of Appeals where the following assignment of error is made:

"The appellants respectfully submit that the Trial Court erred in holding that the supposed testament, Exh. 'A', was signed in accordance with law; and in admitting the will to probate."

In view of the fact that the appeal involves a question of law the said court has certified the case to us.

The facts as found by the trial court are as follows:

"It appears on record that the last Will and Testament (Exhibit 'A'), which is sought to be probated, is written in the Spanish language and consists of two (2) typewritten pages (pages 4 and 5 of the record) double space. The first page is signed by Juan Bello and under his name appears typewritten 'Por la testadora Anacleta Abellana, residence Certificate A-1167629, Enero 20, 1951, Ciudad de Zamboanga', and on the second page appears the signature of the three (3) instrumental witnesses Bias Sebastian, Faustino Macaso and Rafael Ignacio, at the bottom of which appears the signature of T. de los Santos and below his signature is his official designation as the notary public who notarized the said testament. On the first page on the left margin of the said instrument also appear the signatures of the instrumental witnesses. On the second page, which is the last page of the said last Will and Testament, also appears the signature of the three (3) instrumental witnesses and on that second page on the left margin appears the signature of Juan Bello under whose name appears handwritten the following phrase, 'Por la Testadora Anacleta Abellana'. The will is duly acknowledged before Notary Public, Attorney Timoteo de los Santos." (Italics supplied)

The appeal squarely presents the following issue: Does the signature of Dr. Juan A. Abello above the typewritten statement "Por la Testadora Anacleta Abellana \* \* \*, Ciudad de Zamboanga," comply with the requirements of the law prescribing the manner in which a will shall be executed?

The present law, Article 805 of the Civil Code, in part provides as follows:

"Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another." (Italics supplied.)

The clause "must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence and by his express direction," is practically the same as the provisions of Section 618 of the Code of Civil Procedure (Act No. 190) which reads as follows:

"No will, except as provided in the preceding section shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. \* \* \* " (Italics supplied)

Note that the old law as well as the new require that the testator himself sign the will, or if he cannot do so, the testator's name must be written by some other person in his presence and by his express direction. Applying this provision this Court said in the case of *Ex Parte Pedro Arcenas, et al.*, 4 Phil., 700:

"It will be noticed from the above-quoted section 618 of the Code of Civil Procedure that where the testator does not know how, or is unable, to sign, it will not be sufficient that one of the attesting witnesses signs the will at the testator's request, the notary certifying thereto as provided in article 695 of the Civil Code, which, in this respect, was modified by section 618 above referred to, but it is necessary that the testator's name be written by the person signing in his stead in the place where he would have signed if he knew how or was able so to do, and this in the testator's presence and by his express direction; so that a will signed in a manner different than that prescribed by law shall not be valid and will not be allowed to be probated.

"Where a testator does not know how, or is unable for any reason, to sign the will himself, it shall be signed in the following manner:

'John Doe by the testator, Richard Roe; or in this form: 'By the testator, John Doe, Richard Roe.' All this must be written by the witness signing at the request of the testator.

"Therefore, under the law now in force, the witness Naval A. Vidal should have written at the bottom of the will the full name of the testator and his own name in one of the forms given above. He did not do so, however, and this failure to comply with the law is a substantial defect which affects the validity of the will and precludes its allowance, notwithstanding the fact that no one appeared to oppose it."

The same ruling was laid down in the case of *Cuison vs. Concepcion*, 5 Phil., 552. In the case of *Barut vs. Cabacungan*, 21 Phil., 461, we held that the important thing is that it clearly appears that the name of the testatrix was signed at her express direction; it is unimportant whether the person who writes the name of the testatrix signs his own or not. Cases of the same import are as follows: (*Ex Parte Juan Ondevilla*, 13 Phil., 479, *Caluya vs. Domingo*, 27 Phil., 330; *Garcia vs. Lacuesta*, 90 Phil., 489).

In the case at bar the name of the testatrix, Anacleta Abellana, does not appear written under the will by said Abellana herself, or by Dr. Juan Abello. There is, therefore, a failure to comply with the express requirement in the law that the testator must himself sign the will, or that his name be affixed thereto by some other person in his presence and by his express direction.

It appearing that the above provision of the law has not been complied with, we are constrained to declare that the said will of the deceased Anacleta Abellana may not be admitted to probate.

Wherefore, the decision appealed from is hereby set aside and the petition for the probate of the will denied. With costs against petitioner.

Paras, C. J., Bengzon, Padilla, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, and Dizon, 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.