

**IN RE ESTATE OF THE DECEASED GREGORIO TOLENTINO.
ADELAIDA TOLENTINO, PETITIONER AND APPELLEE, VS. NATALIA
FRANCISCO ET AL., OPPOSITPRS AND APPELLANTS.**

G. R. No. 35993. December 19, 1932

Ponente: STREET, J.

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STREET, J.:

This petition was filed in the Court of First Instance of Manila by Adelaida Tolentino de Concepcion, for the purpose of procuring probate of the will of Gregorio Tolentino, deceased, who died at the 'hand of an assassin, in his home, No. 2541 Lico Street, in the District of Santa Cruz, Manila, on November 9, 1930. In the inception of the proceedings Eugene de Mitkiewiez was appointed special co-administrator, and he joined as co-plaintiff in the petition. Opposition was made to the probate of the will by Ciriaco Francisco, Natalia Francisco, and Gervasia Francisco, all cousins of the deceased and residents of the City of Manila. Upon hearing the cause the trial court overruled the opposition, declared the will to have been properly executed, and allowed the probate thereof. From this order the three opponents appealed.

At the time of his death on November 9, 1930, Gregorio Tolentino was sixty-six years of age. During the more vigorous years of his life he had been married to Benita Francisco, but she predeceased him years ago. By their industry and frugality the two had accumulated a very considerable estate which does not appear to have suffered any material diminution in the years of Tolentino's widowhood. The pair had no children, and the generous instincts of the survivor prompted him to gather around him in his comfortable and commodious home a number of his wife's kin; and by him various younger members of the connection were supported and educated. At one time Tolentino contemplated leaving his property mainly to these kin of his wife, of the surname Francisco; and for several years prior to his death, he had kept a will indicating this desire. However, in October, 1930, strained relations, resulting from grave disagreements, developed between Tolentino and the Francisco relations and he determined to make a new will in which, apart from certain legacies in favor of a few individuals, the bulk of his estate, worth probably about P150,000, should be given to Adelaida Tolentino de Concepcion, as his universal heir.

To this end, on October 17, 1930, Tolentino went to the office of Eduardo Gutierrez Repide, an attorney at 97 General Luna, Manila, and informed him that he wanted to make a new will and desired Repide to draft it for him. After the necessary preliminary inquiries had been made, the attorney suggested to Tolentino to return later, bringing a copy of the will previously made. Accordingly, on the second day thereafter, Tolentino again appeared in Repide's office with the prior will; and the attorney proceeded to reduce the new will to proper form. As the instrument was taking shape Tolentino stated that he wanted the will to be signed in Repide's office, with Repide himself as one of the attesting witnesses. For the other two witnesses Tolentino requested that two attorneys attached to the office, namely, Leoncio B. Monzon and Ramon L. Sunico, should serve. For this reason, in the draft of the will, as it at first stood, the names of the three above mentioned were inserted as the names of the three attesting witnesses.

When the instrument had been reduced to proper form it was placed in the hands of Tolentino, the testator, in order that he might take it home to reflect over its provisions and consider whether it conformed in all respects to his wishes. On the morning of October 21 he again appeared in Repide's office and returned to him the draft of the will with certain corrections. Among the changes thus made was the suppression of the names of Monzon, Sunico, and Repide as attesting witnesses, these names being substituted by the names of Jose Syypap, Agustin Vergel de Dios, and Vicente Legarda. The explanation given by the testator for desiring this change was that he had met Jose Syypap on the Escolta, the day before, and had committed the indiscretion of communicating the fact that he (Tolentino) was having a new will made in which Monzon, Sunico, and Repide would appear as the attesting witnesses. Now Syypap had been the draftsman of the former will of Tolentino, and in this same will the name of Syypap appeared as one of the attesting witnesses, the other two being Vicente Legarda and Vergel de Dios. When, therefore, Syypap learned that a new will was being drawn up without his intervention, he showed profound disappointment, saying to Tolentino that he considered it a gross offense that he, Legarda, and Vergel de Dios should be eliminated as witnesses to the new will. Upon this manifestation of feeling by Syypap, Tolentino decided to avail himself of Syypap, Legarda, and Vergel de Dios as witnesses to this will also, and he therefore requested Repide to change the names of the attesting witnesses. After this point had been settled Tolentino stated that he would request Syypap, Legarda, and Vergel de Dios to appear at the office of Repide for the purpose of signing the will. To this end Tolentino went away but returned later saying that he had spoken to Syypap about it and that the latter strenuously objected, observing that the will should be signed at a chopsuey restaurant (panciteria). Tolentino further stated to his attorney in this conversation that he had arranged with Syypap and the other two intending witnesses to meet at five o'clock in the afternoon of the next day, which was October 22, for the purpose of executing the will.

