

TESTATE ESTATE OF CARLOS GIL, DECEASED. ISABEL HERREROS VDA. DE GIL, ADMINISTRATRIX AND APPELLEE, VS. PILAR GIL VDA. DE MURCTANO, OPPOSITOR AND APPELLANT.

G. R. No. L-3362. March 01, 1951

Ponente: JUGO, J.

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JUGO, J.:

The Court of First Instance of Manila admitted to probate the alleged will and testament of the deceased Carlos Gil. The oppositor Pilar Gil Vda. de Murciano appealed to this Court, raising only questions of law.

Her counsel assigns the two following alleged errors:

"Primer Error.—El Juzgado inferior erro al dejar de declarar que el alegado testamento de Carlos Gil no ha sido otorgado de acuerdo con la ley.

"Segundo Error.—Erro finalmente al legalizar el referido testamento."

The alleged will read as follows:

"Primera Pagina (1)

"EN EL NOMBRE DE DIOS, AMEN.

"Yo, Carlos Gil, de 66 anos de edad, residente de Porac, Pampanga, I. F., hallandome sano y en pleno goce de mis facultades intelectuales, libre y expontaneamente, sin violencia, coaccion, dolo o influencia ilegal de persona extrana, otorgo y ordeno este mi testamento y ultima voluntad en castellano, idioma que poseo y entiendo, de la manera siguiente:

"1. Declaro que durante mi matrimonio con mi esposa la hoy Isabel Herreros no tuvimos hijos;

"2. Declaro que tengo propiedades situadas en Manila y en la Provincia de Pampanga;

"3. Doy y adjudico a mi querida esposa Isabel Herreros todos mis bienes ya que muebles e inmuebles situados en Manila y en Pampanga, bajo la condicion de que cuando esta muera y si hayan bienes remanentes heredadas por ella de mi, que dichos bienes remanentes se adjudicaran a Don Carlos Worrel.

"4. Nombro como albacea de mis bienes despues de mi fallecimiento al Dr. Galicano Coronel a quien tengo absoluta confianza, con relevacion de fianza;

"En testimonio de todo lo cual, firmo este mi testamento y en el margen izquierdo de cada una de sus dos paginas utiles con la clausula de atestiguamiento en presencia de los testigos, quienes a su vez firmaron cada una de dichas paginas y la clausula de atestiguamiento en mi presencia cada uno de ellos con la de los demas, hoy en Porac, Pampanga, I. F., el dia 27 de Mayo de mil nove-cientos treinta y nueve.

"CARLOS GIL

"Testificacion:

"Segunda Pagina (2)

"Nosotros los que suscribimos, todos mayores de edad, certificamos: que el testamento que precede este escrito en la lengua castellana que conoce la testadora, compuesto de dos paginas utiles con la clausula de atestiguamiento paginadas correlativamente en letras y numeros en la parte superior de la casilla, asi como todas las hojas del mismo, en nuestra presencia y que cada uno de nosotros hemos atestiguado y firmado dicho documento y todas las hojas del mismo en presencia del testador y en la de cada uno de nosotros.

"(Fdo.) Alfredo T. Rivera

"(Fdo.) Ramon Mendiola

"(Fdo.) Mariano Omana"

Regarding the correctness and accuracy of the above-copied alleged will, the court below said:

"* * * The only copy available is a printed form contained in the record appeal in case G. R. No. L-254, entitled 'Testate Estate of Carlos Gil; Isabel Herreros Vda. de Gil, petitioner and appellant vs. Roberto Toledo y Gil, oppositor and appellee.' Both parties are agreed that this is a true and correct copy of the will." (P. 10, Record on Appeal).

The appeal being only on questions of law the above finding of the court below cannot be disputed. The conclusions of law reached by said court are based on it. Moreover, the finding is correctly based on the evidence of record. The parties agreed that said copy is true and correct. If it were otherwise, they would not have so agreed, considering that the defect is of an essential character and is fatal to the validity of the attestation clause.

It will be noted that the attestation clause above quoted does not state that the alleged testator signed the will. It declares only that it was signed by the witnesses. This is a fatal defect, for the precise purpose of the attestation clause is to certify that the testator signed the will, this being the most essential element of the clause. Without it there is no attestation at all. It is said that the court may correct a mere clerical error. This is too much of a clerical error for it affects the very essence of the clause. Alleged errors may be overlooked or corrected only in matters of form which do not affect the substance of the statement.

It is claimed that the correction may be made by inference. If we cure a deficiency by means of inferences, when are we going to stop making inferences to supply fatal deficiencies in wills? Where are we to draw the line? Following that procedure we would be making interpolations by inferences, implications, and even by internal circumstantial evidence. This would be done in the face of the clear, unequivocal, language of the statute as to how the attestation clause should be made. It is to be supposed that the drafter of the alleged will read the clear words of the statute when he prepared it. For the court to supply alleged deficiencies would be against the evident policy of the law. Section 618 of Act No. 190, before it was amended, contained the following provision:

"* * * 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."

However, Act No. 2645 of the Philippine Legislature, passed on July 1, 1916, besides increasing the contents of the attestation clause, entirely suppressed the above-quoted provision. This would show that the purpose of the amending act was to surround the execution of a will with greater guarantees and solemnities. Could we, in view of this, hold that the court can cure alleged deficiencies by inferences, implications, and internal circumstantial evidence? Even in ordinary cases the law requires certain requisites for the conclusiveness of circumstantial evidence.

It is contended that the deficiency in the attestation clause is cured by the last paragraph of the body of the alleged will, which we have quoted above. At first glance, it is queer that the alleged testator should have made an attestation clause, which is the function of the witnesses. But the important point is that he attests or certifies his own signature, or, to be more accurate, his signature certifies itself. It is evident that one cannot certify his own signature, for it does not increase the evidence of its authenticity. It would be like lifting one's self by his own bootstraps. Consequently, the last paragraph of the will cannot cure in any way the fatal defect of the attestation clause of the witnesses. Adding a zero to an insufficient amount does not make it sufficient.

