

**CRISTINA SAMSON, DELFINA NAVAL, AND SOR CONSOLACION
EUGENIO, PETITIONERS AND APPELLANTS, VS. MONICA NAVAL,
ROSA NAVAL, AND CELESTINA NAVAL, OBJECTORS AND
APPELLANTS.**

G.R. No. 11823. February 11, 1918

Ponente: ARAULLO, J.

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ARAULLO, J.:

On September 20, 1915, attorney Perfecto Gabriel presented in the Court of First Instance of the city of Manila, for allowance as the will of Simeona F. Naval, who died in said city two days previously, a document executed by her on February 13, 1915, and in which he was appointed executor. The case was recorded as No. 13386 and, after hearing the petition for allowance filed by said executor, it was denied on the ground that said document was not duly executed by the deceased as her last will and testament, inasmuch as she did not sign it in the presence of three witnesses and the two witnesses did not sign it in the presence of each other. Thereafter the nieces and legatees of the same deceased filed in the same court for allowance as her will, another document executed by her on October 31, 1914, and, consequently, the case was registered under another number, which was No. 13579. The petition for allowance was opposed by Monica Naval, Rosa Naval, and Cristina Naval on the ground that the will, the allowance of which is asked, could not be allowed, because of the existence of another will of subsequent date, executed during her lifetime by the same Simeona F. Naval, and because said will has been revoked by another executed subsequently by her during her lifetime, and, further, because said will has not been executed with the formalities required by existing laws. Trial having taken place, at which evidence was adduced, the court on February 8, 1916, issued an order, admitting said second document and ordering its allowance as the last will and testament of said deceased. From said order the opponents appealed to this court and transmitted to us the corresponding declarations. Two of the opponents, that is, Rosa and Cristina Naval, assigned, as errors committed by the court, the following:

- The finding of the court that the will of October 31, 1914, has not been revoked by that of February 13, 1915;
- The act of the court in permitting the petitioner to institute and proceed with the proceedings relative to the last case for the allowance of the will, No. 13579, notwithstanding that proceedings had already been had in the other case No. 13386 and final judgment rendered therein; and
- The act of the court in denying the motion for continuance of the trial on the allowance of the will of October 31, 1914, which motion was presented for the sole purpose of introducing evidence to show the falsity of the signatures appearing in said will and submitting said signatures to the Bureau of Science for analysis.

The other opponent, Monica Naval, assigned, besides the first two errors already mentioned, the finding of the court that the disallowance of the will of said deceased, dated February 13, 1915, on the ground that it was not executed in such form that it could transmit real and personal property, according to section 618 of the Code of Civil Procedure, also had the effect of annulling the revocatory clause in said will.

From the evidence it appears, as we have already stated, that the trial court declared that the first document presented by the executor of the deceased, Simeona F. Naval, as a will executed by her on February 13, 1915, and which was the subject-matter of case No. 13386 of said court, could not be allowed, on the ground that it was not executed with the requisites and formalities prescribed by law. Article 739 of the Civil Code provides that a former will is by operation of law revoked by another valid subsequent will, if the testator does not state in the later will his desire that the former should subsist wholly or partly. In harmony with this provision of substantive law, we find section 623 of the Code of Civil Procedure, which provides that no will shall be revoked, except by implication of law, otherwise than by some will, codicil, or other writing executed as provided in case of wills.

Therefore, according to these legal provisions, in order that the will of February 13, 1915, that is, the first document presented as the will of the deceased Simeona F. Naval, could have the effect of revoking that which was presented afterwards by the petitioners as executed by the same deceased on October 31, 1914, that is, on a date previous to the execution of the first, it was necessary and indispensable that the later will, that is, that first presented for allowance, should be perfect or valid, that is, executed as provided by law in case of wills.

It also appears from the record that the opponents themselves maintained that said later will, that is, that of February 13, 1915, was not perfect, or executed as provided by law in case of wills, and the Court of First Instance of Manila has so held in disallowing said document as the will of the deceased. So that it is very evident that the second will presented, that is, that of October 31, 1914, was not and could not have been revoked by the first, and the court was not in error in so holding in the order appealed from. We deem it unnecessary to add a single word more or cite well-known doctrines and opinions of jurists in support of what has already been stated.