Pursuant to these instructions Repide made the desired changes in the will; and just before twelve o'clock noon of the next day Tolentino returned to Repide's office and received from him the original document, with a carbon copy thereof. Repide advised the testator that the carbon copy should be executed with the same formality as the original in order that the intention of the testator should not be frustrated by the possible loss or destruction of the original.

It is a custom in the office of Repide not to number the consecutive pages of a will, on the typewriting machine, the duty of numbering the pages being left to the testator himself. This precaution appears to have been born of experience, and has been adopted by Repide to prevent the possible destruction of a will by the mere erasure of the figures or letters indicating the pagination,—a disaster which, in Repide's experience, had occurred in at least one case. Accordingly, upon delivering the completed will and carbon copy to the testator, Repide took particular pains to instruct the testator to write the consecutive paging of both original and duplicate before signing the instrument.

At this interview the testator suggested to Repide that the latter should also go to the place where the will was to be executed, so that he might be present at the formality. The attorney replied that it was impossible for him to do so as he had another engagement for the hour indicated, which would prevent his attendance.

At about 4.30 p. m. on the same day, which was October 22, Tolentino started in his car to pick up Syypap and Vergel de Dios at their respective homes on Antipolo and Benavides streets. He then caused his chauffeur to drive with the three to La Previsora Filipina, on Rizal Avenue, where Vicente Legarda, the third intending witness was to be found. Arriving at this place, the three entered the office of Legarda, who was manager of the establishment, and they were invited to take seats, which they did. Tolentino then suggested that the three should go as his guests to a panciteria, where they could take refreshments and the will could be executed. Legarda replied that he must decline the invitation for he had an engagement to go to the Cosmos Club the same afternoon. Upon this

Tolentino asked Legarda to permit the will to be signed in his office, and to this request Legarda acceded.

Tolentino thereupon drew two documents from his pocket saying that it was his last will and testament, done in duplicate, and he proceeded to read the original to the witnesses. After this had been completed, Legarda himself took the will in hand and read it himself. He then returned it to Tolentino, who thereupon proceeded, with pen and ink, to number the pages of the will thus, "Pagina Primera", "Pagina Segunda", etc. He then paged the duplicate copy of the will in the same way. He next proceeded to sign the original will and each of its pages by writing his name "G. Tolentino" in the proper places. Following this, each of the three witnesses signed their own respective names at the end of the will, at the end of the attesting clause, and in the left margin of each page of the instrument. During this ceremony all of the persons concerned in the act of attestation were present together, and all fully advertent to the solemnity that engaged their attention.

After the original of the will had been executed in the manner just stated, the testator expressed his desire that the duplicate should be executed in the same manner. To this Syyp objected, on the ground that it was unnecessary; and in this view he was supported by Vergel de Dios, with the result that the wishes of the testator on this point could not be carried out. As the party was about to break up Tolentino used these words: "For God's sake, as a favor, I request you not to let any one know the contents of this will." The meeting then broke up and Tolentino returned Syyp and Vergel de Dios to their homes in his car. He then proceeded to the law office of Repide, arriving about 6.15 p. m. After preliminary explanations had been made, Tolentino requested Repide to keep the will overnight in his safe, as it was already too late to place it in the compartment which Tolentino was then renting in the Oriental Safe Deposit, in the Kneidler Building. In this connection the testator stated that he did not wish to take the will to his home, as he knew that his relatives were watching him and would take advantage of any carelessness on his part to pry into his papers. Also, in this conversation Tolentino informed Repide of the refusal of Syyp to execute the duplicate of the will.

After a good part of an hour had thus been spent at Repide's office by the testator and after the original of the will had been deposited in Repide's safe, Tolentino took the attorney to the latter's residence in Ermita, and then returned to his own home, where he remained without again going out that night. But promptly at nine o'clock the next morning Tolentino presented himself at Repide's office for the purpose of securing the will. Repide happened to be out and Tolentino went away, but again returned the next day and received the will. With the instrument thus in his possession he proceeded at once to the Oriental Safe Deposit and there left the instrument in his private compartment, No. 333, in which place it remained until withdrawn some two weeks later by order of the court.

