

ESTATE OF THE DECEASED PAULINO DIANCIN. TEOPISTA DOLAR, PROPONENT AND APPELLANT, VS. FIDEL DIANCIN ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 33365. December 20, 1930

Ponente: MALCOLM, J.

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MALCOLM, J.:

The will of the deceased Paulino Diancin was denied probate in the Court of First Instance of Iloilo on the sole ground that the thumbmarks appearing thereon were not the thumbmarks of the testator. Disregarding the other errors assigned by the proponent of the will, we would direct attention to the third error which challenges squarely the correctness of this finding.

The will in question is alleged to have been executed by Paulino Diancin at Dumangas, Iloilo, on November 13, 1927. A thumbmark appears at the end of the will and on the left hand margin of each of its pages in the following manner: "Paulino Diancin, Su Signo, Por Pedro Diamante." The witnesses to the will were the same Pedro Diamajite, Inocentes Deocampo, and Juan Dominado. The will is detailed in nature, and disposes of an estate amounting approximately to P50,000.

For comparative purposes, Exhibit 8, a document of sale containing an admittedly genuine thumbmark of Paulino Diancin, was presented. Photographs of the thumbmarks on the will and of the thumbmark on Exhibit 8 were also offered in evidence. One, Carlos J. Jaena, attempted to qualify as an "expert," and thereafter gave as his opinion that the thumbmarks had not been made by the same person. One, Jose G. Villanueva, likewise attempted to qualify as an "expert" and gave as his opinion that the thumbmarks were authentic. The petition of the proponent of the will to permit the will to be sent to Manila to be examined by an expert was denied. On one fact only were the opposing witnesses agreed, and this was that the ink used to make the thumbmarks on the will was of the ordinary type which blurred the characteristics of the marks, whereas the thumbmark on Exhibit 8 was formed clearly by the use of the special ink required for this purpose. The trial judge expressed his personal view as being that great differences existed between the questioned marks and the genuine mark.

The requirement of the statute that the will shall be "signed" is satisfied not only by the customary written signature but also by the testator's or testatrix' thumbmark. Expert testimony as to the identity of thumbmarks or fingerprints is of course admissible. The method of identification of fingerprints is a science requiring close study. Where thumb impressions are blurred and many of the characteristic marks far from clear, thus rendering it difficult to trace the features enumerated by experts as showing the identity or lack of identity of the impressions, the court is justified in refusing to accept the opinions of alleged experts and in substituting its own opinion that a distinct similarity in some respects between the admittedly genuine thumbmark and the questioned thumbmarks, is evident. This we do here. (*Emperor vs. Abdul Hamid* [1905], 32 Indian L. Rep., 759, cited in 3 Chamberlayne on the Modern Law of Evidence, sec. 2561, note 3.)

There is another means of approach to the question and an obvious one. The three instrumental witnesses united

in testifying concerning the circumstances surrounding the execution of the will. It was stated that in addition to the testator and themselves, one other person, Diosdado Dominado, was present. This latter individual was called as a witness by the oppositors to the will to identify Exhibit 8. He was later placed on the witness stand by the proponent on rebuttal, and thereupon declared positively that he was the one who prepared the will for the signature of Paulino Diancin; that the thumbmarks appearing on the will were those of Paulino Diancin, and that he saw Paulino Diancin make these impressions. The testimony of a witness called by both parties is worthy of credit.

We reach the very definite conclusion that the document presented for probate as the last will of the deceased Paulino Diancin was, in truth, his will, and that the thumbmarks appearing thereon were the thumbmarks of the testator. Accordingly, error is found, which means that the judgment appealed from must be, as it is hereby, reversed, and the will ordered admitted to probate, without special finding as to costs in this instance.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

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