

## **IN THE MATTER OF THE WILL OF THE DECEASED JOSEFA YLANAN. CELESTINO RODRIGUEZ, APPLICANT AND APPELLANT, VS. EUGENIO YAP ET AL., OPPOSITORS AND APPELLEES.**

*G.R. No. 45924. May 18, 1939*

Ponente: AVANCENA, C.J.

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### **AVANCENA, C.J.:**

The appealed decision denies the probate of the will left by the deceased Josefa Ylanan. This will contains the following attestation clause:

"We, Wenceslao Fernan, Sancho Mondares, Luis N. Murillo and Celestino Rodriguez, depose: (a) That this is the last will of Josefa Ylanan; (b) said will is composed of two pages; (c) inasmuch as Josefa Ylanan does not know how to write, upon her direction, her name was signed by Celestino Rodriguez in the presence of Josefa Ylanan and of her witnesses; (d) that the name of Josefa Ylanan was signed in all the pages; (e) and we have signed this will in the presence of the testatrix and in the presence of each and everyone of us here in Cebu, Cebu, this 27th day of January, 1926."

The name of the testatrix appears at the foot of the will and on the left margin of its two pages. The signatures of the witnesses appear only on the left margin of the two pages and not at the bottom of the will.

In denying the probate of the will, the court relied on the fact that the attestation clause aforequoted is substantially defective because not containing the declaration that the testatrix signed at the foot of the will in the presence of the witnesses or that the witnesses signed on the margin of its pages in the presence of the testatrix and of each other. We are not ready to affirm the appealed decision as to these grounds.

The attestation clause states (c) that, as the testatrix did not know how to write, her name was written by Celestino Rodriguez under her direction and in her presence and that of her witnesses. While not so stated, this can only refer to the foot of the will, and not to the margin of the pages thereof, because there is added (b) that the name of the testatrix was written in all its pages, which would otherwise have been unnecessary.

The attestation clause also states that the witnesses signed the will in the presence of the testatrix and of each other. While it is also not stated that these signatures were written on the left margin of the pages of the will, it should be so understood in view of the fact that these witnesses only signed on the left margin of the pages of the will, for otherwise it would not be a fact that they, as they state, signed the will.

The drafting of the attestation clause of this will is not, technically, free from criticism, but it is substantially in compliance with the law.

We maintain the view that there should be strict compliance with the substantial requirements of the will in order to insure its authenticity, but at the same time we believe that formal imperfections should be brushed aside when they do not affect this purpose and which, when taken into account, may defeat the testator's will.

The appealed judgment is reversed, and it is held that the will of the deceased Josefa Ylanan is allowable, without

special pronouncement as to the costs in this instance. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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