

TEODORO CANEDA, LORENZA CANEDA, TERESA CANEDA, JUAN CABALLERO, AUREA CABALLERO, OSCAR LAROSA, HELEN CABALLERO, SANTOS CABALLERO, PABLO CABALLERO, VICTOR RAGA, MAURICIA RAGA, QUI...

G.R. No. 103554. May 28, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

Presented for resolution by this Court in the present petition for review on certiorari is the issue of whether or not the attestation clause contained in the last will and testament of the late Mateo Caballero complies with the requirements of Article 805, in relation to Article 809, of the Civil Code.

The records show that on December 5, 1978, Mateo Caballero, a widower without any children and already in the twilight years of his life, executed a last will and testament at his residence in Talisay, Cebu before three attesting witnesses, namely, Cipriano Labuca, Gregorio Cabando and Flaviano Toregosa. The said testator was duly assisted by his lawyer, Atty. Emilio Lumontad, and a notary public, Atty. Filoteo Manigos, in the preparation of that last will.[1] It was declared therein, among other things, that the testator was leaving by way of legacies and devises his real and personal properties to Presentacion Gaviola, Angel Abatayo, Rogelio Abatayo, Isabelito Abatayo, Benoni G. Cabrera and Marcosa Alcantara, all of whom do not appear to be related to the testator.[2]

Four months later, or on April 4, 1979, Mateo Caballero himself filed a petition docketed as Special Proceeding No. 3899-R before Branch II of the then Court of First Instance of Cebu seeking the probate of his last will and testament. The probate court set the petition for hearing on August 20, 1979 but the same and subsequent scheduled hearings were postponed for one reason or another. On May 29, 1980, the testator passed away before his petition could finally be heard by the probate court.[3] On February 25, 1981, Benoni Cabrera, one of the legatees named in the will, sought his appointment as special administrator of the testator's estate, the estimated value of which was P24,000.00, and he was so appointed by the probate court in its order of March 6, 1981.[4]

Thereafter, herein petitioners, claiming to be nephews and nieces of the testator, instituted a second petition, entitled "In the Matter of the Intestate Estate of Mateo Caballero" and docketed as Special Proceeding No. 3965-R, before Branch IX of the aforesaid Court of First Instance of Cebu. On October 18, 1982, herein petitioners had their said petition for intestate proceedings consolidated with Special Proceeding No. 3899-R in Branch II of the Court of First Instance of Cebu and opposed thereat the probate of the testator's will and the appointment of a special administrator for his estate.[5]

Benoni Cabrera died on February 8, 1982 hence the probate court, now known as Branch XV of the Regional Trial Court of Cebu, appointed William Cabrera as special administrator on June 21, 1983. Thereafter, on July 20, 1983, it issued an order for the return of the records of Special Proceeding No. 3965-R to the archives since the testate proceedings for the probate of the will had to be heard and resolved first. On March 26, 1984 the case was reraffled and eventually assigned to Branch XII of the Regional Trial Court of Cebu where it remained until the

conclusion of the probate proceedings.[6]

In the course of the hearing in Special Proceeding No. 3899-R, herein petitioners appeared as oppositors and objected to the allowance of the testator's will on the ground that on the alleged date of its execution, the testator was already in a poor state of health such that he could not have possibly executed the same. Petitioners likewise reiterated the issue as to the genuineness of the signature of the testator therein.[7]

On the other hand, one of the attesting witnesses, Cipriano Labuca, and the notary public, Atty. Filoteo Manigos, testified that the testator executed the will in question in their presence while he was of sound and disposing mind and that, contrary to the assertions of the oppositors, Mateo Caballero was in good health and was not unduly influenced in any way in the execution of his will. Labuca also testified that he and the other witnesses attested and signed the will in the presence of the testator and of each other. The other two attesting witnesses were not presented in the probate hearing as they had died by then.[8]

On April 5, 1988, the probate court rendered a decision declaring the will in question as the last will and testament of the late Mateo Caballero, on the ratiocination that:

"x x x The self-serving testimony of the two witnesses of the oppositors cannot overcome the positive testimonies of Atty. Filoteo Manigos and Cipriano Labuca who clearly told the Court that indeed Mateo Caballero executed this Last Will and Testament now marked Exhibit 'C' on December 5, 1978. Moreover, the fact that it was Mateo Caballero who initiated the probate of his Will during his lifetime when he caused the filing of the original petition now marked Exhibit 'D' clearly underscores the fact that this was indeed his Last Will. At the start, counsel for the oppositors manifested that he would want the signature of Mateo Caballero in Exhibit 'C' examined by a handwriting expert of the NBI but it would seem that despite their avowal and intention for the examination of this signature of Mateo Caballero in Exhibit 'C', nothing came out of it because they abandoned the idea and instead presented Aurea Caballero and Helen Caballero Campo as witnesses for the oppositors.