As to the second error assigned by the opponents, we believe it sufficient to refer to what the court below stated in the judgment appealed from. It is as follows:

"The court finds no incongruity in the presentation of a prior will when another will of subsequent date has been disallowed. Disregarding the fact that the petitioners in this case were not those who presented the will in No. 13386, in which the petition was presented by the same D. Perfecto Gabriel as executor, it is proper to take into account that the object of a petition for allowance is to ask for an order declaring that a will has been executed in accordance with the requisites and formalities required by law. This is a question for the court to decide and is out of the control of the party who presents the will. The allowance or disallowance of a will by a competent court depends upon whether the evidence adduced at the trial shows or does not show that the formalities required by law have been complied with, and this cannot be determined in advance, as a general rule, by the person who presents the testament, for he has not always concurred in or seen the execution of the will.

"If, therefore, the person who presents a will and asks that it be allowed does not secure its allowance, and he has in his possession another will, or has information that another exists, he does not contradict himself by asking for the allowance of the will of earlier date merely because the later will was declared invalid by the proper court. If in this case there is any who adopts a contradictory position, it is the respondent himself, inasmuch as in case No. 13386 he alleged, as a ground for the disallowance of the will then presented, that it was not executed in accordance with the law, and now he maintains the contrary, for he claims that said will revoked that which is now presented."

With respect to the third error, it is beyond doubt that the court did not commit it, for it appears that when the examination of the witness, Cristina Samson, was finished and the court told Attorney Lualhati, counsel for the respondents, to continue adducing his evidence, he said he had no more proof, although he added that he would ask the court to grant him permission to send the will of 1914 to the Bureau of Science, which petition was objected to by the attorney for the proponents and denied by the court. Immediately thereafter the attorney for the opponents asked for the continuance of the trial, which was also denied by the court, after objection was made by

the proponents. The attorney for the opponents excepted to said ruling.

Therefore, the petition of said attorney for the remission of said will to the Bureau of Science, in the terms in which it was made to the court, after he had stated that he had no more evidence to present, signified that he left it to the discretion of the court to grant it or not. Furthermore, no exception was taken to the order denying this motion, and although the attorney for the opponents excepted to the order denying the motion for continuance of the trial, such exception was completely useless and ineffective for the purpose of alleging before this court that the trial court erred in that respect, for said resolution, being one of those left to the discretion of the court in the exercise of its functions, according to section 141 of the Code of Civil Procedure, it could not be the subject of an exception, unless the court, in denying said motion, abused its discretionary power and thereby prejudiced the essential rights of the respondents, which is not the case here.

The error which, in addition to the first two already mentioned, has been assigned by the opponent and appellant, Monica Naval, refers, according to her, to the court's action in declaring that the disallowance of the will of the deceased Simeona F. Naval, dated February 13, 1915, for the reason that it was not executed in such manner and form that it could transmit real and personal property, according to the provisions of section 618 of the Code of Civil Procedure, also had the effect of annulling the revocatory clause of said will.

First of all, it is not true that the court made such statement in the terms given in said assignment of error, that is, it is not true that the court declared that, because said will was not executed in the form required by law in order that it may transmit real and personal property, according to the provisions of section 618, the disallowance of said will also had the effect of annulling the revocatory clause therein contained. In the order appealed from there is no declaration or conclusion made in these terms. The court did not say that the annulment of the revocatory clause in said will was the effect or consequence of the fact that it was not allowed on the ground that it was not executed in the form required by law in order that it may transmit real and personal property. Referring to the construction, given by the respondent to sections 618 and 623 of the Code of Civil Procedure, to the effect that a subsequent will may revoke a previous will, although the later will has not been allowed by the competent court, it being sufficient that the intention of the testator to revoke the previous will should be clearly expressed, and that, while the requisite of allowance is necessary in order that it may transmit property from one person to another, it is not necessary in order that it might produce other effects, for example, the effect of a revocatory clause, or a clause of acknowledgment of a child,—what the court declared, we repeat, was that although the revocation of a will should have been effected, not by means of another will or codicil, but by means of a document, as authorized by said section 623, which document should have the requisites and conditions fixed in section 618, the presentation of the document to the court was necessary in order that the latter might allow it, by declaring that it was executed with the formalities required by law for the execution of a will, and finally concluding that, just as it must be proved that the requisites of section 618 have been complied with in order that a will may be of value through its allowance, so without such allowance the revocatory clause like the other provisions of the will, has no value or effect except to show extraneous matters, as, for example, the acknowledgment of natural children, of some debt or obligation. In such case, the document could produce effect, but not as a will, but simply as a written admission made by the person executing it. And it is beyond doubt that the revocatory clause contained in a document, like the present, which contains provisions proper of a will, as those relating to legacies and distribution of the properties of the testator after his death as well as the appointment of executors, is not matter extraneous to the will, but merely a part thereof, intimately connected with it as well as with the will or wills, the revocation of which is declared in said clause; in short, the desire of the testator declared in the revocatory clause is related to the desire of the same testator expressed in the provisions of the testament in which said clause is found and to that which he might have expressed in the testaments which he may have previously executed. There is such relation between the revocatory clause and the will which contains it, that if