It is said that the rules of statutory construction are applicable to documents and wills. This is true, but said rules apply to the body of the will, containing the testamentary provisions, but not to the attestation clause, which must be so clear that it should not require any construction.

The parties have cited pro and con several decisions of the Supreme Court, some of which are said to be rather strict and others liberal, in the interpretation of section 618 of Act No. 190, as amended by Act No. 2645.

In the case of *Gumban vs. Gorecho* (50 Phil., 30, 31), the court had the following to say:

"1. WILLS; ALLOWANCE OR DISALLOWANCE; SECTIONS 618 and 634 of the Code of Civil Procedure Construed.—The right to dispose of property by will is governed entirely by statute. The law is here found in section 618 of the Code of Civil Procedure, as amended by Act No. 2645, and in section 634 of the same Code, as unamended. The law not alone carefully makes use of the imperative, but cautiously goes further and makes use of the negative, to enforce legislative intention.

"2. ID.; ID.; ID.; ATTESTATION.—The Philippine authorities relating to the attestation clause to wills reviewed. The cases of *Safio vs. Quintana* ([1925], 48 Phil., 506), and *Nayve vs. Mojal and Aguilar* ([1924], 47 Phil., 152), particularly compared. The decision in *In re Will of Quintana*, supra, adopted and reaffirmed. The decision in *Nayve vs. Mojal and Aguilar*, supra, modified.

"3. ID.; ID.; ID.; ID.—The portion of section 618 of the Code of Civil Procedure, as amended, which provides that "The attestation clause shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other" applied and enforced.

"4. ID.; ID.; ID.; ID.—An attestation clause which does not recite that the witnesses signed the will and each and every page thereof on the left margin in the presence of the testator is defective, and such a defect annuls the will. (*Safio vs. Quintana*, supra.)"

In the subsequent case of *Quinto vs. Morata* (54 Phil., 481, 482), Judge Manuel V. Moran, now Chief Justice of the Supreme Court, in his decision made the following pronouncement:

"* * * En la clausula de atestiguamiento del testamento en cuesti6n, se hace constar que los testadores firmaron el testamento en presencia de los tres testigos instrumental y que estos firmaron el testamento los unos en presencia de los otros, pero no se hace constar que dichos testigos firmaron el testamento en presencia de los testadores, ni que estos y aquellos firmaron todas y cada una de las paginas del testamento los primeros en presencia de los segundos y vice-versa.

"En su virtud, se deniega la solicitud en la que se pide la legalizacion del alegado testamento Exhibit A de Gregorio Pueblo y Carmen Quinto, y se declara que Gregorio Pueblo murio intestado."

The Supreme Court fully affirmed the decision, laying down the following doctrine:

"1. WILLS; ATTESTATION CLAUSE; EVIDENCE TO SUPPLY DEFECTS OF.— The attestation clause

must be made in strict conformity with the requirements of section 618 of Act No. 190, as amended. Where said clause fails to show on its face a full compliance with those requirements, the defect constitutes sufficient ground for the disallowance of the will. (Sano vs. Quintana, 48 Phil., 506; Gumban vs. Gorecho, 50 Phil., 30). Evidence aliunde should not be admitted to establish facts not appearing on the attestation clause, and where said evidence has been admitted it should not be given the effect intended. (Uy Coque vs. Navas L. Sioca, 43 Phil., 405, 409.)

"2.ID.; ID.; INTERPRETATION, OF SECTION 618 OF ACT NO. 190, AS AMENDED.—Section 618 of Act No. 190, as amended, should be given a strict interpretation in order to give effect to the intention of the Legislature. Statutes prescribing formalities to be observed in the execution of wills are very strictly construed. Courts cannot supply the defective execution of will. (40 Cyc, p. 1079; Uy Coque vs. Navas L. Sioca, supra.)

It is true that in subsequent decisions, the court has somewhat relaxed the doctrine of the Gumban vs. Gorecho case, supra, but not to the extent of validating an attestation clause similar to that involved herein.

In the case of Aldaba vs. Roque (43 Phil., 378), the testatrix signed the attestation clause which was complete, and it was also signed by the two attesting witnesses. For this reason, the court said:

"In reality, it appears that it is the testatrix who makes the declaration about the points contained in the above described paragraph; however, as the witnesses, together with the testatrix, have signed the said declaration, we are of the opinion and so hold that the words above quoted of the testament constitute a sufficient compliance with the requirements of section 1 of Act No. 2645 which provides that: * * *" (p. 381, supra.)

The attestation clause involved herein is very different. In the case of Dichoso de Ticson vs. De Gorostiza (57 Phil., 437), it was held that:

"An attestation clause to a will, copied from a form book and reading: 'We, the undersigned attesting witnesses, whose residences are stated opposite our respective names, do hereby certify that the testatrix, whose name is signed hereinabove, has publish unto us the foregoing will consisting of two pages as her Last Will and Testament, and has signed the same in our presence, and in witness whereof we have each signed the same and each page thereof in the presence of said testatrix and in the presence of each other,' held not to be fatally defective and to conform to the law."

This is very different from the attestation clause in the case at bar.

In the case of Grey vs. Fabie[*] (40 Off. Gaz., 1st Supplement, 196, No. 3, May 23, 1939), the will was objected to on the ground that, although the attestation clause stated that "each of the pages of which the said will is composed" was signed by the testatrix at the left margin and at the foot of the fifth page, it did not state that the signature was made in the presence of the witnesses. It was held, however, that said deficiency was cured by the phrase "as well as by each of us in the presence of the testatrix." The words "as well as" indicate that the testatrix signed also in the presence of the witnesses, for the phrase "as well as" in this case is equivalent to "also." The language is clear and, unlike the attestation clause in the present case, does not necessitate any correction. In the body of the will the testatrix stated that she signed in the presence of each and all of the three witnesses. This was considered as a corroboration, but it was unnecessary.