"All told, it is the finding of this Court that Exhibit 'C' is the Last Will and Testament of Mateo Caballero and that it was executed in accordance with all the requisites of law."[9]

Undaunted by said judgment of the probate court, petitioners elevated the case to the Court of Appeals in CA--G.R. CV No. 19669. They asserted therein that the will in question is null and void for the reason that its attestation clause is fatally defective since it fails to specifically state that the instrumental witnesses to the will witnessed the testator signing the will in their presence and that they also signed the will and all the pages thereof in the presence of the testator and of one another.

On October 15, 1991, respondent court promulgated its decision[10] affirming that of the trial court, and ruling that the attestation clause in the last will of Mateo Caballero substantially complies with Article 805 of the Civil Code, thus:

"The question therefore is whether the attestation clause in question may be considered as having substantially complied with the requirements of Art. 805 of the Civil Code. What appears in the attestation clause which the oppositors claim to be defective is 'we do certify that the testament was read by him and the testator, Mateo Caballero, has published unto us the foregoing will consisting of THREE PAGES, including the acknowledgment, each page numbered correlatively in letters on the upper part of each page, as his Last Will and Testament, and he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin in the presence of the said testator and in the presence of each and all of us' (underlining supplied).

"To our thinking, this is sufficient compliance and no evidence need be presented to indicate the meaning that the said will was signed by the testator and by them (the witnesses) in the presence of all of them and of one

another. Or as the language of the law would have it that the testator signed the will 'in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.' If not completely or ideally perfect in accordance with the wordings of Art. 805 but (sic) the phrase as formulated is in substantial compliance with the requirement of the law. "[11]

Petitioners moved for the reconsideration of said ruling of respondent court, but the same was denied in the latter's resolution of January 14, 1992,[12] hence this appeal now before us. Petitioners assert that respondent court has ruled upon said issue in a manner not in accord with the law and the settled jurisprudence on the matter and are now questioning once more, on the same ground as that raised before respondent court, the validity of the attestation clause in the last will of Mateo Caballero.

We find the present petition to be meritorious, as we shall shortly hereafter explain, after some prefatory observations which we feel should be made in aid of the rationale for our resolution of the controversy.

1. A will has been defined as a species of conveyance whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate after his death.[13] Under the Civil Code, there are two kinds of wills which a testator may execute.[14] The first kind is the ordinary or attested will, the execution of which is governed by Articles 804 to 809 of the Code. Article 805 requires that:

"Art. 805. Every will, other than a holo-graphic 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.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of 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 the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them."

In addition, the ordinary will must be acknowledged before a notary public by the testator and the attesting witnesses,[15] hence it is likewise known as a notarial will. Where the testator is deaf or a deaf-mute, Article 807 requires that he must personally read the will, if able to do so. Otherwise, he should designate two persons who will read the will and communicate its contents to him in a practicable manner. On the other hand, if the testator is blind, the will should be read to him twice; once, by anyone of the witnesses thereto, and then again, by the notary public before whom it is acknowledged.[16]

The other kind of will is the holographic will, which Article 810 defines as one that is entirely written, dated, and signed by the hand of the testator himself. This kind of will, unlike the ordinary type, requires no attestation by witnesses. A common requirement in both kinds of wills is that they should be in writing and must have been executed in a language or dialect known to the testator.[17]

However, in the case of an ordinary or attested will, its attestation clause need not be written in a language or dialect known to the testator since it does not form part of the testamentary disposition. Furthermore, the language used in the attestation clause likewise need not even be known to the attesting witnesses.[18] The last paragraph of Article 805 merely requires that, in such a case, the attestation clause shall be interpreted to said witnesses.

