

**IN THE MATTER OF THE TESTATE ESTATE OF ANTONIO MOJAL,
DECEASED. FILOMENA NAYVE, PETITIONER AND APPELLEE, VS.
LEONA MOJAL AND LUCIANA AGUILAR, OPPONENTS AND
APPELLANTS.**

G.R. No. 21755. December 29, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is a proceeding for the probate of the will of the deceased Antonio Mojal, instituted by his surviving spouse, Filomena Nayve. The probate is opposed by Leona Mojal and Luciana Aguilar, sister and niece, respectively, of the deceased.

The Court of First Instance of Albay, which tried the case, overruled the objections to the will, and ordered the probate thereof, holding; that the document in controversy was the last will and testament of Antonio Mojal, executed in accordance with law. From this judgment the opponents appeal, assigning error to the decree of the court allowing the will to probate and overruling their opposition.

The will in question, Exhibit A, is composed of four sheets with written matter on only one side of each, that is, four pages written on four sheets. The four sides or pages containing written matter are paged "Pag. 1," "Pag. 2," "Pag. 3," "Pag. 4," successively. Each of the first two sides or pages, which was used, was signed by the testator and the three witnesses on the margin, left side of the reader. On the third page actually used, the signatures of the three witnesses appear also on the margin, left side of the reader, but the signature of the testator is not on the margin, but about the middle of the page, at the end of the will and before the attestation clause. On the fourth page, the signatures of the witnesses do not appear on the margin, but at the bottom of the attestation clause, it being the signature of the testator that is on the margin, left side of the reader.

The defects attributed to the will are:

(a) The fact of not having been signed by the testator and the witnesses on each and every sheet on the left margin; (b) the fact of the sheets of the document not being paged with letters; (c) the fact that the attestation clause does not state the number of sheets or pages actually used of the will; and (d) the fact that the testator does not appear to have signed all the sheets in the presence of the three witnesses, and the latter to have attested and signed all the sheets in the presence of the testator and of each other.

As to the signatures on the margin, it is true, as above stated, that the third page actually used was signed by the testator, not on the left margin, as it was by the witnesses, but about the middle of the page and at the end of the will; and that the fourth page was signed by the witnesses, not on the left margin, as it was by the testator, but about the middle of the page and at the end of the attestation clause.

In this respect the holding of this court in the case of *Avera vs. Garcia and Rodriguez* (42 Phil., 145), is applicable, wherein the will in question was signed by the testator and the witnesses, not on the left, but right,

margin. The rule laid down in that case is that the document contained the necessary signatures on each page, whereby each page of the will was authenticated and safeguarded against any possible alteration. In that case, the validity of the will was sustained, and consequently it was allowed to probate.

Applying that doctrine to the instant case, we hold that, as each and every page used of the will bears the signatures of the testator and the witnesses, the fact that said signatures do not all appear on the left margin of each page does not detract from the validity of the will.

Turning to the second defect alleged, that is to say, the fact that the sheets of the document are not paged with letters, suffice it to cite the case of *Unson vs. Abella* (43 Phil., 494), where this court held that paging with Arabic numerals and not with letters, as in the case before us, is within the spirit of the law and is just as valid as paging with letters.

As to the proposition that the attestation clause does not state the number of sheets or pages of the will, which is the third defect assigned, it must be noted that the last paragraph of the will here in question and the attestation clause, coming next to it, are of the following tenor:

"In witness whereof, I set my hand unto this will here in the town of Camalig, Albay, Philippine Islands, this 26th day of November, nineteen hundred and eighteen, composed of four sheets, including the next:

"ANTONIO MOJAL

"(Signed and declared by the testator Don Antonio Mojál to be his last will and testament in the presence of each of us, and at the request of said testator Don Antonio Mojál, we signed this will in the presence of each other and of the testator.)