In the case of Leynez vs. Leynez (40 Off. Gaz., 3rd Supplement, 51, 52, No. 7, October 18, 1939; 68 Phil., 745), the attestation clause reads as follows:

"Suscrito y declarado por el testador Valerio Leynez, como su ultima voluntad y testamento en presencia de todos y cada uno de nosotros, y a ruego de dicho testador, firmamos el presente cada uno en presencia de los otros, o de los demas y de la del mismo testador, Valerio Leynez. El testamento consta de dos (2) paginas sola-mente."

The objection was that the attestation clause did not state that the testator and the witnesses signed each and every page of the will. This fact, however, appears in the will itself. It is clear, therefore, that in that case the will complied with all the requisites for its due execution. In the instant case, essential words were omitted.

In the case of *Alcala vs. De Villa* [1] (40 Off. Gaz., 14th Supplement, 131, 134-135, No. 23, April 18, 1939), the attestation clause reads as follows:

"Hacemos constar que en la fecha y pueblo arriba mencionados otorgo el Sr. Emiliano Alcala su ultima voluntad o testamento com-puesto de cuatro paginas incluida ya esta clausula de atestigua-miento. Que estabamos presentes en el momento de leer y ratificar el que el testamento arriba mencionado es su ultima voluntad o testamento compuesto de cuatro paginas en papel de maquinilla. Que igualmente estabamos presentes cuando el firmo este documento al pie del mismo y en el margen izquierdo de cada pagina del testador tambien en presencia suya y de cada uno da nosotros en cada pagina y en el margen izquierdo de esta escritura o testamento. En su testimonio firmamos abajo en presencia del testador y de cada uno de nosotros."

The above attestation clause is substantially perfect. The only clerical error is that it says "testador" instead of "testamento" in the phrase "cada pagina del testador." The word "tambien" renders unnecessary the use of the verb "firmamos."

In the case of *Mendoza vs. Pilapil* [2] (40 Off. Gaz., 1855, No. 9, June 27, 1941), the attestation clause did not state the number of pages of the will. However, it was held that this deficiency was cured by the will itself, which stated that it consisted of three pages and in fact it had three pages.

In the case of *Rallos vs. Rallos* (44 Off. Gaz., 4938, 4940, No. 12, October 23, 1947), decided by the Court of Appeals, the attestation clause (translated in Spanish) reads as follows:

"Nosotros, los testigos, certificamos que este que hemo3 firmado es el testamento y ultima voluntad, que se ha redactado en cuatro paginas, de Numeriano Eallos, quien despues de leer y de leerle el mencionado testamento, y despues de que ella dio su conformidad, firtno y marco con su dedo pulgar derecho en nuestra presencia y en presencia de cada uno de nosotros, que asimismo cada uno de nosotros, loa testigos, firmamos en presencia de la testadora y en presencia de cada uno de nosotros."

It will be noticed that the only thing omitted is the statement as to the signing of the testatrix and the witnesses of each and every page of the will, but the omission is cured by the fact that, their signatures appear on every page. This attestation clause is different from that involved in the present case.

There is no reason why wills should not be executed by complying substantially with the clear requisites of the law, leaving it to the courts to supply essential elements. The right to dispose of property by will is not natural but statutory, and statutory requirements should be satisfied.

"The right to make a testamentary disposition of one's property is purely of statutory creation, and is available only upon a compliance with the requirements of the statute. The formalities which the Legislature has prescribed for the execution of a will are essential to its validity, and cannot be disregarded. The mode so prescribed is the measure for the exercise of the right, and the heir can be deprived of his inheritance only by a compliance with this mode. For the purpose of determining whether a will has been properly executed, the intention of the testator in executing it is entitled to no consideration. For that purpose only the intention of the Legislature, as expressed in the language of the statute, can be considered by the court, and whether the will as presented, shows a compliance with the statute." *Estate of Walker*, 110 Cal., 387, 42 Pac, 815, 30 L.R.A., 460, 52 Am. St. Rep. 104. In re *Seaman's Estate*, 80 Pac, 700, 701.)

"In interpreting the legislature's thought, courts have rigidly opposed any exception tending to weaken the basic principle underlying the law, the chief purpose of which is to see that the testator's wishes are observed.

It is possible, in some or many cases, a decedent may have thought he had made a will, but the statute says he had not. The question is not one of his intention, but of what he actually did, or * * * failed to do * * *. It may happen* * * that * * * wills * * * truly expressing the intentions of the testators are made without observations of the required forms; and whenever that happens, the genuine intention is frustrated. * * * The legislature * * * has thought of it best and has therefore determined, to run the risk of frustrating (that intention, * * * in preference to the risk of giving effect to or facilitating the formation of spurious wills, by the absence of forms. * * * The evil of defeating the intention * * * is less than the evil probably to arise by giving validity to wills made without any form, * * * or, in derogation of testator's wishes, fraudulently imposing spurious wills on his estate. *Churchill's Estate*, 260 Pac. 94, 101, 103 Atl. 533.

"It has always been the policy of this court to sustain a will if it is legally possible to do so, but we cannot break down the legislative barriers protecting a man's property after death, even if a situation may be presented apparently meritorious." (*In Re: Maginn*, 30 A.L.R., pp. 419, 420.)

In view of the foregoing, the decision appealed from is reversed, denying the probate of the alleged will and declaring intestate the estate of the deceased Carlos Gil. With costs against the appellee. It is so ordered.

Moran, C. J., Pablo, Bengzon, Padilla and Reyes, JJ., concur.

[*] 68 Phil., 128.

[1] 71 Phil., 561.

