

**ESTATE OF THE DECEASED CARIDAD ALCANTARA DE GOROSTIZA.
CONSORCIA DICHOSO DE TICSON, PETITIONER AND APPELLANT, VS.
MARINO DE GOROSTIZA, OPPOSITOR AND APPELLEE.**

G. R. No. 35586. October 31, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

The will of the deceased Caridad Alcantara de Gorostiza was denied probate in the trial court, for the reason that the attestation clause failed to state that the testatrix signed every page of the will as required by section 618, as amended, of the Code of Civil Procedure. The attestation clause in question reads:

"We, the undersigned attesting witnesses, whose residences are stated opposite our respective names, do hereby certify that the testatrix, whose name is signed hereinabove, has publish unto us the foregoing will consisting of two pages as her Last Will and Testament, and has signed the same in our presence, and in witness whereof we have each signed the same and each page thereof in the presence of said testatrix and in the presence of each other." The single question is, if the attestation clause above quoted is fatally defective and so annuls the will, or if the said attestation clause conforms to the law and so permits the court to respect the wishes of the deceased and to sustain the will.

The theses of the appellant and the appellee are as far apart as the poles. Appellant says that when the attestation clause mentions "the testatrix, whose name is signed hereinabove", the word "hereinabove" should be taken as not only referring to the signature at the end of the will but to the signatures on the margin of its two pages, and that when later the attestation clause mentions "the foregoing will consisting of two pages as her Last Will and Testament, and has signed the same", the word "same" refers to the two pages of the will and not to the will itself. Appellee on the other hand maintains that in the attestation clause, all that has been said about the testatrix, "whose name is signed hereinabove" is that "she has signed the same (will) in our (witnesses) presence", and that the attestation clause does not set forth that the testatrix has signed every page of the will in the presence of the attesting witnesses.

Placing the attestation clause under the judicial microscope, we observe, after analytical study, that it shows compliance with statutory provisions. We must reject as untenable the interpretation of the appellant relative to the word "hereinabove", for this simply has reference to the signature of the testatrix at the end of the will. We must reject also as untenable the interpretation of the appellant that the word "same" refers back to "pages" and not to "will", for such an interpretation would be inconsistent with the language used further on in the attestation clause where mention is made of the signing by the witnesses of "the same and each page thereof", meaning the will and each page thereof. We are, however, clear that when the attestation clause states that the testatrix "has publish unto us the foregoing will consisting of Wo pages as her Last Will and Testament, and has signed the same", the word "same" signifies the foregoing will consisting of two pages, which necessarily implies the signature by the testatrix of the will and every page thereof. In our judgment, an interpretation sustaining the validity of the attestation clause is neither forced nor illogical.

Precision of language in the drafting of an attestation clause is desirable. However, it is not imperative that a parrot-like copy of the words of the statute be made. It is sufficient if from the language employed it can reasonably be deduced that the attestation clause fulfills what the law expects, of it.

There is another aspect to the case. Evidence of course may not be admitted to supply omissions in an attestation clause. The attestation clause must show on its face a compliance with the law. But this does not preclude an examination of the will, and here the will itself shows that the testatrix and the witnesses signed on the left-hand margin of the two pages; that the testatrix signed at the end of the will, and that the witnesses signed at the end of the attestation clause. The attestation clause is a part of the instrument which so closely, if not literally, adheres to the law of wills.

It has been observed during our deliberations that a decision upholding the will before us would run counter to a uniform line of authorities to the contrary. That is hardly an exact statement. The truth is that there have been noticeable in the Philippines two divergent tendencies in the law of wills-the one being planted on strict construction and the other on liberal construction. A late example of the former views may be found in the decision in *Rodriguez vs. Alcala* ([1930], 55 Phil., 150), sanctioning a literal enforcement of the law. The basic case in the other direction, predicated on reason, is *Abangan vs. Abangan* ([1919], 40 Phil., 476), oft-cited approvingly in later decisions.

The attestation clause here is an exact transcription of the form found in former Justice Fisher's *New Encyclopedia of Philippine Legal Forms*, third edition, page 495, except that, by typographical error, the word "published" has been written "publish". So it would be a safe assumption that there are other wills in this jurisdiction having similar attestation clauses. A decision against the will in this case might accordingly have far-reaching and disastrous results.

Legalistic formalities should not be permitted to obscure the use of good sound common sense in the consideration of wills and to frustrate the wishes of deceased persons solemnly expressed in testaments, regarding the execution of which there is not even a hint of bad faith or fraud. We find the attestation clause legally sufficient, and order that the will of the deceased *Caridad Alcantara de Gorostiza* be admitted to probate.

Judgment reversed, the costs of both instances to be paid by the appellee.

Villamor, Abad Santos, Hull, and Imperial, JJ., concur.

OSTRAND, J.: I reserve my vote.

BUTTE, J., concurs in the result.

DISSENTING

STREET, J., with whom concur VILLA-REAL and VICKERS, JJ.,

The attesting clause in this case is, in our opinion, defective in that it fails to show that every page of the will was signed by the testator in the presence of the attesting witnesses. In section 618 of the Code of Civil Procedure, as amended, it is declared, among other things, that the attestation shall state that the testator signed "the will and every page thereof" in the presence of the witnesses, also that the attesting witnesses signed the will "and all pages thereof" in the presence of the testator and of each other. In the attestation before us it is stated that the witnesses had signed the will "and each page thereof" in the presence of the testatrix and of each other, but with respect to

the signing by the testatrix it is merely stated that she signed "the same" in our presence. The question here presented really resolves itself into the question, What is the proper and real antecedent of "the same" as first used in the attestation clause? It will be noted that this expression is used twice in the attestation, and it is obvious that it must have the same meaning in both places. Now, in the second place where the phrase is used, it evidently means the will merely and not "the will and every page thereof". It follows that, as this expression is used in the first place in the attestation clause, it should be understood to refer merely to the will.

In our opinion the certification that a will "consisting of two pages" was signed by the testator is not a certification of the fact that it was signed on "every page thereof". What appears to have occurred in this case, if we may be permitted so to say, is that the court has inadvertently permitted a mere inference to usurp the place of the plain fact which the law requires to be stated in the attestation. If this decision is correct, it might in time be logically followed by another to the effect that an attesting clause is good if it certifies merely that the will was "signed in the manner prescribed by law",-a proposition which we think would be generally recognized as unsound.

Consistently with this attestation the signature of the testatrix in the margin of the first page might have been signed by her at a time when the attesting witnesses were not present. The clause is therefore defective, and no error was committed by the trial court in rejecting the will.

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