

**IN RE WILL OF FRANCISCO VARELA CALDERON, DECEASED.
FRANCISCO CABMELO VARELA, PETITIONER AND APPELLEE, VS.
MIGUEL VARELA CALDERON ET AL., OPPONENTS AND APPELLANTS.**

G. R. No. 36342. October 08, 1932

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by Miguel Varela Calderon, Angel Varela Calderon, Jesus Varela Calderon, Trinidad Varela Calderon, Paula Varela Calderon, Pilar Varela Calderon and Maria Varela Calderon from the judgment rendered by the Honorable Mariano A. Albert, Judge of the Court of First Instance of Manila, ordering the allowance and probate of the document marked Exhibit B as the last will and testament of the late Francisco Varela Calderon.

The deceased, a physician by profession, was a Filipino citizen resident of the City of Manila where he owned real properties assessed at P188,017.81. He traveled abroad for his health and temporarily resided in Hendaye-Plage, France. Not feeling very well, but in the full enjoyment of his mental faculties, he decided to make his last will and testament (Exhibit B), on April 14, 1930, in Paris, France, with the assistance of attorneys F. de Roussy de Sales, Gething C. Miller and Henri Gadd. Sometime later, that is on July 15, 1930, he died in the Grand-Hotel de Leysin Sanatorium in Switzerland.

On September 20, 1930, the herein petitioner-appellee, Francisco Carmelo Varela, filed a petition in the Court of First Instance of the City of Manila, praying that said will be admitted to probate. Said petition was opposed by the deceased's brothers Jose, Miguel, Angel, Jesus, Trinidad, Paula, Pilar and Maria, surnamed Varela Calderon, although, later on, the first mentioned opponent withdrew his opposition giving as his reason therefor that it was out of respect for the testator's wishes because the will was executed in his own handwriting. The grounds of the opposition are as follows: (a) That the will sought to be probated was not holographic in character and did not comply with the requisites prescribed by article 970 of the French Civil Code; (e) that the witnesses to the will did not possess the qualifications required by article 980 of the French Civil Code; (c) that for not having complied with the requisites prescribed by the French law, said will is null and void; (d) that neither has it the character of an open will, not having been executed in accordance with article 1001 of the French Civil Code; and (e) that the provisions of article 1007 of the same Code relative to the recording of wills were not complied with in connection with the will in question.

The appellants assign the following errors alleged to have been committed by the trial court:

"1. The trial court erred in declaring that Exhibit B, purporting to be the last will and testament of the deceased Francisco Varela Calderon, was a valid holographic will made and executed, in accordance with the laws of the French Republic.

"2. The trial court, therefore, erred in allowing and admitting to probate said document Exhibit B, as the last will and testament of the deceased Francisco Varela Calderon." In view of the nature of both assignments of

error and of the arguments advanced in their support, we shall discuss them jointly.

The will in question, Exhibit B, as translated into English reads as follows:

"I. FRANCISCO VARELA CALDERON, DOCTOR IN MEDICINE, bachelor, citizen of the Philippine Islands and subject of the United States of America, borne and domiciled at Manila, Philippine Islands, and actually residing temporarily at Hendaye-Plage, France, I declare that the followings are my act of last wills and my testament:

"1. I revoke all testamentary dispositions made by myself before this day.

"2. I desire that the inhumation of my body be made without any ceremony.

"3. I give and bequeath to my children FRANCISCO Carmelo Varela borne at Madrid on the twenty fourth of November nineteen hundred five and to Carmen Varela borne at Manila, Philippine Islands, on the fourth of October nineteen hundred seven who live both actually with me, the totality of my personal properties, real estates and mixed including those on which I could have the power of disposition or designation whatsoever, by equal parts in all properties, instituting them my residuary legatee.

"4. I name for my testamentary executor, without bail, my son, Francisco Carmelo Varela, to his default my daughter Carmen Varela, to the default of this one my brother Miguel Varela Calderon and to the default of my brother, Mr. Antonio Gutierrez del Campo.