[2] 72 Phil., 546.

DISSENTING

TUASON, J.,

The decision takes for granted that the will was written just as it was copied in the stipulation of facts by the parties. But counsel for appellee makes the correctness of the copy an issue thereby raising the question of not whether the burnt will possessed the statutory requirements but whether the copy is erroneous. Since this is a chief feature on which the appellee's case is built; since, in fact, the objection to the form of the attestation clause, with which the decision wholly deals, would disappear if the appellee's contention were well founded, it is proper that in this dissenting opinion we should accord the matter at least a passing notice.

It may be stated as background that the original of the will was filed in the Court of First Instance of Manila in 1943; that in 1945, before the will came up for probate, it was destroyed by fire or looters; that in the probate proceeding after liberation, the parties submitted an agreed statement of facts in which the will was reproduced as copied in the record on appeal in another case docketed in this court on appeal as G. R. No. L-254 and decided on April 30, 1948. It further appears from the record of that case and from the decision of this court that the controversy there concerned the right of a nephew of the testator to impugn the will, it being alleged that he was not a legal heir and had no interest in the probate.

As transcribed in the majority decision, it will be seen that the attestation clause is truncated and meaningless. The last of the compound sentence is incomplete, lacking an adjective phrase. Counsel for appellee contends that the phrase "ha sido firmado por el testador" or equivalent expression between the words "del mismo" and the words "en nuestra presencia" should be inserted if the sentence is to be complete and have sense. The attestation clause with the inclusion of the omitted phrase, which we italicize should read thus:

"Nosotros, los que suscribimos, todos mayores de edad, certifica-mos que el testamento que precede escrito en la lengua castellana que conoce la testadora, compuesto de las paginas utiles con la clausula de atestiguamiento paginadas correlativamente en letras y nimeros en la parte superior de la casilla, asi como todas las hojas del mismo (Ha sido firmado por el testador) en nuestra pre-sencia y que cada uno de nosotros hemos atestiguado y firmado dicho documento y todas las hojas del mismo en presencia del testador y en la de cada uno de nosotros."

It seems obvious that the missing phrase was inadvertently left out. The probabilities of error in the copy are enhanced by the fact that the form of the will was not in controversy. The form of the will being immaterial, it is easily conceivable that little or no care was employed in the copying thereof in the pleading or record on appeal above mentioned. The absence of the signature of the testator on the first page of the copy is an additional proof that little or no pain was taken to insure accuracy in the transcription. The appearance of "la testadora" in the copy instead of "el testador" is another..

Quite aside from all this, the testator was presumed to know the law, as the decision says. Certainly, Attorney Mariano Omana, who drafted the whole instrument and signed it as an attesting witness, knew the law and, by the context of the whole instrument, has shown familiarity with the rules of grammar and ability to express his idea properly.

Read in the light of these circumstances—without mentioning the evidence on record, not objected to, that the testator signed the will in the presence of the attesting witnesses—so important an omission as to make the sentence senseless—granting such omission existed in the original document—could not have been intentional or due to ignorance. The most that can be said is that the flaw was due to a clerical mistake, inadvertence, or oversight.

There is insinuation that the appellee in agreeing that the will read as it was "reproduced in the Record on Appeal" above mentioned is bound by the agreement. This is not an absolute rule. The binding effect of a stipulation on the parties does not go to the extent of barring them or either of them from impeaching it on the score of clerical error or clear mistake. That there was such mistake, is indubitable. It is noteworthy that the opponent and appellant herself appears not to have noticed any defect in the attestation clause as copied in the stipulation. It would seem that in the court below she confined her attack on the will to the alleged failure of the testator to sign the iirst page. We say this because it was only the alleged un-signing of the first page of the document which the trial court in the appealed decision discussed and ruled upon. There is not the slightest reference in the decision, direct or implied, to any flaw in the attestation clause—which is by far more important than the alleged absence of the testator's signature on the first page.

As stated, the problem posed by the omission in question is governed, not by the law of wills which requires certain formalities to be observed in the execution, but by the rules of construction applicable to statutes and documents in general. And this rule would obtain even if the omission had occurred in the original document and not in the copy alone. In either case, the court may and should correct the error by supplying the omitted word or words.

In Testamentaria del finado Emjlio Alcala, a similar situation arose and the Court said:

"Es evidente que leyendo la clausula de atestiguacion se nota a simple vista que en su redaction se ha incurrido en omisiones que la razon y el sentido comun pueden suplirlas sin alterar ni tergiversar la intencion tanto del testador como la de los tres testigos que intervinieron en el otorgamiento de la misma. Teniendo en cuenta la fraseologia de la segunda parte de la clausula se observara que las omisiones, aunque son substanciales, consisten en meros errores gramaticales que los tribunales, en el ejercicio de su discretion y en la aplicacion de las reglas de interpretation de documentos, pueden subsanarlos para dar efectividad a la intencion y hacer que

el conjunto de los terminos de la clausula de atestacion surtan sus efectos.

"La interpretation que se acaba de dar a la clausula de atestacion y la correction de los errores gramaticales de que la misma adolece, incluyendo la insertion del verbo 'firmamos' que se omitio involuntariamente, esta de acuerdo con las reglas fundamentales de interpretation de documentos segun las cuales se debe hacer prevalecer siempre la intencion del que haya redactado el instrumento (art. 288, Cod. de Proc. Civ.; Pecson contra Coronel, 45 Jur. Fil., 224; 28 R.C.L., sec. 187, pags. 225, 226.)"

"La solution que se acaba de dar al asunto es la que se halla mas conforme con la justicia en vista de que no se ha presentado prueba alguna que insinue siquiera que en el otorgamiento del testamento se ha cometido dolo o fraude con el animo de perjudicar a cualquiera. (Testamentaria de Emiano Alcala, 40 G. O., 14." Suplemento, No. 23, pags. 131, 132.)"