An attestation clause refers to that part of an ordinary will whereby the attesting witnesses certify that the instrument has been executed before them and to the manner of the execution of the same.[19] It is a separate memorandum or record of the facts surrounding the conduct of execution and once signed by the witnesses, it gives affirmation to the fact that compliance with the essential formalities required by law has been observed.[20] It is made for the purpose of preserving in a permanent form a record of the facts that attended the execution of a particular will, so that in case of failure of the memory of the attesting witnesses, or other casualty, such facts may still be proved.[21]

Under the third paragraph of Article 805, such a clause, the complete lack of which would result in the invalidity of the will,[22] should state (1) the number of pages used upon which the will is written; (2) that the testator signed, or expressly caused another to sign, the will and every page thereof in the presence of the attesting witnesses; and (3) that the attesting witnesses witnessed the signing by the testator of the will and all its pages, and that said witnesses also signed the will and every page thereof in the presence of the testator and of one another.

The purpose of the law in requiring the clause to state the number of pages on which the will is written is to safeguard against possible interpolation or omission of one or some of its pages and to prevent any increase or decrease in the pages;[23] whereas the subscription of the signatures of the testator and the attesting witnesses is made for the purpose of authentication and identification, and thus indicates that the will is the very same instrument executed by the testator and attested to by the witnesses.[24]

Further, by attesting and subscribing to the will, the witnesses thereby declare the due execution of the will as embodied in the attestation clause.[25] The attestation clause, therefore, provides strong legal guaranties for the due execution of a will and to insure the authenticity thereof.[26] As it appertains only to the witnesses and not to the testator, it need be signed only by them.[27] Where it is left unsigned, it would result in the invalidation of the will as it would be possible and easy to add the clause on a subsequent occasion in the absence of the testator and the witnesses.[28]

In its report, the Code Commission commented on the reasons of the law for requiring the formalities to be followed in the execution of wills, in the following manner:

"The underlying and fundamental objectives permeating the provisions on the law on wills in this Project consists in the liberalization of the manner of their execution with the end in view of giving the testator more freedom in expressing his last wishes, but with sufficient safeguards and restrictions to prevent the commission of fraud and the exercise of undue and improper pressure and influence upon the testator.

"This objective is in accord with the modern tendency with respect to the formalities in the execution of wills.
x x x "[29]

2. An examination of the last will and testament of Mateo Caballero shows that it is comprised of three sheets all of which have been numbered correlatively, with the left margin of each page thereof bearing the respective signatures of the testator and the three attesting witnesses. The part of the will containing the testamentary dispositions is expressed in the Cebuano-Visayan dialect and is signed at the foot thereof by the testator. The attestation clause in question, on the other hand, is recited in the English language and is likewise signed at the end thereof by the three attesting witnesses thereto.[30] Since it is the proverbial bone of contention, we reproduce it again for facility of reference:

"We, the undersigned attesting Witnesses, whose Residences and postal addresses appear on the Opposite of our respective names, we do hereby certify that the Testament was read by him and the testator, MATEO CABALLERO, has published unto us the foregoing Will consisting of THREE PAGES, including the

Acknowledgment, each page numbered correlatively in letters on the upper part of each page, as his Last Will and Testament and he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin, in the presence of the said testator and in the presence of each and all of us. "

It will be noted that Article 805 requires that the witnesses should both attest and subscribe to the will in the presence of the testator and of one another. "Attestation" and "subscription" differ in meaning. Attestation is the act of the senses, while subscription is the act of the hand. The former is mental, the latter mechanical, and to attest a will is to know that it was published as such, and to certify the facts required to constitute an actual and legal publication; but to subscribe a paper published as a will is only to write on the same paper the names of the witnesses, for the sole purpose of identification.[31]

In *Taboada vs. Rosal*,[32] we clarified that attestation consists in witnessing the testator's execution of the will in order to see and take note mentally that those things are done which the statute requires for the execution of a will and that the signature of the testator exists as a fact. On the other hand, subscription is the signing of the witnesses' names upon the same paper for the purpose of identification of such paper as the will which was executed by the testator. As it involves a mental act, there would be no means, therefore, of ascertaining by a physical examination of the will whether the witnesses had indeed signed in the presence of the testator and of each other unless this is substantially expressed in the attestation.

It is contended by petitioners that the aforequoted attestation clause, in contravention of the express requirements of the third paragraph of Article 805 of the Civil Code for attestation clauses, fails to specifically state the fact that the attesting witnesses witnessed the testator sign the will and all its pages in their presence and that they, the witnesses, likewise signed the will and every page thereof in the presence of the testator and of each other. We agree.