"In witness whereof I have in this one my act of last wills and testament, written dated and signed entirely by my hand, applied my signature and my seal at Paris, this fourteenth of April nineteen hundred thirty.

(Sgd.) "FRANCISCO VARELA CALDERON (L. S.)

In margin:

ANNEXE A

(Sgd.)

"HENRI GADD

(Sgd.)

"TH. PEYROT

"Signed, sealed, published and declared by the testator above mentioned, Francisco Varela Calderon, on the 14 April 1930, as being his act of last wills and his testament in the presence of we, who, at his request, in his presence, and in the presence, and in the presence of one another, have to these presents applied our signatures as witnesses:

(Sgd.) "F. DE ROUSSY DE SALES,

39 rue la Boetie, Paris.

(Sgd.) "GETHING C. MILLER,

39 rue la Boetie, Paris, France.

(Sgd.) "HENRI GADD,

39 rue la Boetie, Paris, France.

"Pour traduction certifiée conforme,

"Manille, le 15 September 1930."

The original will was executed in the French language and had been written, dated and signed by the testator with his own hand, with the exception of the attestation clause which appears at the bottom of the document. This fact is proved by the testimony of the appellee and his other witnesses, including the depositions, and is admitted by the appellants.

The petition for the allowance and probate of said will is based on the provisions of article 970 of the French Civil Code which considers as a holographic will that which is made or executed, dated and signed by the testator in his own handwriting without the necessity of any other formality, and on section 635 of the Code of Civil Procedure in force in this jurisdiction which provides that a will made out of the Philippine Islands in accordance with the laws in force in the country in which it was made and which may be allowed and admitted to probate therein, may, also be proved, allowed and recorded in the Philippine Islands in the same manner and with the same effect as if executed in the latter country. Both provisions of law literally copied from the English text, read as follows: "

(Article 970, French Civil Code)

"A holographic will is not valid unless it is entirely written, dated, and signed by the testator. No other formality is required. "(Article 635, Code of Civil Procedure)

"Will made out of the Philippine, Islands.-A will made out of the Philippine Islands which might be proved and allowed by the laws of the state or country in which it was made, may be proved, allowed, and recorded in the Philippine Islands, and shall have the same effect as if executed according to the laws of these Islands."

As we have already said, it is an admitted fact that the will was written, dated and signed by the deceased testator, for which reason, there is no doubt that it had been made and executed in accordance with article 970 of the French Civil Code were it not for the attestation clause which appears at the bottom of the document.

The appellants contend that the addition of said clause has entirely vitiated the will, because it ceased to be a holographic will, neither does it possess the requisites of a public or open will in accordance with the French law. The court which originally took cognizance of the case decided that such circumstance does not invalidate the will. We concur in said opinion and hold that a clause drawn up in such manner is superfluous and does not affect

in any way the essential requisites prescribed for holographic wills by the French law, and, consequently, it has not invalidated the will nor deprived it of its holographic character. In reaching this conclusion, we base our opinion not only on the clear and conclusive provisions of article 970 of the French Civil Code and on the decisions of the French Court of Appeals cited in the appellee's brief, but principally on the fact established in the depositions made by practicing attorneys F. de Roussy de Sales, Gething C. Miller and Henri Gadd of Paris, France, who emphatically declared that the will in question did not lose its holographic character by the addition of the aforementioned attestation clause and that it may be allowed to probate in conformity with the French laws under which it had been made and executed.

In view of the foregoing, we believe it unnecessary to consider and pass upon the other grounds invoked by the opposition consisting in the incapacity of the three witnesses who signed at the end of the attestation clause and the absence of the requisites prescribed by the French Civil Code for the execution of open wills, inasmuch as the attorney for the appellee has conclusively proved that the will in question is holographic, and we have so held and decided.

The order appealed from, being in conformity with the law, is hereby affirmed in toto, with costs against the appellants. So ordered.

Avancena, C. J., Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Butte, JJ., concur.

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