

**IN RE WILL OF THE DECEASED LUCINA ANDRADA. LUCILA ARCE,
PETITIONER AND APPELLANT.***G. R. No. 16008. September 29, 1921*

Ponente: STREET, J.

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Lucina Andrada died on June 5, 1919, in the Municipality of Capiz, Province of Capiz; and soon thereafter a petition was presented to the Court of First Instance of Capiz by Lucila Arce to establish a document purporting to be the last will and testament of the deceased. Upon hearing the petition, his Honor, Judge Antonio Villareal, declared that the document in question had not been executed in conformity with the requirements of section 618 of the Code of Civil Procedure, as amended by Act No. 2645 of the Philippine Legislature. He therefore refused to admit the purported will to probate, and the petitioner appealed.

The attesting clause of the will in question is incorporated in the will itself, constituting the last paragraph thereof; and its defect consists in the fact that it does not state the number of sheets or pages upon which the will is written, though it does state that the testatrix and the instrumental witnesses signed on every page, as is in fact obvious from an inspection of the instrument. Each of the pages moreover bears successively the Visayan words, "isa," "duha," "tatlo," "apat," "lima," which mean respectively "one," "two," "three," "four," "five," Visayan being the dialect in which the instrument is written.

By section 618 of the Code of Civil Procedure, as amended by Act No. 2645, it is required that each and every page of the will shall be numbered correlatively in letters and that the attesting clause shall state the number of sheets or pages used.

Without deciding in this case whether the will in question is rendered invalid by reason of the manner in which the pages are numbered, the court is unanimous upon the point that the defect pointed out in the attesting clause is fatal. The law plainly says that the attestation shall state the number of sheets or pages used, the evident purpose being to safeguard the document from the possibility of the interpolation of additional pages or the omission of some of the pages actually used. It is true that this point is also safeguarded by the other two requirements that the pages shall be consecutively lettered and that each page shall be signed on the left margin by the testator and the witnesses.

In the light of these requirements it is really difficult to see any practical necessity for the additional requirement that the attesting clause shall state the number of sheets or pages used. Nevertheless, it cannot be denied that the last mentioned requirement affords additional security against the danger that the will may be tampered with; and as the Legislature has seen fit to prescribe this requirement, it must be considered material.

In two cases we have held that the failure to comply with the strict requirements of this law does not invalidate the instrument, but the irregularities presented in those cases were entirely trivial, the defect in one case being that a will in which the dispositive part consisted of a single sheet was not signed in the margin in addition to being signed at the bottom (*In re will of Abangan*, 40 Phil., 476); in the other, that the pages comprising the body of the

will were signed by the testator and witnesses on the right margin instead of the left (*Avera vs. Garcia and Rodriguez*, p. 145, ante). In the case now before us the defect is, in our opinion, of more significance; and the rule here applicable is that enunciated in *Caraig vs. Tatlonghari*, R. G. No. 12558, decided March 23, 1918, not reported, and *In re estate of Saguinsin*, 41 Phil., 875), in each of which the will was held to be invalid.

It results that the trial judge did not err in refusing probate of the will, and the judgment must be affirmed. It is so ordered, with costs against the appellant.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

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