

AMBROSIA KALAW, PETITIONER AND APPELLEE, VS. ALEJANDRO VIRREY AND CANDIDO LANTING, CONTESTANTS AND APPELLANTS.*G.R. No. 12894. August 21, 1918*

Ponente: AVANCEÑA, J.

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Sebastian Virrey, who died in the municipality of Lipa, Batangas, on December 3, 1916, left a holographic will, executed on January 29, 1895. Upon the filing of this will for probate, the court set the 13th day of January, 1917, for the hearing, after due publication, and on this date Alejandro Virrey and Candido Lanting filed an opposition based on the ground that the will could not be allowed, in accordance with section 617 of the Code of Civil Procedure. Upon the opening of the session of the court, on the above date, for the hearing of the probate proceedings on this will, the contestants, represented by their counsel, objected to the taking of evidence and prayed the court first to decide the issue raised by them as to whether or not, under the Civil Code, an holographic will might be allowed after the present Code of Civil Procedure had gone into effect. The court overruled the objection, ordered the production of evidence and reserved its decision of the issue in question until the rendering of final judgment upon the allowance of the will. The contestants entered an exception to this ruling. During the trial the contestants abstained from cross-examining the witnesses and from producing their own evidence. On March 19, 1917, the court rendered judgment, by dismissing the opposition of Alejandro Virrey and Candido Lanting and allowing the will. To this judgment the contestants also filed an exception and, in this instance, make the following assignment of errors:

First. The court erred in allowing the probate of the will before first deciding, as a previous issue, whether or not the so-called holographic will of the late Sebastian Virrey might be allowed under Act No. 190.

The only provision of law in connection with the probate of wills is that, upon the filing of a will, the court shall set a date for the hearing thereon, in which the testimony of all the witnesses presented shall be taken. There is no provision whatever that requires the court previously to decide upon any issue raised, much less when such issue refers to a point like the one concerned in the present case, and which, as the court says, relates to the main subject matter of the case and should be finally decided. We believe that the court acted legally in dismissing the contestants' objection. The taking of the evidence having been ordered, the contestants were entitled to cross-examine the petitioner's witnesses, if they had any cross-examination to make, and to produce their own evidence, if any they had, and they cannot now complain for not having done what was in their power to do. Having virtually waived their opportunity to present evidence, they are not now entitled to ask for another opportunity, which necessarily would delay the course of these proceedings, to the prejudice of the parties interested in the will of Sebastian Virrey.

Second. The court erred in dismissing the opposition of Alejandro Virrey and Candido Lanting, and in allowing to probate the will of Sebastian Virrey.

The contestants allege that, according to section 617 of the Code of Civil Procedure, only open, sealed and verbal

wills executed by a Spaniard, or a resident of these Islands, before the enforcement of Act No. 190, may be allowed, to the exclusion of holographic wills. Section 617 reads as follows:

"Sec. 617. Spanish Wills.—A will executed by a Spaniard, or a resident of the Philippine Islands, before the date on which this act shall come into force, shall be valid and allowed, if duly executed in accordance with the laws before that date prevailing in the Philippine Islands relating to the execution of wills, whether such will be an open will or a sealed will, or one termed a verbal will under that law, but such will must be established and the estate administered in accordance with the provisions of this code."

The opponents contend that, inasmuch as this provision expressly mentions open, sealed, and verbal wills, and not holographic wills, it is to be inferred that those belonging to the last class are excluded. We are of the opinion that this contention is unfounded, and that it is evident, having in mind the spirit of this provision, that the legislative intent is to include, not only the open, sealed, or verbal wills specified in the law, but also any other will executed in accordance with the laws in force on the date when Act No. 190 was promulgated. Not only is there no reason to suppose that the legislator intended to exclude holographic wills from the benefits of the foregoing provision, but it also appears absurd that he should have intended to include therein the other kinds of wills, even the one termed "verbal"—which was only allowed in special circumstances and under special conditions for the reason of its being the kind of will having the least guaranty of authenticity— and should have excluded holographic wills which have a better guaranty of authenticity.

The judgment appealed from is affirmed, with the costs against the appellants. So ordered.

Torres, Johnson, Street, Malcolm, and Fisher, JJ., concur.

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