"PEDRO CARO

"SILVERIO MORCO

"ZOILO MASINAS"

As may be seen, the number of sheets is stated in said last paragraph of the will. It is true that in the case of *Uy Coque vs. Navas L. Sioca* (43 Phil., 405), it was held that the attestation clause must state the number of sheets or pages composing the will; but when, as in the case before us, such fact, while it is not stated in the attestation clause, appears at the end of the will proper, so that no proof aliunde is necessary of the number of the sheets of the will, then there can be no doubt that it complies with the intention of the law that the number of sheets of which the will is composed be shown by the document itself, to prevent the number of the sheets of the will from being unduly increased or decreased.

With regard to the last defect pointed out, namely, that the testator does not appear to have signed on all the sheets of the will in the presence of the three witnesses, and the latter to have attested and signed on all the sheets in the presence of the testator and of each other, it must be noted that in the attestation clause above set out it is said that the testator signed the will "in the presence of each of the witnesses" and the latter signed "in the presence of each other and of the testator." So that, as to whether the testator and the attesting witnesses saw each other sign the will, such a requirement was clearly and sufficiently complied with. What is not stated in this clause is whether the testator and the witnesses signed all the sheets of the will.

The act of the testator and the witnesses seeing reciprocally the signing of the will is one which cannot be proven by the mere exhibition of the will unless it is stated in the document. And this fact is expressly stated in the attestation clause now before us. But the fact of the testator and the witnesses having signed all the sheets of the will may be proven by the mere examination of the document, although it does not say anything about this, and if that is the fact, as it is in the instant case, the danger of fraud in this respect, which is what the law tries to avoid,

does not exist.

Therefore, as in the instant case the fact that the testator and the witnesses signed each and every page of the will is proven by the mere examination of the signatures in the will, the omission to expressly state such evident fact does not invalidate the will nor prevent its probate.

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

Johnson, Malcolm and Villamor, JJ., concur.

DISSENTING OPINION

AVANCEÑA, J.:

In my opinion the judgment appealed from must be reversed, and the probate of the will denied on the ground that the number of sheets or pages composing the will is not stated in the attestation clause.

The attestation clause is necessary and essential for the validity of the will (In re Estate at Neumark, 46 Phil., 841). The law requires that the attestation clause should state the number of sheets or pages of the will and In re Will of Andrada (42 Phil., 180) it was held that a document said to be the will of a deceased person cannot be probated when the attestation clause does not state the number of sheets or pages composing the will. The fact that in the will proper the number of pages composing it is stated, does not cure the defect of it not having been stated in the attestation clause. The intention of the law in providing that it should be stated necessarily in the attestation clause is undoubtedly that the attesting witnesses and not the testator should certify this fact. As held in the case of Abangan vs. Abangan (40 Phil., 476), the attestation clause pertains to the attesting witnesses and it is not necessary that the testator should also sign it. On the other hand the will proper pertains to the testator, and not to the attesting witnesses and it is not necessary also that the latter should sign it (In re Will of Tan Diuco, 45 Phil., 807), as in fact they did not sign it in the instant case. Therefore, the statement of the number of sheets or pages of the will in the will proper is not a compliance with the law, for in that way it is only the testator who states the fact and not the attesting witnesses, as required by the law.

DISSENTING OPINION

OSTRAND, J.:

I concur in the dissenting opinion of Mr. Justice Avanceña. The majority opinion is directly contrary to the decisions of this court in the cases of In re Will of Andrada (42 Phil., 180) and Uy Coque vs. Navas L. Sioca (43 Phil., 405) and violates the well-known rule that statutes prescribing the formalities to be observed in the execution of wills must be strictly construed. And this is done in the face of the fact that the attestation clause in the will before us evidently is drawn in accordance with the original text of section 618 of the Code of Civil Procedure which the Legislature, by Act No. 2645, found it necessary to amend and strengthen by adding precisely the requirements which the court now virtually declares non-essential.

STREET, J., concurs in the dissenting opinions of Justices Avanceña and Ostrand.

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