

ISABEL BIBBY DE PADILLA, PETITIONER, VS. A. HORRILLEN, JUDGE OF FIRST INSTANCE OF MANILA, AND CONCEPCION PATERNO VIUDA DE PADILLA, RESPONDENTS.*G. R. No. 42259. August 31, 1934*

Ponente: MALCOLM, J.

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During the course of the hearing in the Court of First Instance of Manila looking to the admission to probate of a document purporting to be the will of the deceased Narciso A. Padilla, the claim was made that the deceased did not execute any will on December 17, 1932. The theory was advanced that the will was in fact executed on December 7, 1932, and that the numeral 1 had been surreptitiously and subsequently prefixed to 7 to make it read 17 instead of 7. The trial judge resolved this incident by authorizing each and everyone of the three copies of the will to be examined by chemical test. The trial judge, however, stipulated that the examination should be done separately; that previous to the examination photographs should be taken of the documents; that any expert or experts of the opposing party could be present when the analysis of the ink was made, and that Lieutenant A. D. Andrews, the expert who was to make the examination, should not do anything without the knowledge of the other party. Thereupon the proponent of the will presented a petition for a writ of prohibition in this court and temporarily a restraining order was issued prohibiting the carrying out of the order of the trial court.

The query in this as in all cases of prohibition is directed to the ascertainment of whether or not the Court of First Instance in the exercise of its judicial functions has proceeded without or in excess of its jurisdiction. In this connection it is of course obvious that a judge has full control over a trial proceeding before him, and that the orderly procedure would be to resolve questions as they arise, permitting of the losing party to note exceptions preparatory to making a record for a possible appeal. We do not desire to depart from this primary and fundamental conception of the relative powers of the trial court and the appellate court. However, an unauthorized application of judicial power, although in a cause otherwise cognizable by the court, may be prevented by prohibition. Also an abuse of a court's discretion may constitute excess of jurisdiction.

When it is desired to secure the admission of a will to probate, it is necessary for the will to be proved and allowed in the Court of First Instance, or by appeal to the Supreme Court. To determine the genuineness of such a document it must be left intact for inspection by the trial and appellate courts. Plainly a questioned document cannot be permitted to be mutilated in the slightest degree. For this reason, no chemicals should be applied to a document which will in any manner injure or deface it. In other words, the purpose of an examination of a contested will is not by alteration in it to mislead a court, but to permit of only such examination as will assist the court in reaching a determination as to the authenticity of the document.

The record in the probate case which was hereinbefore mentioned is not before us, nor do we have full information regarding the evidence in that case. However, it appears from a quotation from Lieutenant Andrews' statement appearing in the memorandum of the respondents that he made the following recommendation:

"A very careful microscopic examination reveals to the eye that it seems that the same color of ink was used in writing the numerals 1 and 7, but a chemical examination will definitely establish whether the same identical ink has been used in making these two numerals. However, I was unable to make the chemical examination to determine this fact as I cannot make any such examination of these documents without proper authority of the court having proper jurisdiction of this case." It further appears from the testimony of Lieutenant Andrews found in the transcript at pages 85-86 and offered by the petitioner that he testified as follows:

"I have made a careful microscopic examination of the numeral date 17 but I have been reluctant to make chemical examinations to determine whether numeral 1 was written with the same or identical ink which wrote the stroke of numeral 7, due to the fact that I have no authority from the court having proper jurisdiction of this case to conduct such a chemical examination, as this would, by the process of chemical reaction, make the ink disappear. I cannot, except by chemical analysis, determine the composition of this ink but I am willing to make; such a chemical examination of this ink if I am given authority to do so."

Thus we are told by the expert that a chemical examination of the ink of the numerals 17 on the will by a process of chemical reaction would make the ink disappear. Osborn in his well known book on Questioned-Documents, indicates¹ that if proper methods are employed chemical reagents can be applied so that the documents are not injured, defaced or obliterated, but that ink tests are sometimes made that seriously deface a writing. (Osborn, Questioned Documents, Second Edition, pp. 20, 458, 459.) So under such conditions, it is readily apparent that at least one of the three copies of the will must be left unaltered for inspection by the trial court and thereafter, if an appeal is taken, for inspection by the Supreme Court. As to the remaining two copies, it rests in the discretion of the trial court to determine if they should be submitted to chemical analysis and the conditions under which this analysis should be conducted.

Subject to the above observations, the writ of prohibition will issue, the costs to be paid by the respondent Concepcion Paterno Viuda de Padilla.

Villa-Real, Imperial, Butte, and Goddard, JJ., concur.

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