From 69 C. J., 82, 83, we quote: "Words omitted from a will may be supplied by the court whenever necessary to effectuate the testator's intention as expressed in the will; but not where the effect of inserting the words in the will would alter or defeat such intention, or change the meaning of words that are clear and unequivocal." On pages 50, 51, the same work says: "To aid the court in ascertaining and giving effect to the testator's intention in the case of an ambiguous will, certain rules have been established for guidance in the construction or interpretation to be placed upon such a will, and in general a will should be construed according to these established rules of construction." Speaking of construction of statutes which, as has been said, is applicable to construction of documents, the same work, in Vol. 59, p. 992, says: "Where it appears from the context that certain words have been inadvertently omitted from a statute, the court may supply such words as are necessary to complete the sense, and to express the legislative intent.

Adding force to the above principle is the legal presumption that the will is in accordance with law. (2 Page on Wills, 840, 841; 57 Am. Jur., 720.)

Let us assume, for the purpose of this decision only, that the attestation clause was drawn as the draftsman intended, that the mistake in language in said clause was not inadvertent, and consider the case on the premise from which the court has approached it; is the decision well grounded, at least in the light of this court's previous decisions ?

At the outset, it should be pointed out that as early as 1922 a similar case, in which the validity of the will was sustained, found its way into this court. (Aldaba vs. Roque, 43 Phil., 378). That case was more than foursquare behind the case at bar. There the departure from the statutory formality was more radical, in that the testator took charge of writing the entire attestation clause in the body of the will, the witnesses limiting their role to signing the document below the testator's signature. Here, at most, the testator took away from the witness only a small part of their assigned task, leaving them to perform the rest.

Referring to "the lack of attestation clause required by law," this court, in a unanimous decision in *Bane*, through Mr. Justice Villamor said (syllabus) "When the attestation clause is signed by the witnesses to the instruments besides the testator, such attestation clause is valid and constitutes a substantial compliance with the provisions of section 1 of Act No. 2645, even though the facts recited in said attestation appear to have been made by the testator himself."

That was good doctrine when it was announced. We think it is good law still. That ruling should set the present case at rest unless the court wants to discard it. On the possibility that this is the intention, we will dwell on the subject further.

This Court noted in *Dichoso de Ticson vs. De Gorostiza*, (1922), 57 Phil., 437, "that there have been noticeable in the Philippines two divergent tendencies in the law of wills—the one being planted on strict construction and the

other on liberal construction. A late example of the former views may be found in the decision in *Rodriguez vs. Alcala* (1930), 55 Phil., 150, sanctioning a literal enforcement of the law. The basic case in the other direction, predicated on reason, is *Abangan vs. Abangan* (1919), 40 Phil., 476, oft-cited approvingly in later decisions." In the *Abangan* case, unanimous court, speaking through Mr. Justice Avanceña, later Chief Justice, observed: "The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded."

Subsequent decisions which followed and adopted the *Abangan* principle were numerous: *Avera vs. Garcia* (1921), 42 Phil., 145; *Aldaba vs. Roque* (1922), 43 Phil., 378; *Unson vs. Abella* (1922), 43 Phil., 494; *Pecson vs. Coronel* (1923), 45 Phil., 216; *Fernandez vs. Vergel de Dios* (1924), 46 Phil., 922; *Nayve vs. Mojal* (1924), 47 Phil., 152; *De Gala vs. Gonzales* (1929), 53 Phil., 104; *Rey vs. Cartagena* (1931), 56 Phil., 282; *Ticson vs. Gorostiza* (1932), 57 Phil., 437; *Testamentaria de M. Ozoa* (1933), 57 J. F., 1007; *Sebastian vs. Panganiban* (1934), 59 Phil., 653; *Rodriguez vs. Yap* (1939)[1], 40 Off. Gaz., 1st Suppl. No. 3, p. 194; *Grey vs. Fabie* (1939)[2], 40 Off. Gaz., 1st Suppl. No. 3, p. 196; *Leynez vs. Leynez* (1939)[3], 40 Off. Gaz., 3rd Suppl. No. 7, p. 51; *Martir vs. Martir* (1940)[4], 40 Off. Gaz., 7th Suppl. No. 11, p. 215; *Sabado vs. Fernandez* (1941)[5], 40 Off. Gaz., 1844; *Mendoza vs. Pilapil* (1941)[6], 40 Off. Gaz., 1855; *Alcala vs. De Villa* (1941)[7], 40 Off. Gaz., 14th Suppl. No. 23, p. 131; and *Lopez vs. Liboro* (1948)[8], 46 Off. Gaz., Suppl. No. 1, p. 211.

The majority decision says, and we quote: "If we cure a deficiency by means of inferences, when are we going to stop making inferences to supply fatal deficiencies in wills? Where are we to draw the line?" These same questions might well have been asked in the cases above cited by the opponents of the new trends. But the so-called liberal rule does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The decisions we have cited to tell us when and where to stop; the dividing line is drawn with precision. They say "Halt" when and where evidence aliunde to fill a void in any part of the document is attempted. They only permit a probe, an exploration within the confines of the will, to ascertain its meaning and to determine the existence or absence of the formalities of law. They do not allow the courts to go outside the will or to admit extrinsic evidence to supply missing details that should appear in the will itself. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results.

The case at hand comes within the bounds thus denned. If the witnesses here purposely omitted or forgot to say that the testator signed the will in their presence, the testator said that he did and the witnesses by their signatures in the will itself said it was so. No extraneous proof was necessary and none was introduced or taken into consideration.