What is fairly apparent upon a careful reading of the attestation clause herein assailed is the fact that while it recites that the testator indeed signed the will and all its pages in the presence of the three attesting witnesses and states as well the number of pages that were used, the same does not expressly state therein the circumstance that said witnesses subscribed their respective signatures to the will in the presence of the testator and of each other.

The phrase "and he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin," obviously refers to the testator and not the instrumental witnesses as it is immediately preceded by the words "as his Last Will and Testament." On the other hand, although the words "in the presence of the testator and in the presence of each and all of us" may, at first blush, appear to likewise signify and refer to the witnesses, it must, however, be interpreted as referring only to the testator signing in the presence of the witnesses since said phrase immediately follows the words "he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin." What is then clearly lacking, in the final logical analysis, is the statement that the witnesses signed the will and every page thereof in the presence of the testator and of one another.

It is our considered view that the absence of that statement required by law is a fatal defect or imperfection which must necessarily result in the disallowance of the will that is here sought to be admitted to probate. Petitioners are correct in pointing out that the aforestated defect in the attestation clause obviously cannot be characterized as merely involving the form of the will or the language used therein which would warrant the application of the substantial compliance rule, as contemplated in the pertinent provision thereon in the Civil Code, to wit:

"Art. 809. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of

article 805" (Underscoring supplied.)

While it may be true that the attestation clause is indeed subscribed at the end thereof and at the left margin of each page by the three attesting witnesses, it certainly cannot be conclusively inferred therefrom that the said witnesses affixed their respective signatures in the presence of the testator and of each other since, as petitioners correctly observed, the presence of said signatures only establishes the fact that it was indeed signed, but it does not prove that the attesting witnesses did subscribe to the will in the presence of the testator and of each other. The execution of a will is supposed to be one act so that where the testator and the witnesses sign on various days or occasions and in various combinations, the will cannot be stamped with the imprimatur of effectivity.[33]

We believe that the following comment of former Justice J.B.L. Reyes[34] regarding Article 809, wherein he urged caution in the application of the substantial compliance rule therein, is correct and should be applied in the case under consideration, as well as to future cases with similar questions:

"x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings." (Emphasis ours.)

3. We stress once more that under Article 809, the defects or imperfections must only be with respect to the form of the attestation or the language employed therein. Such defects or imperfections would not render a will invalid should it be proved that the will was really executed and attested in compliance with Article 805. In this regard, however, the manner of proving the due execution and attestation has been held to be limited to merely an examination of the will itself without resorting to evidence aliunde, whether oral or written.

The foregoing considerations do not apply where the attestation clause totally omits the fact that the attesting witnesses signed each and every page of the will in the presence of the testator and of each other.[35] In such a situation, the defect is not only in the form or the language of the attestation clause but the total absence of a specific element required by Article 805 to be specifically stated in the attestation clause of a will. That is precisely the defect complained of in the present case since there is no plausible way by which we can read into the questioned attestation clause any statement, or an implication thereof, that the attesting witnesses did actually bear witness to the signing by the testator of the will and all its pages and that said instrumental witnesses also signed the will and every page thereof in the presence of the testator and of one another.

Furthermore, the rule on substantial compliance in Article 809 cannot be invoked or relied on by respondents since it presupposes that the defects in the attestation clause can be cured or supplied by the text of the will or a consideration of matters apparent therefrom which would provide the data not expressed in the attestation clause or from which it may necessarily be gleaned or clearly inferred that the acts not stated in the omitted textual requirements were actually complied with in the execution of the will. In other words, the defects must be remedied by intrinsic evidence supplied by the will itself.

In the case at bar, contrarily, proof of the acts required to have been performed by the attesting witnesses can be supplied only by extrinsic evidence thereof, since an overall appreciation of the contents of the will yields no basis whatsoever from which such facts may be plausibly deduced. What private respondent insists on are the testimonies of his witnesses alleging that they saw the compliance with such requirements by the instrumental witnesses, oblivious of the fact that he is thereby resorting to extrinsic evidence to prove the same and would accordingly be doing by indirection what in law he cannot do directly.

4. Prior to the advent of the Civil Code on August 30, 1950, there was a divergence of views as to which manner of interpretation should be followed in resolving issues centering on compliance with the legal formalities required in the execution of wills. The formal requirements were at that time embodied primarily in Section 618 of Act No. 190, the Code of Civil Procedure. Said section was later amended by Act No. 2645, but the provisions respecting said formalities found in Act No. 190 and the amendment thereto were practically reproduced and adopted in the Civil Code.

