

EX PARTE JUAN ONDEVILLA ET AL., PETITIONERS AND APPELLANTS.

G.R. No. 4454. April 12, 1909

Ponente: MAPA, J.

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MAPA, J.:

These proceedings were instituted for the probate of the will of Pascuala Olaguer, deceased. The lower court refused the probate and from that decision the petitioners have appealed to this court.

There is no doubt that the testament in question was executed before a sufficient number of witnesses. This was acknowledged to be true in the decision appealed from. The only matter at issue is the sufficiency of form in which the name of the testatrix appears at the foot of the will. The testatrix could not sign at the time she executed the will and requested one named Fructuoso Llenaresa to sign on her behalf, which the latter did by writing: her name and signing at the foot of the document as follows:

"For Pascuala Olaguer,

"Fructuoso Llenaresa."

The judge below was of the opinion that this manner of writing the name of the testatrix is not in accordance with the law, and this was his only reason for refusing the probate of the will, because, as he says, "it is always better that, where a testator can not sign his name, the person signing for him should only write the name of the testator, and that the latter should make a cross which should be witnessed and attested by the witnesses to the act."

Section 618 of the Code of Procedure in Civil Actions, which prescribes the form of the execution of wills, provides in part as follows:

"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."

As will be seen, the law does not prescribe the specific form in which the name of the testator should be affixed at the foot of the will when written at his request by another person. The only thing required by law is that the will shall bear the name of the testator. In construing this legal provision this court has held and established in case No. 1708, *Ex parte Pedro Arcenas et al.* (4 Phil. Rep., 700), that "where a testator does not know how, or is unable for any reason, to sign the will himself, it shall be signed in the following manner: 'John Doe, by the testator, Richard Roe;' or in this form: 'By the testator, John Doe, Richard Roe: '"

This last form is precisely the one which has been used in the will in question, with the exception of the words the testator which were omitted. It is unnecessary to say that such omission does not nor can it in anyway affect the validity of the will, because the essential thing is the name of the testator, which name, we hold, was duly written in the aforesaid will.

The order appealed from is reversed, and the will is hereby declared valid and ordered admitted to probate. So ordered.

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

CARSON, J., concurring in the result:

I concur in the dispositive part of the foregoing decision, notwithstanding my opinion in the case of Maria Siason (10 Phil. Rep., 504), inasmuch as the rule upon which that decision is based is the one accepted and admitted by the majority of the court.

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