

**TESTATE ESTATE OF THE LATE VICENTE CAGRO. JESUSA CAGRO,
PETITIONER AND APPELLEE, VS. PELAGIO CAGRO, ET AL.,
OPPOSITIONS AND APPELLANTS.**

G. R. No. L-5826. April 29, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal interposed by the oppositors from a decision of the Court of First Instance of Samar, admitting to probate the will allegedly executed by Vicente Cagro who died in Laoangan, Pambujan, Samar, on February 14, 1949.

The main objection insisted upon by the appellants is that the will is fatally defective, because its attestation clause is not signed by the attesting witnesses. There is no question that the signatures of the three witnesses to the will do not appear at the bottom of the attestation clause, although the page containing the same is signed by the witnesses on the left-hand margin.

We are of the opinion that the position taken by the appellant is correct. The attestation clause is "a memorandum of the facts attending the execution of the will" required by law to be made by the attesting witnesses, and it must necessarily bear their signatures. An unsigned attestation clause cannot be considered as an act of the witnesses, since the omission of their signatures at the bottom thereof negatives their participation.

The petitioner and appellee contends that signatures of the three witnesses on the left-hand margin conform substantially to the law and may be deemed as their signatures to the attestation clause. This is untenable, because said signatures are in compliance with the legal mandate that the will be signed on the left-hand margin of all its pages. If an attestation clause not signed by the three witnesses at the bottom thereof, be admitted as sufficient, it would be easy to add such clause to a will on a subsequent occasion and in the absence of the testator and any or all of the witnesses.

Wherefore, the appealed decision is reversed and the probate of the will in question denied. So ordered with costs against the petitioner and appellee.

Pablo, Bengzon, Montemayor, Jugo and Labrado, JJ., concur.

DISSENTING

BAUTISTA ANGELO, J.,

I dissent. In my opinion the will in question has substantially complied with the formalities of the law and, therefore, should be admitted to probate. It appears that the will was signed by the testator and was attested by three instrumental witnesses, not only at the bottom, but also on the left-hand margin. The witnesses testified not

only that the will was signed by the testator in their presence and in the presence of each other but also that when they did so, the attestation clause was already written thereon. Their testimony has not been contradicted. The only objection set up by the oppositors to the validity of the will is the fact that the signatures of the instrumental witnesses do not appear immediately after the attestation clause.

This objection is too technical to be entertained. In the case of *Abangan vs. Abangan*, (40 Phil., 476), this court said that when the testamentary dispositions "are wholly written on only one sheet signed at the bottom by the testator and three witnesses (as the instant case), their signatures on the left margin of said sheet would be completely purposeless." In such a case, the court said, the requirement of the signatures on the left hand margin was not necessary because the purpose of the law—which is to avoid the substitution of any of the sheets of the will, thereby changing the testator's dispositions—has already been accomplished. We may say the same thing in connection with the will under consideration because while the three instrumental witnesses did not sign immediately after the attestation clause, the fear entertained by the majority that it may have been only added on a subsequent occasion and not at the signing of the will, has been obviated by the uncontradicted testimony of said witnesses to the effect that such attestation clause was already written in the will when the same was signed.

The following observation made by this court in the *Abangan* case is very fitting:

"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." (*supra*)

We should not also overlook the liberal trend of the New Civil Code in the matter of interpretation of wills, the purpose of which, in case of doubt, is to give such interpretation that would have the effect of preventing intestacy (articles 788 and 791, New Civil Code).

I am therefore of the opinion that the will in question should be admitted to probate.

Feria, J., concurs.

DISSENTING

TUASON, J.,

I concur in Mr. Justice Bautista's dissenting opinion and may add that the majority decision erroneously sets down as a fact that the attestation clause was not signed, when the witnesses signatures appear on the left margin and the real and only question is whether such signatures are legally sufficient.

The only answer, in our humble opinion, is yes. The law on wills does not provide that the attesting witness should sign the clause at the bottom. In the absence of such provision, there is no reason why signatures on the margin are not good. A letter is not any the less the writer's simply because it was signed, not at the conventional place but on the side or on top.

Feria, J., concurs.

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