One view advanced the liberal or substantial compliance rule. This was first laid down in the case of *Abangan vs. Abangan*,^[36] where it was held that 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 guarantee their truth and authenticity. Therefore, the laws on this subject should be interpreted in such a way as to attain these primordial ends. Nonetheless, it was also emphasized that 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, hence 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. The subsequent cases of *Avera vs. Garcia*,^[37] *Aldaba vs. Roque*,^[38] *Unson vs. Abella*,^[39] *Pacson vs. Coronel*,^[40] *Fernandez vs. Vergel de Dios, et al.*,^[41] and *Nayve vs. Mojal, et al.* ^[42] all adhered to this position.

The other view which advocated the rule that statutes which prescribe the formalities that should be observed in the execution of wills are mandatory in nature and are to be strictly construed was followed in the subsequent cases of *In the Matter of the Estate of Saguinsin*,^[43] *In re Will of Andrada*,^[44] *Uy Coque vs. Sioca*, ^[45] *In re Estate of Neumark*,^[46] and *Sano vs. Quintana*.^[47]

Gumban vs. Gorecho, et al.,^[48] provided the Court with the occasion to clarify the seemingly conflicting decisions in the aforementioned cases. In said case of *Gumban*, the attestation clause had failed to state that the witnesses signed the will and each and every page thereof on the left margin in the presence of the testator. The will in question was disallowed, with these reasons therefor:

"In support of their argument on the assignment of error above-mentioned, appellants rely on a series of cases of this court beginning with (*In the Matter of the (E)state of Saguinsin* ([1920], 41 Phil., 875), continuing with *In re Will of Andrada* [1921], 42 Phil., 180), *Uy Coque vs. Navas L. Sioca* [1922], 43 Phil., 405), and *In re Estate of Neumark* ([1923], 46 Phil., 841), and ending with *Sano vs. Quintana* ([1925], 48 Phil., 506). Appellee counters with the citation of a series of cases beginning with *Abangan vs. Abangan* ([1919], 40 Phil., 476), continuing through *Aldaba vs. Roque*, ([1922], 43 Phil., 378), and *Fernandez vs. Vergel de Dios* ([1924], 46 Phil., 922), and culminating in *Nayve vs. Mojal and Aguilar* ([1924], 47 Phil., 152). In its last analysis, our task is to contrast and, if possible, conciliate, the last two decisions cited by opposing counsel, namely, those of *Sano vs. Quintana*, *supra*, and *Nayve vs. Mojal and Aguilar*, *supra*.

"In the case of *Sano vs. Quintana*, *supra*, it was decided that 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. The case of *Uy Coque vs. Sioca*, *supra*, was cited, but the case of *Nayve vs. Mojal and Aguilar*, *supra*, was not mentioned. In contrast, is the decision in *Nayve vs. Mojal and Aguilar*, *supra*, wherein it was held that the attestation clause must state the fact that the testator and the witnesses reciprocally saw the signing of the will, for such an act cannot be proved by the mere exhibition of the will, if it is not stated therein. It was also held that the fact that the testator and the witnesses signed each and every page of the will can be proved also by the mere examination of the signatures appearing on the document itself, and the omission to state such evident facts does not invalidate the will.

"It is a habit of courts to reaffirm or distinguish previous cases; seldom do they admit inconsistency in doctrine. Yet here, unless aided by casuistry of the extreme type, it would be impossible to reconcile the *Mojal*

and Quintana decisions. They are fundamentally at variance. If we rely on one, we affirm. If we rely on the other, we reverse.

"In resolving this puzzling question of authority, three outstanding points may be mentioned. In the first place, the Mojal decision was concurred in by only four members of the court, less than a majority, with two strong dissenting opinions; the Quintana decision was concurred in by seven members of the court, a clear majority, with one formal dissent. In the second place, the Mojal decision was promulgated in December, 1924, while the Quintana decision was promulgated in December 1925; the Quintana decision was thus subsequent in point of time. And in the third place, the Quintana decision is believed more nearly to conform to the applicable provisions of the law.