the will does not produce legal effects, because it has not been executed in accordance with the provisions of the law, neither would the revocatory clause therein produce legal effects. And if, in the present case, the so-called will of the deceased, Simeona F. Naval, dated February 13, 1915, was not duly executed by her, as her last will and testament, as declared by the court in its decision of November 19, 1915, in case No. 13386, for which reason its allowance was denied, neither may it be maintained that the revocatory clause contained in said will is the expression of the last will of said deceased. The disallowance of the will, therefore, produced the effect of annulling the revocatory clause, not exactly because said will was not executed in such form that it could transmit real and personal property, as inaccurately alleged by the appellant, Monica Naval, to be the court's finding, upon which said assignment of error is based, but because it was proved that said will was not executed or signed with the formalities and requisites required by section 618 of the Code of Civil Procedure, a cause which also produces the nullity of the same will, according to section 634 of said law; and of course what is invalid in law can produce no effect whatever.

"If the instrument propounded as a revocation be in form a will, it must be perfect as such, and be subscribed and attested as is required by the statute. An instrument intended to be a will, but failing of its effect as such on account of some imperfection in its structure or for want of due execution, cannot be set up for the purpose of revoking a former will." (40 Cyc., p. 1177, and cases cited therein.)

"A subsequent will containing a clause revoking an earlier will must, as a general rule, be admitted to probate before the clause of revocation can have any effect, and the same kind, quality, and method of proof is required for the establishment of the subsequent will as was required for the establishment of the former will." (40 Cyc., p. 1178, and cases cited therein.)

But admitting that the will said to have been executed by the deceased Simeona F. Naval on February 13, 1915, notwithstanding its inefficacy to transmit property for the reason that it has not been executed, according to the provisions of said section 618 of the Code of Civil Procedure, should be considered as executed by her in order to express her desire, appearing in one of its clauses, to revoke and annul any previous will of hers, as stated in clause 13, this being the argument adduced by the appellant, Monica Naval, in support of said assignment of error—neither could it be maintained that, the allowance of said will having been denied by the court on November 11, 1915, said revocatory clause subsists and the intention expressed by the testatrix therein is valid and legally effective, for the simple reason that, in order that a will may be revoked by a document, it is necessary, according to the conclusive provisions of section 623 of said procedural law, that such document be executed according to the provisions relating to will in section 618, and the will in question, or, according to the respondent, the so-called document, was not executed according to the provisions of said section, according to the express finding of the trial court in its order of November 11, 1915, acquiesced in by the opponent herself, and which is now final and executory. Therefore, the disallowance of said will and the declaration that it was not executed according to the provisions of law as to wills, produced the effect of annulling said revocatory clause.

In support of the argument advanced in her brief said appellant, Monica Naval, cites the declaration made by the Supreme Court of Massachusetts in *Wallis vs. Wallis* (114 Mass., 510, 512), which, according to the appellant herself, was in the following terms:

"If it be shown that a later will was duly executed and attested, containing a clause expressly revoking former wills, nothing else appearing as to its contents, it is nevertheless good as a revocation, but it can only be made available by setting it up in opposition to the probate of the earlier will."

In the decision of said case the finding referred to be by the appellant appears not to have been made by the Supreme Court of Massachusetts.

The syllabus of said decision says:

"When a will revoking a former will is in existence, it must be established in the Probate Court; but when it has been lost or destroyed, and its contents cannot be sufficiently proved to admit it to probate, it may nevertheless be availed of as a revocation in opposition to the probate of the will revoked by it."

And in the body of the decision there is a declaration, to which the appellant must have desired to refer in her brief, which declaration says:

"If it can be proved that a later will was duly executed, attested and subscribed, and that it contained a clause expressly revoking all former wills, but evidence of the rest of its contents cannot be obtained, it is nevertheless a good revocation; and it can be made available only by allowing it to be set up in opposition to the probate of the earlier will," * * *.