On the morning of November 9, 1930, Gregorio Tolentino was found dead in his bed, having perished by the hands of an assassin.

The peculiarity of this case is that, upon the trial of this proceeding for the probate of the will of the decedent, two of the attesting witnesses, Jose Syyp and Vergel de Dios, repudiated their participation in the execution of the will at the time and place stated; and while admitting the genuineness of their signatures to the will, pretended that they had severally signed the instrument, at the request of the testator, at different places. Thus, Syyp, testifying as a witness, claimed that the testator brought the will to Syyp's house on the afternoon of October 21—a time, be it remembered, when the will had not yet left the hands of the draftsman—and upon learning that Syyp could not be present at the time and place then being arranged for the execution of the will, he requested Syyp, as a mere matter of complaisance, to sign the will then, which Syyp did. Vergel de Dios has another story to tell of isolated action, claiming that he signed the will in the evening of October 22 at the Hospital of San Juan de Dios in Intramuros.

We are unable to give any credence to the testimony of these two witnesses on this point, the same being an

evident fabrication designed for the purpose of defeating the will. In the first place, the affirmative proof showing that the will was properly executed is adequate, consistent, and convincing, consisting of the testimony of the third attesting witness, Vicente Legarda, corroborated by Miguel Legarda and Urbana Rivera, two disinterested individuals, employees of La Previsora Filipina, who were present in Legarda's office when the will was executed and who lent a discerning attention to what was being done. In the second place, each of the seven signatures affixed to this will by Syyp appear to the natural eye to 'have been made by using the same pen and ink that was used by Legarda in signing the will. The same is also probably true of the seven signatures made by Vergel de Dios. This could hardly have happened if the signatures of Syyp and Vergel de Dios had been affixed, as they now pretend, at different times and places. In the third place, both Syyp and Vergel de Dios are impeached by proof of contradictory statements made by them on different occasions prior to their appearance as witnesses in this case. In this connection we note that, after the murder of Gregorio Tolentino, and while the police authorities were investigating his death, Nemesio Alferez, a detective, sent for Syyp and questioned him concerning his relations with the deceased. Upon this occasion Syyp stated that Gregorio Tolentino had lately made a will, that it had been executed at the office of La Previsora Filipina under the circumstances already related, and that he himself had served as one of the attesting witnesses.

With respect to Vergel de Dios we have the following fact: On the day that Gregorio Tolentino was buried, Ramon Llorente, a member of the city police force, was sent out to the cemetery in order that he might be present and observe the demeanor on that occasion of such of Tolentino's kin as might be present. Llorente arrived before the funeral cortege, having been taken out to the cemetery by Repide. While the two were waiting at the cemetery, Llorente noted the presence of Vergel de Dios; and as Repide had never met Vergel de Dios, he requested the policeman to introduce him. In the conversation that ensued Vergel de Dios stated with considerable detail that Gregorio Tolentino had made a will just before his death, that it was executed at La Previsora Filipina, and that he was one of the witnesses who attested the instrument at that time and place.

Again, on a certain occasion subsequent to the death of Gregorio Tolentino, Juan Concepcion, the husband of Adelaida Tolentino, accompanied by Genoveva de Mendoza, called upon Vergel de Dios, and in the conversation that resulted Vergel de Dios told them that the will was properly executed, that he was one of the attesting witnesses, and that it had been signed by all of them in the office of La Previsora Filipina.

These circumstances and other incidents revealed in the proof leave no room for doubt in our mind that Syyp and Vergel de Dios have entered into a conspiracy between themselves, and in concert with the opponents, to defeat the will of Gregorio Tolentino although they are well aware that said will was in all respects properly executed; and the trial court, in our opinion, committed no error in admitting the will to probate.

When a will is contested it is the duty of the proponent to call all of the attesting witnesses, if available, but the validity of the will in no wise depends upon the united support of the will by all of those witnesses. A will may be admitted to probate notwithstanding the fact that one or more of the subscribing witnesses do not unite with the other, or others, in proving all the facts upon which the validity of the will rests. (Fernandez vs. Tantoco, 49 Phil., 380.) It is sufficient if the court is satisfied from all the proof that the will was executed and attested in the manner required by law. In this case we feel well assured that the contested will was properly executed and the order admitting it to probate was entirely proper.

The order appealed from will therefore be affirmed, with costs against the appellants. So ordered.

Malcolm, Villamor, Villa-Real, Abad Santos, Hull, and Vickers, JJ., concur.

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