"The right to dispose of property by will is governed entirely by statute. The law of the case is here found in section 61 of the Code of Civil Procedure, as amended by Act No. 2645, and in section 634 of the same Code, as unamended. It is in part provided in section 61, as amended that 'No will * * * shall be valid * * * unless * * *.' It is further provided in the same section that 'The attestation 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.' Codal section 634 provides that 'The will shall be disallowed in either of the following cases: 1. If not executed and attested as in this Act provided.' The law not alone carefully makes use of the imperative, but cautiously goes further and makes use of the negative, to enforce legislative intention. It is not within the province of the courts to disregard the legislative purpose so emphatically and clearly expressed.

"We adopt and reaffirm the decision in the case of Sano vs. Quintana, supra, and, to the extent necessary, modify the decision in the case of Nayve vs. Mojal and Aguilar, supra." (Emphases in the original text).

But after the Gumban clarificatory pronouncement, there were decisions of the Court that once more appeared to revive the seeming diversity of views that was earlier threshed out therein. The cases of Quinto vs. Morata,[49] Rodriguez vs. Alcala,[50] Echevarria vs. Sarmiento,[51] and Testate Estate of Toray[52] went the way of the ruling as restated in Gumban. But De Gala vs. Gonzales, et al.,[53] Rey vs. Cartagena,[54] De Ticson vs. De Gorostiza,[55] Sebastian vs. Panganiban,[56] Rodriguez vs. Yap,[57] Grey vs. Fabia,[58] Leynez vs. Leynez,[59] Martir vs. Martir,[60] Alcala vs. De Villa,[61] Sabado vs. Fernandez,[62] Mendoza vs. Pilapil,[63] and Lopez vs. Liboro,[64] veered away from the strict interpretation rule and established a trend toward an application of the liberal view.

The Code Commission, cognizant of such a conflicting welter of views and of the undeniable inclination towards a liberal construction, recommended the codification of the substantial compliance rule, as it believed this rule to be in accord with the modern tendency to give a liberal approach to the interpretation of wills. Said rule thus became what is now Article 809 of the Civil Code, with this explanation of the Code Commission:

"The present law provides for only one form of executing a will, and that is, in accordance with the formalities prescribed by Section 618 of the Code of Civil Procedure as amended by Act No. 2645. The Supreme Court of the Philippines had previously upheld the strict compliance with the legal formalities and had even said that the provisions of Section 618 of the Code of Civil Procedure, as amended regarding the contents of the attestation clause were mandatory, and non-compliance therewith invalidated the will (Uy Coque vs. Sioca, 43 Phil. 405). These decisions necessarily restrained the freedom of the testator in disposing of his property.

"However, in recent years the Supreme Court changed its attitude and has become more liberal in the interpretation of the formalities in the execution of wills. This liberal view is enunciated in the cases of Rodriguez vs. Yap, G.R. No. 45924, May 18, 1939; Leynez vs. Leynez, G.R. No. 46097, October 18, 1939; Martir vs. Martir, G.R. No. 46995, June 21, 1940; and Alcala vs. Villa, G.R. No. 47351, April 18, 1941.

"In the above mentioned decisions of our Supreme Court, it has practically gone back to the original provisions of Section 618 of the Code of Civil Procedure before its amendment by Act No. 2645 in the year 1916. To turn this attitude into a legislative declaration and to attain the main objective of the proposed Code in the liberalization of the manner of executing wills, article 829 of the Project is recommended, which reads:

'ART. 829. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of article 829.'"[65]

The so-called liberal rule, the Court said in *Gil vs. Murciano*,[66] "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 into 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."

It may thus be stated that the rule, as it now stands, is that omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed. However, those omissions which cannot be supplied except by evidence aliunde would result in the invalidation of the attestation clause and ultimately, of the will itself.[67]

WHEREFORE, the petition is hereby GRANTED and the impugned decision of respondent court is hereby REVERSED and SET ASIDE. The court a quo is accordingly directed to forthwith DISMISS its Special Proceeding No. 3899-R (Petition for the Probate of the Last Will and Testament of Mateo Caballero) and to REVIVE Special Proceeding No. 3965-R (In the Matter of the Intestate Estate of Mateo Caballero) as an active case and thereafter duly proceed with the settlement of the estate of the said decedent.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Nocon, JJ., concur.

* The first name of this representative party petitioner is also spelled "Armistica" in the corresponding allegation of the petition.

[1] Original Record, 1-3.

[2] Exhibit C; Folder of Exhibits in Special Proceeding No. 3899-R, 7-8.

[3] Original Record, 1-3, 7, 24, 32.

[4] *Ibid.*, 32-34.