To regard the letter rather than the spirit of the will and of the law behind it was the thing that led to unfortunate consequences. It was the realization of the injustice of the old way that impelled this court, so we believe, to forsake the antiquated, outworn worship of form in preference to substance. It has been said, and experience has shown, that the mechanical system of construction has operated more to defeat honest wills than prevent fraudulent ones. That, it must be conceded, is the effect in this case of this court's rejection of the will under consideration. For the adverse party concedes the genuineness of the document. At least, the genuineness is superobvious, and there is not the slightest insinuation of undue pressure, mental incapacity of the testator or fraud.

It is said that for the testator to certify that he signed the will in the witnesses' presence "would be like lifting one's self by his own bootstraps." The simile, we say with due respect, does not look to us quite well placed. Under physical law a man cannot raise his body from the ground by his own bare hands without the aid of some mechanical appliance, at least not for more than a flitting moment. But there is no impossibility or impropriety in one attesting to his own act unless forbidden by rules of positive law. The rationale of our dissent is that he is not. If we were to make a metaphorical comparison, it would be more appropriate to say that a man can and generally does himself pull the bootstraps to put the boots on.

Coming to execution of wills, we see no legitimate practical reason for objecting to the testator instead of the witnesses certifying that he signed the will in the presence of the latter. The will is the testator's, and the intervention of attesting witnesses is designed merely to protect the testator's and not anybody else's interest.

If the sole purpose of the statute is to make it certain that the testator has definite and complete intention to pass his property, and to prevent, as far as possible, any chance of substituting one instrument for another (1 Page on Wills, 481), what better guaranty of the genuineness of the will can there be than a certification by the testator himself in the body of the will so long as the testator's signature is duly authenticated? Witnesses may sabotage the will by muddling it or the attestation clause. For the testator, who is desirous of making a valid will, to do so would be a contradiction. If the formalities are only a means to an end and not the end themselves, and that end is achieved by another method slightly different from the prescribed manner, what has been done by the testator and the witnesses in the execution of the instant will should satisfy both law and conscience. The chief requirements of statute are writing, signature by the testator, and attestation and signature of three witnesses. Whether the courts profess to follow the harsher rule, or whether to follow the milder rule, they agree on one thing—that as long as the testator performs each of those acts the courts should require no more. (1 Page on Wills, 481, 483, 484.) Paras, Feria, Montemayor and Bautista Angelo, JJ. concur.

[1] 68 Phil., 126.

[2] 68 Phil., 128.

[3] 68 Phil., 745.

[4] 70 Phil., 89.

[5] 72 Phil., 531.

[6] 72 Phil., 546.

[7] 71 Phil., 561.

[8] 81 Phil., 429.

RESOLUTION

March 20, 1953

TUASON, J.:

This appeal is before us on a motion for reconsideration of this court's decision. Whereas formerly six Justices voted for reversal and five for affirmance of the probate court's order admitting the will to probate, the vote upon reconsideration was six for affirmance and five for reversal, thereby making the dissenting opinion, which had

been filed, the prevailing rule of the case. Under the circumstances, this resolution will largely be confined to a restatement of that dissenting opinion.

The will in question was presented for probate in the Court of First Instance of Manila in 1943 with Roberto Toledo y Gil, decedent's nephew, and Pilar Gil Vda. de Murciano, decedent's sister opposing the application, Toledo's legal right to intervene was questioned by the proponent of the will, and the objection was sustained in an order which was affirmed by this court in G. R. No. L-254. As a result of the latter decision, Toledo was eliminated from the case and did not appear when the trial was resumed.

The proceeding seems to have been held in abeyance pending final disposition of Toledo's appeal, and early in 1945, before the application was heard on the merit, the record, along with the will, was destroyed, necessitating its reconstitution after liberation. In the reconstitution, a stipulation of facts was submitted in which, according to the appealed order, "both parties * * * agreed that the will as transcribed in the record on appeal in Case G. R. No. L-254 is true and a correct copy."

The will consisted of only two pages, and the attestation clause as thus copied reads:

"NOSOTROS los que suscribimos, todos mayores de edad, certificamos: que el testamento que precede escrito en la lengua castellana que conoce la testador, compuesto de dos paginas utiles con la clausula de atestiguamiento paginadas correlativamente en letras y numeros en la parte superior de la casilla, asi como todas las hojas del mismo, en nuestra presencia y que cada uno de nosotros hemos atestiguado y firmado dicho documento y todas las hojas del mismo en presencia del testador y en la de cada uno de nosotros.

"(Fdo.) ALFREDO RIVERA

"(Fdo.) RAMON MENDIOLA

"(Fdo.) MARIANO OMANA"

It will be noted from the above copy that the last of the compound sentence is truncated and meaningless. This defect is the main basis of the appellant's sole assignment of error.

Counsel for appellee contend that the phrase "han sido firmadas por el testador" or equivalent expression between the words "del mismo" and the words "en nuestra presencia" should be inserted if the attestation clause is to be complete and have sense. With this insertion the attestation clause would read " * * *, asi como todas las hojas del mismo han sido firmadas por el testador en nuestra presencia * * * " The point is well taken.

It seems obvious that the missing phrase was left out from the copy. The probabilities of error in the copy are enhanced by the fact that the form of the will was not in controversy in Toledo's appeal. The form of the will being immaterial, it is easily conceivable that little or no care was employed in transcribing the document in the agreement or record on appeal. The absence of the signature of the testator on the first page of the copy is an additional proof that little or no pain was taken to insure accuracy in the transcription. The appearance of "la testadora" in the copy instead of "el testador" is another indication of haste and carelessness in the transcription.

Quite aside from all this, the testator was presumed to know the law, as the trial court says. Certainly, Attorney Mariano Omana, who drew the instrument and signed it as an attesting witness, knew the law and, by the context thereof, has shown familiarity with the rules of grammar and ability to express his idea properly. In the light of these circumstances and of the further fact that the clause was brief and, by its importance, must have been written with utmost concern, so important an omission as to make the clause or sentence senseless could not have been made, intentionally or otherwise, in the original.