The facts of the case in which this decision was rendered are different from the facts of the case at bar. That was a case concerning a will filed by one of the children of the testatrix, Mary Wallis, as her last will, to the allowance of which another son objected, alleging that said will had been revoked by another executed by the same deceased subsequent to the will that was filed, and that it had been fraudulently destroyed or taken by his brother, the proponent and his wife, or by one of them, in order to deprive him of the rights conferred upon him by said will. Therefore, the will said to have been subsequently executed by the testatrix and in which, according to the oppositor, the clause revocatory of the former will appeared, was not presented by said oppositor, while the previous will was, on the contrary, filed for allowance by the son of the testatrix, who appeared to be favored therein, said oppositor having alleged that the subsequent will, that is, that containing the revocatory clause, had been drawn, subscribed and executed in accordance with the provisions of the law, a fact which he was ready to prove just as he was ready to prove that it had been destroyed or suppressed by the proponent, his brother and his wife, or one of them. In the case at bar, the subsequent will containing the revocatory clause of the previous will executed by the deceased Simeona F. Naval was presented to the court for allowance and it was disallowed—a fact which gave opportunity to the legatees of said deceased to present a previous will executed by her on October 31, 1914, and said two wills having been successively presented, evidence as to them was also successively adduced for their allowance by the court.

Therefore, the declaration made by the Supreme Court of Massachusetts in *Wallis vs. Wallis* (supra), to the effect that a subsequent will containing a revocatory clause of previous wills, constitutes a valid revocation and may be used in objecting to the allowance of the previous will, even when it is not possible to obtain proof of the remainder of the contents of said subsequent will, refers to the case in which the latter had been taken away, destroyed or suppressed, and it was impossible to present it for allowance, but requires for that purpose that it be proved that said subsequent will has been executed, attested, and subscribed in due form and that it contained, furthermore, that revocatory clause. This is what said declaration and, in relation thereto, also what the syllabus of the decision thereof clearly says. The court, through Chief Justice Gray, in giving its opinion, thus began by saying:

"By our law, no will can be revoked by any subsequent instrument, other than a 'will, codicil or writing, signed, attested and subscribed in the manner provided for making a will.' And when an instrument of revocation is in existence and capable of being propounded for probate, its validity should be tried by a direct proceeding instituted for the purpose in the Probate Court. (*Loughton vs. Atkins*, 1 Pick., 535.)"

It results, therefore, that while perfect parity does not exist between the case decided by the Supreme Court of Massachusetts, to which the appellant Monica Naval refers, and that which is now before us, it is wholly unquestionable that, whether the case deals with a subsequent will revocatory of a previous will, which may possibly be presented to a probate court for allowance, or of a subsequent will, also revocatory of a previous will, which could not be presented for allowance, because it has been taken or hidden, or mislaid—in order that such

will may constitute a valid revocation and be utilized in the second case, although the remaining provisions may not be proven, in opposition to the allowance of the previous will, it is necessary to prove that it was executed, attested, and subscribed in due form, and, of course, also that it contained a clause expressly revoking the previous will, or, what is the same thing, that said subsequent will had been executed according to the provisions relating to wills, as expressed in section 623 of the procedural law in force. There can be no doubt whatever that this applies when the revocation had been made to appear in a writing or document susceptible of presentation for allowance, like the so-called will of the deceased Simeona F. Naval, dated February 13, 1915, and considered by said respondent and appellant as a mere document of revocation, for, as already seen in said decision invoked by her, the requisite as to signing, attesting, and subscribing in the form, required by law for the execution of wills in order that it may revoke a previous will, is also required in a will as well as in a codicil, or in a writing, and in referring to a document of revocation, it is also expressed that its validity should be proved in a direct proceeding, instituted for the purpose in a probate court. In the case at bar, the document, executed by the deceased, Simeona F. Naval, as her last will and testament, dated February 13, 1915, has been presented for allowance; its validity has been proved by means of said procedure in the Court of Probate of Manila, and that court denied its allowance, on the ground that the document in question had not been duly executed by the deceased, as her last will and testament, because she did not sign in the presence of three witnesses, and two of these witnesses did not sign in the presence of each other, or what is the same thing, that said document had not been attested and subscribed in the manner established by law for the execution of wills, or, in other words, as provided by law in case of wills, as stated by section 623 of said procedural law, and this resolution was acquiesced in, as already stated, by the respondents in this case, and is, therefore, final and executory.

In conclusion, the doctrine laid down in the decision of the Supreme Court of Massachusetts, invoked by the appellant, Monica Naval, is in conformity with the provision of said section 623 of our procedural law and article 739 of the Civil Code, and the will executed by the deceased Simeona F. Naval on October 31, 1914, not having been revoked, according to these provisions, by the will presented and alleged as executed by the same deceased subsequently on February 13, 1915, the allowance of which was denied by the Court of First Instance of Manila, the court below was not in error in ordering the allowance of said will, that is, of that of October 31, 1914, as the last will and testament of said deceased.

Wherefore, the order appealed from is affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Carson, Street, and Malcolm, JJ., concur.

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