

IN THE MATTER OF THE WILL OF MARIA SIASON Y MADRID DE LEDESMA. PROBATE PROCEEDINGS.

G.R. No. 4132. March 23, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In this special proceeding for the legalization of a will, the Court of First Instance refused probate on the ground that the instrument was not subscribed by the witnesses in the presence of the testatrix and of each other as required by section 618 of the Code of Civil Procedure.

The testatrix was ill and confined to her house, the execution of the will taking place in the sala where she lay upon a sofa. The witnesses differ as to whether the testatrix from where she lay could read what was written at the table; and the first witness, after signing, went away from the table. These two circumstances do not impair the validity of the execution of the will. The witnesses being in the same apartment were all present and the statute does not exact that either they or the testator shall read what has been written. Had one of the witnesses left the room or placed himself so remotely therein as to be cut off from actual participation in the proceeding, then the subscription might not have taken place in his presence within the meaning of the law.

A second objection is suggested on this appeal, that the signature to the instrument is defective. It ends in this form:

"At the request of Señora Maria Siason.

"CATALINO GEVA.

"T. SILVERIO. FRUCTUOSO G. MORIN.

"RAFAEL ESPINOS."

Section 618 of the Code of Civil Procedure 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 in writing and signed by the testator, 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 attestation shall state the fact that the testator signed the will, or caused it to be signed by some other person, at his express direction, in the presence of three witnesses, and that they attested and subscribed it in his presence and in the presence of each other. But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided."

The misunderstanding of this section arising from the incorrect rendering of it into Spanish in the official translation was corrected by what was said in the decision of this court in *Ex parte Arcenas* (4 Phil. Rep., 700). Confusion has also come out of the different wording of the two clauses of this section, the one specifying the requisites of execution and the other those of the attestation clause. The concluding sentence of the section,

however, makes clear that the former and not the latter is to control. Consequently the will must be signed by the "testator, or by the testator's name written by some other person in his presence, and by his express direction," and the question presented in this case is, Are the words "Señora Maria Siason" her name written by some other person? They undoubtedly are her name, but occurring as they do after the words "at request of," it is contended that they form a part of the recital and not a signature, the only signature being the names of the witnesses themselves. In *Guison vs. Concepcion* (5 Phil. Rep., 551) it was held that there was no signature, although the attestation clause which followed the will contained the name of the testatrix and was thereafter signed by the witnesses. The distinction between that case and the present one is one of extreme nicety, and in the judgment of the writer of this opinion should not be attempted. The majority of the court, however, are of the opinion that the distinction is a tenable one inasmuch as in the *Concepcion* will the name of the testatrix occurred only in the body of the attestation clause, after the first signatures of the witnesses, whereas in this will it immediately follows the testament itself and precedes the names of the witnesses.

In sustaining this form of signature, this court does not intend to qualify the decisions in *Ex parte Santiago* (4 Phil. Rep., 692), *Ex parte Arcenas*, above quoted, or in *Abaya vs. Zalamero*.^[1] In the *Arcenas* case the court pointed out the correct formula for a signature which ought to be followed, but did not mean to exclude any other form substantially equivalent.

The decision of the court below is reversed, without costs, and that court is directed to admit the instrument before it to probate as the last will of the testatrix. So ordered.

Arellano, C. J., Torres and Mapa, JJ., concur.

Willard J., concurs in the result.

DISSENTING

CARSON, J., with whom concurs JOHNSON, J.,

I dissent. This court has frequently held that a will should not be probated unless there has been strict compliance in its execution with all the "requisites of a will" as prescribed in section 618 of the Code of Civil Procedure. This section provides that the will must be signed by the testator, or that it must be signed by the testator's name written by some other person. I think it is quite clear that the will in question was signed by the name of the witness written at the request of the testatrix, but that it was not signed by the name of the testatrix written by the witness.

We have heretofore called attention to mistakes in the translation into Spanish of section 618 of the Code of Civil Procedure in the first official translation. I think, however, that the translation in the majority opinion, taken from the last official translation is also imperfect'

It fails to convey accurately the idea expressly set out in the English version, which requires that where the testator does not sign his own name, the will must be signed by the name of the testator attached by some other person. The Spanish version seems to prescribe merely that in such cases the will shall bear (lleve) the name of the testator written by some other person. The English version clearly prescribes that the name of the testator shall be affixed to the will as a signature and we have already decided that it is not sufficient that the name of the testator appear in the attestation clause, because in such cases the name is not affixed to the will as a signature. The name of the testatrix was not affixed to the instrument under consideration as a signature, and, appears there merely in the recital of the fact that she requested some one to sign for her.

The name of the testatrix appeared in the attestation clause at the end of the will in the case of Guison vs. Concepcion (5 Phil. Rep., 551), and it was placed there for precisely the same purpose as it appears in the will under consideration; that is, in a recital of the fact that the testatrix had requested some one to attach her signature to the will. We declared in that case that the will could not be probated because the name of the testatrix was not subscribed to the will in accordance with the provisions of section 618 of the Code of Civil Procedure. I am unable to perceive the distinction between that case and the case under consideration.

I recognize that in the case under consideration a holding that the name of the testatrix is not signed to the will in the manner prescribed by law would appear to defeat the intent of the testatrix, and to invalidate the instrument for a failure to comply with a mere technical formality. But the same reasons of public policy which dictated the provisions of law prescribing certain requisites without which no will is valid, no matter how conclusive the proof as to the fact that the rejected instrument contains the last will of the deceased, and was prepared as such in absolute good faith, imposes upon the courts the duty of scrutinizing every will submitted for probate to ascertain whether there has been a strict compliance in its execution with the requisites prescribed by law.

[1] Page 357, *supra*.

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