There is insinuation that the appellee in agreeing that the will read as it was "reproduced in the Record on Appeal"

is bound by the agreement. This is not an absolute rule. The binding effect of a stipulation on the parties does not go to the extent of barring either of them from impeaching it on the score of clerical error or clear mistake. The mistake just pointed out clearly brings the case within the exceptions to the rule. The able counsel for the proponent of the will could not possibly have subscribed to the agreement if they had noticed the incomplete sentence in the copy without making an objection or reservation.

The problem posed by the omission in question is governed, not by the law of wills which requires certain formalities to be fulfilled in the execution, but by the rules of construction applicable to statutes and documents in general. And this rule would obtain whether the omission occurred in the original document or in the copy alone. In either case, the court may and should correct the error by supplying the omitted word or words.

In Testamentaria del finado Emiliano Alcala, a similar situation arose and the court said:

"Es evidente que leyendo la clausula de atestiguaci6n se nota a simple vista que en su redaccion se ha incurrido en omisiones que la razon y el sentido comun pueden suplirlas sin alterar ni tergiver-sar la intention tanto del testador como la de los tres testigos que intervehieron en el otorgamiento de la misma. Teniendo en cuenta la fraseologia de la segunda parte de la clausula se observara que las omisiones, aunque son substanciales, consisten en meros errores gramaticales que los tribunales, en el ejercicio de su discrecion y en la aplicacion de las reglas de interpretation de documentos, pueden subsanarlos para dar efectividad a la intention y hacer que el con-junto de los terminos de la clausula de atestacion surtan sus efectos."

"La interpretacion que se acaba de dar a la clausula de atestacion y la correction de los errores gramaticales de que la misma adolece, incluyendo la insertion del verbo 'firmamos' que se omitio involuntariamente, esta de acuerdo con las reglas fundamentales de interpretacion de documentos segun las cuales se debe hacer prevalecer siempre la intention del que haya redactado el instrumento (art. 286, Cod. de Proc. Civil; Pecson contra Coronel, 45 Jur. Fil., 224; 28 R. C. L., sec. 187, pags. 225, 226)."

"La solucion que se acaba de dar al asunto es la que se halla mas conforme con la justicia en vista de que no se ha presentado prueba alguna que insinue siquiera que en el otorgamiento del testamento se ha cometido dolo o fraude con el animo de perjudicar a cualquiera. Testamentaria de Emiliano Alcala, 40 Gac. Of., 14.o Suplemento, No. 23, pags. 131, 132.)"

From 69 C. J. 82, 83, we quote: "Words omitted from a will may be supplied by the court whenever necessary to effectuate the testator's intention as expressed in the will; but not where the effect of inserting the words in the will would alter or defeat such intention, or change the meaning of words that are clear and unequivocal." On pages 50 and 51, the same work says: "To aid the court in ascertaining and giving effect to the testator's intention in the case of an ambiguous will, certain rules have been established for guidance in the construction or interpretation to be placed upon such a will, and in general a will should be construed according to these established rules of construction." And referring to construction of statutes which, as has been said, is applicable to construction of documents, C. J. S., in Vol. 59, p. 992, tells us that "Where it appears from the context that certain words have been inadvertently omitted from a statute, the court may supply such words as are necessary to complete the sense, and to express the legislative intent."

Adding force to the above principle is the legal presumption that the will is in accordance with law. (2 Page on Wills 840, 841; 57 Am. Jur., 720.)

But let it be assumed, for the sake of this decision only, that the attestation clause was drawn exactly as it was copied in Toledo's record on appeal, was the mistake fatal? Was it, or was it not, cured by the testator's own declaration? to wit: "En testimonio de lo cual, firmo este mi testamento y en el margen izquierdo de cada una de sus dos paginas utiles con la clausula de atestiguamiento en pre-sencia de los testigos, quienes a su vez firmaron cada una de dichas paginas y la clausula de atestiguamiento en mi presencia cada uno de ellos con la de los

demas, hoy en Porac, Pampanga, I. F., el dia 27 de marzo de mil nove-cientos treinta y nueve." The answer is in the negative.

As early as 1922 a similar case, in which the validity of the will was sustained, found its way into this court. See *Aldaba vs. Roque*, 43 Phil., 378. That case was more than foursquare behind the case at bar. There the departure from the statutory formality was more radical, in that the testator took charge of writing the entire attestation clause in the body of the will, the witnesses limiting their role to signing the document below the testator's signature. Here, at the most, the testator took away from the witnesses only a small part of their assigned task, leaving to them the rest.

Referring to "the lack of attestation clause required by law," this court, in a unanimous decision in *bane*, through Mr. Justice Villamor said in the *Aldaba-Roque* case (syllabus) :

"When the attestation clause is signed by the witnesses to the instruments, besides the testator, such attestation clause is valid and constitutes a substantial compliance with the provisions of section 1 of Act No. 2645, even though the facts recited in said attestation clause appear to have been made by the testator himself"

That ruling should set the present case at rest unless we want to revert to the old, expressly abandoned doctrine, in a long line of what we believe to be better-considered decisions.

This court noted in *Dichoso de Ticson vs. De Gorostiza* (1922), 57 Phil., 437, "that there have been noticeable in the Philippines two divergent tendencies in the law of wills—the one being planted on strict construction and the other on liberal construction. A late example of the former views may be found in the decision in *Rodriguez vs. Alcala* (1930), 55 Phil., 150, sanctioning a literal enforcement of the law. The basic rule in the other direction, predicated on reason, is *Abangan vs. Abangan* (1919), 40 Phil., 476, oft-cited approvingly in later decisions."

In the *Abangan* case, a unanimous court, speaking through Mr. Justice Avancena, later Chief Justice, observed:

"The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will. So when an interpretation already given assures such ends, any other interpretation whatsoever, that adds nothing but demands more requisites entirely unnecessary, useless and frustrative of the testator's last will, must be disregarded."

