

TESTACY OF SIXTO LOPEZ. JOSE S. LOPEZ, PETITIONER AND APPELLEE, VS. AGUSTIN LIBORO, OPPOSITOR AND APPELLANT.*G.R. No. L-1787. August 27, 1948*

Ponente: TUASON, J.

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In the Court of First Instance of Batangas the appellant opposed unsuccessfully the probate of what purports to be the last will and testament (Exh. "A") of Don Sixto Lopez, who died at the age of 83 in Balayan, Batangas, on March 3, 1947, almost six months after the document in question was executed. In the court below, the present appellant specified five grounds for his opposition, to wits (1) that the deceased never executed the alleged will; (2) that his signature appearing in said will was a forgery; (3) that at the time of the execution of the will, he was wanting in testamentary as well as mental capacity due to advanced age; (4) that, if he did ever execute said will, it was not executed and attested as required by law, and one of the alleged instrumental witnesses was incapacitated to act as such; and it was procured by duress, influence of fear and threats and undue and improper pressure and influence on the part of the beneficiaries instituted therein, principally the testator's sister, Clemencia Lopez, and the herein proponent, Jose S. Lopez; and (5) that the signature of the testator was procured by fraud or trick.

In this instance only one of these objections is reiterated, formulated in these words: "That the court a quo erred in holding that the document Exhibit 'A' was executed in all particulars as required by law". To this objection is added the alleged error of the court "in allowing the petitioner to introduce evidence that Exhibit 'A' was written in a language known to the decedent after petitioner rested his case and over the vigorous objection of the oppositor."

The will in question comprises two pages, each of which is written on one side of a separate sheet. The first sheet is not paged either in letters or in Arabic numerals. This, the appellant believes, is a fatal defect.

The purpose of the law in prescribing the paging of wills is to guard against fraud, and to afford means of preventing the substitution or of detecting the loss of any of its pages. (*Abangan vs. Abangan*, 40 Phil. 476) In the present case, the omission to put a page number on the first sheet, if that be necessary, is supplied by other forms of identification more trustworthy than the conventional numeral words or characters. The unnumbered page' is clearly identified as the first page by the internal sense of its contents considered in relation to the contents of the second page. By their meaning and coherence, the first and second lines on the second page are undeniably a continuation of the last sentence of the testament, before the attestation clause, which starts at the bottom of the preceding page. Furthermore, the unnumbered page contains the caption "TESTAMENTO", the invocation of the Almighty, and a recital that the testator was in the full use of his testamentary faculty, all of which, in the logical order of sequence, precede the direction for the disposition of the maker's property. Again, as page two contains only the two lines above mentioned, the attestation clause, the mark of the testator and the signatures of the witnesses, the other sheet can not by any possibility be taken for other than page one. *Abangan vs. Abangan*, *supra*, and *Fernandez vs. Vergel de Dios*, 46 Phil., 922 are decisive of this issue.

Although not falling within the purview and scope of the first assignment of error, the matter of the credibility of the witnesses is assailed under this heading. On the merits we do not believe that the appellant's contention deserves serious consideration. Such contradictions in the testimony of the instrumental witnesses as are set out in the appellant's brief are incidents, not all of which every one of the witnesses can be supposed to have perceived, or to recall in the same order in which they occurred.

"Everyday life and the result of investigations made in the field of experimental psychology show that the contradictions of witnesses generally occur in the details of a certain incident, after a long series of questionings, and far from being an evidence of falsehood constitute a demonstration of good faith. Inasmuch as not all those who witness an incident are impressed in like manner, it is but natural that in relating their impressions they should not agree in the minor details; hence, the contradictions in their testimony." (People vs. Limbo, 49 Phil. 99.)

The testator affixed his thumbmark to the instrument instead of signing his name. The reason for this was that the testator was suffering from "partial paralysis". While another in testator's place might have directed someone else to sign for him, as appellant contends should have been done, there is nothing curious or suspicious in the fact that the testator chose the use of mark as the means of authenticating his will. It was a matter of taste or preference. Both ways are good. A statute requiring a will to be "signed" is satisfied if the signature is made by the testator's mark. (De Gala vs. Gonzales and Ona, 53 Phil. 108; 28 R. C. L., 117.)

With reference to the second assignment of error, we do not share the opinion that the trial court committed an abuse of discretion in allowing the appellant to offer evidence to prove knowledge of Spanish by the testator, the language in which the will is drawn, after the petitioner had rested his case and after the opponent had moved for dismissal of the petition on the ground of insufficiency of evidence. It is within the discretion of the court whether or not to admit further evidence after the party offering the evidence has rested, and this discretion will not be reviewed except where it has clearly been abused. (64 C. J., 160.) More, it is within the sound discretion of the court whether or not it will allow the case to be reopened for the further introduction of evidence after a motion or request for a nonsuit, or a demurrer to the evidence, and the case may be reopened after the court has announced its intention as to its ruling on the request, motion, or demurrer, or has granted it or has denied the same, or after the motion has been granted, if the order has not been written, or entered upon the minutes or signed. (64 C. J., 164.)

In this jurisdiction this rule has been followed. After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. (Siuliong & Co. vs. Ylagan, 43 Phil. 393; U. S. vs. Alviar, 36 Phil. 804.) So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. (I Moran's Comments on the Rules of Court, 2nd ed., 545; 64 C. J., 160-163.) The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight.

Although alien to the second assignment of error, the appellant impugns the will for its silence on the testator's understanding of the language used in the testament. There is no statutory requirement that such knowledge be expressly stated in the will itself. It is a matter that may be established by proof aliunde. This Court so impliedly ruled in Gonzales vs. Laurel, 46 Phil. 781, in which the probate of a will written in Tagalog was ordered although it did not say that the testator knew that idiom. In fact, there was not even extraneous proof on the subject other than the fact that the testator resided in a Tagalog region, from which the court said "a presumption arises that said

Maria Tapia knew the Tagalog dialect."

The order of the lower court ordering the probate of the last will and testament of Don Sixto Lopez is affirmed, costs.

Paras, Actg. C.J., Pablo, Perfecto, Bengzon, Briones, and Padilla, JJ., concur.

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