[5] *Ibid.*, 68-69, 157.

[6] *Ibid.*, 98, 116, 143, 148, 157-159.

[7] TSN, July 3, 1986, 3-5, 13-17, 23-27; July 18, 1986, 5-10.

[8] TSN, October 9, 1984, 11-26; January 4, 1985, 2; April 22, 1985, 10-18.

- [9] Original Record, 339-340; per Judge Francis J. Militante.
- [10] Justice Cezar D. Francisco, ponente, with Justices Reynato S. Puno and Jaime D. Lantin, concurring.
- [11] Rollo, 9.
- [12] Ibid., 33.
- [13] Rivera vs. Palmanori, 40 Phil. 116 (1919); Art. 810, Civil Code.
- [14] Report of the Code Commission, 103-105.
- [15] Art. 806, Civil Code.
- [16] Art. 808, id.
- [17] Art. 804, id.
- [18] B. Tolentino, Civil Code of the Philippines, 68 (1979 ed.).
- [19] Testate Estate of Paula Toray, 87 Phil. 139 (1950).
- [20] Vda. de Ramos, et al. vs. Court of Appeals et al., 81 SCRA 393 (1978).
- [21] Leynez vs. Leynez, 68 Phil. 745 (1939).
- [22] In re Estate of Neumark, 46 Phil. 841 (1923).
- [23] In The Matter of the Estate of Sanguinsin, 41 Phil. 875 (1920); In re Will of Andrada, 42 Phil. 180 (1921).
- [24] Testate Estate of Paula Toray, supra.
- [25] Gonzales vs. Gonzales de Carungcong, 90 Phil. 444 (1951).
- [26] Echevarria vs. Sarmiento, 66 Phil. 611 (1938).
- [27] Abangan vs. Abangan, 40 Phil. 476 (1919).
- [28] Cagro vs. Cagro, 92 Phil. 1032 (1953).
- [29] Report of the Code Commission, 103.
- [30] Exhibits C to C-18; Folder of Exhibits in Special Proceed-ing No. 3899-R, 7-9; Original Record, 4-6.
- [31] Hill vs. Davis, 167 P. 465, 466, 64 Okl. 253, L.R.A. 1918B 687.

[32] 118 SCRA 195 (1982).

- [33] Andalis vs. Pulgueras, 59 Phil. 643 (1934).
- [34] Lawyer's Journal, November 30, 1950, 566, cited in Tolentino, op. cit., supra, note 17 at 111-112.
- [35] Uy Coque vs. Sioca, 43 Phil. 405 (1922); Gumban vs. Gorecho, 50 Phil. 30 (1927); Quinto vs. Morata, 54 Phil. 481 (1930); Rodriguez vs. Alcala, 55 Phil. 150 (1930); Testate Estate of Paula Toray, supra; Gil vs. Marciano, 88 Phil. 261 (1951).
- [36] 40 Phil. 476 (1919).
- [37] 42 Phil. 145 (1921).

- [38] 43 Phil. 378 (1922).
- [39] 43 Phil. 494 (1922).
- [40] 45 Phil. 216 (1923).
- [41] 46 Phil. 922 (1924).
- [42] 47 Phil. 152 (1924).
- [43] 41 Phil. 875 (1920).
- [44] 42 Phil. 180 (1921).
- [45] 43 Phil. 405 (1922).
- [46] 46 Phil. 841 (1923).
- [47] 48 Phil. 506 (1925).
- [48] 50 Phil. 30 (1927).
- [49] 54 Phil. 481 (1930).
- [50] 55 Phil. 150 (1930).
- [51] 66 Phil. 611 (1933).
- [52] 87 Phil. 139 (1950).
- [53] 53 Phil. 104 (1929).
- [54] 56 Phil. 282 (1931).
- [55] 57 Phil. 437 (1932).
- [56] 59 Phil. 653 (1934).
- [57] 68 Phil. 126 (1939).
- [58] 68 Phil. 128 (1939).
- [59] 68 Phil. 745 (1939).
- [60] 70 Phil. 89 (1940).
- [61] 71 Phil. 561 (1940).
- [62] 72 Phil. 531 (1941).
- [63] 72 Phil. 546 (1941).
- [64] 81 Phil. 429 (1948).
- [65] Report of the Code Commission, 104-105.
- [66] 88 Phil. 260, 281 (1951).
- [67] Tolentino, *op. cit.*, *supra*, note 17 at 111.

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