

IN RE WILL OF LUPO MERCADO, DECEASED. REMEDIOS JACINTO, WIDOW OF MERCADO, PETITIONER AND APPELLANT, VS. SANTIAGO MERCADO, OPPONENT AND APPELLEE.

G.R. No. 23392. March 18, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from an order of the Court of First Instance of Rizal denying a petition for the probate of the last will and testament of the deceased Lupo Mercado.

The will is executed in the Spanish language and is typewritten on four sheets of ordinary legal size typewriting paper. As is usual with typewritten documents, the writing appears on only one page of each sheet and the pages used are numbered consecutively "uno," "dos," "tres" and "cuatro." The attestation clause states, among other things, that the document "consta de tres hojas enumeradas correlativamente 'uno,' 'dos' y 'tres' aparte de la presente hoja que constituye la hoja numero 'cuatro,' " (appears on three sheets consecutively numbered "one," "two" and "three" aside from the present sheet numbered "four").

The court below held that under section 618 of the Code of Civil Procedure, as amended, the attestation clause should have stated that the pages used, not the sheets used, were numbered inasmuch as only one page or side of each sheet had been used.

This view is in our opinion erroneous. Section 618 reads as follows:

"Requisites of will.—No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be written in the language or dialect known by the testator and signed by him, 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 each other. 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, on the left margin, and said pages shall be numbered correlatively in letters placed on the upper part of each sheet. 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."

It will be observed that the section quoted provides that the attestation shall state the number of sheets or pages used. In the will in question only one page of each sheet was, in accordance with the usual practice in typewriting, used. A page used was therefore in effect a sheet used and the two might well be treated as identical. In such circumstances, it seems immaterial whether the word "page" or the word "sheet" is used in the attestation clause. The situation would be different if the writing had appeared on both sides of the sheets.

The case of the Estate of Saguinsin (41 Phil., 875), is not in point. There the alleged will was written in longhand

and, as then customary, on both sides of the sheets, but only the first page of each sheet was numbered and signed. That is not this case.

The order appealed from is reversed and it is hereby ordered that the will here in question be admitted to probate. No costs will be allowed in this instance. So ordered.

Johnson, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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