Subsequent decisions which followed and adopted the *Abangan* principle were: *Avera vs. Garcia* (1921), 42 Phil., 145; *Aldaba vs. Roque* (1922), 43 Phil., 378; *Unson vs. Abella* (1922), 43 Phil., 494; *Pecson vs. Coronel* (1923), 45 Phil., 216; *Fernandez vs. Verge! de Dios* (1924), 46 Phil., 922; *Nayve vs. Mojal* (1924), 47 Phil., 152; *De Gala vs. Gonzales* (1929), 53 Phil., 104; *Rey vs. Cartagena* (1931), 56 Phil., 282; *Ticson vs. Gorostiza* (1932), 57 Phil., 437; *Testamentaria de N. Ozoa* (1933), 57 J. F., 1007; *Sebastian vs. Pailiganiban* (1934), 59 Phil., 653; *Rodriguez vs. Yap* (1939), 40 Off. Gaz., 1st Suppl. No. 3, p. 194; *Grey vs. Fabia* (1939), 40 Off. Gaz., 1st Suppl., No. 3, p. 196; *Leynez vs. Leynez* (1939), 40 Off. Gaz., 3rd Suppl. No. 7, p. 51; *Martir vs. Martir* (1940), 40 Off. Gaz., 7th Suppl. No. 11, p. 215; *Sabado vs. Fernandez* (1941), 40 Off. Gaz., 1844; *Mendoza vs. Pilapil* (1941), 40 Off. Gaz., 1855; *Al-cala vs. De Villa* (1941), 40 Off. Gaz., 14th Suppl. No. 23, p. 131; and *Lopez vs. Liboro* (1948), 46 Off. Gaz., SuppL, No. 1, p. 211.

It is objected that "If we cure a deficiency by means of inferences, when are we going to stop making inferences to supply fatal deficiencies in wills? Where are we to draw the line?" These same questions might well have been asked by the opponents of the new trends in the cases

above cited. But the so-called liberal rule does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The later decisions do tell us when and where to stop; they draw the dividing line with precision. They do not allow evidence aliunde to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration within its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results.

The case at hand comes within the bounds thus defined. If the witnesses here purposely omitted or forgot to say that the testator signed the will in their presence, the testator said that he did and the witnesses by their signatures in the will itself said it was so. No extraneous proof was necessary and none was introduced or taken into consideration.

To regard the letter rather than the spirit of the will and of the law behind it was the thing that led to unfortunate consequences. It was the realization of the injustice of the old way that impelled this court, so we believe, to forsake the antiquated, outworn worship of form in preference to substance. It has been said, and experience has shown, that the mechanical system of construction has operated more to defeat honest wills than prevent fraudulent ones. That, it must be conceded, would be the effect in this case if the will under consideration were rejected. For the adverse party now concedes the genuineness of the document. At any rate, the genuineness is superobvious, and there is not the slightest insinuation of undue pressure, mental incapacity of the testator, or fraud.

It is said that for the testator to certify that he signed the will in the witnesses' presence "would be like lifting one's self by his own bootstraps." The simile does not look to us quite well placed. There is no impossibility or impropriety in one attesting to his own act unless forbidden by rules of positive law. The rationale of this decision is that he is not. If we were to make a metaphorical comparison, it would be more correct to say that a man can and generally does himself pull the bootstraps when he puts his boots on.

Coming to execution of wills, we see no legitimate, practical reason for objecting to the testator instead of the witnesses certifying that he signed the will in the presence of the latter. The will is of the testator's own making, the intervention of attesting witnesses being designed merely to protect his interest. If the sole purpose of the statute in requiring the intervention of witnesses is to make it certain that the testator has definite and complete intention to pass his property, and to prevent, as far as possible, any chance of substituting one instrument for another (1 Page on Wills, 481), what better guaranty of the genuineness of the will can there be than a certification by the testator himself in the body of the will so long as the testator's signature is duly authenticated? Witnesses may sabotage the will by muddling and bungling it or the attestation clause. For the testator, who is desirous of making a valid will, to do so would be a contradiction. If the formalities are only a means to an end and not the end themselves, and that end is achieved by another method slightly different from the prescribed manner, what has been done by the testator and the witnesses in the execution of the instant will should satisfy both law and conscience.

A second ground of attack on the questioned will is that the first page or sheet thereof does not bear the testator's signature. The discussion on the correctness of the copy of the attestation clause amply answers this objection. In fact, the appellee's case is much stronger on this point for the reason that there is not only speculative but also positive basis for the conclusion that the testator's signature was affixed to the first page of the original. Both the testator and the attesting witnesses stated in the will and in the attestation clause, respectively, that the former signed both pages or sheets of the testament.

Upon the foregoing considerations, the order of the probate court is affirmed with costs.

A motion dated February 17, 1953, was filed after the motion for reconsideration was deliberated and voted upon, in behalf of the minor children of Carlos Worrel, who was a residuary legatee under the will and who is alleged to have died on February 6, 1949. The motion prays that a guardian ad litem be appointed for the said children, and allowed to intervene and file "A Supplementary Memorandum in Support of Appellant's (Appellee's?) Motion for reconsideration." Counsel for the appellant objects to the motion on the ground that the movants having only a contingent interest under the will are not of right entitled to intervene.

As this case has already been considerably delayed and thoroughly considered and discussed from all angles, it is the sense of the court that the children's intervention with the consequent further delay of the decision would not serve the best interest of the parties. For this reason, the motion is denied.

Paras, Feria, Montemayor, Bautista Angelo and Labrador, JJ., concur.

Padilla and Reyes, JJ., dissent.

DISSENTING

JUGO, J., with whom concur PABLO and BENGZON, JJ.,

I dissent on the ground set forth in my opinion rendered in this case.

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