

PEDRO BARUT, PETITIONER AND APPELLANT, VS. FAUSTINO CABACUNGAN ET AL., OPPONENTS AND APPELLEES.

G.R. No. 6285. February 15, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

This case is closely connected with the case of Faustino Cabacungan vs. Pedro Barut and another, No. 6284,[1] just decided by this court, wherein there was an application for the probate of an alleged last will and testament of the same person the probate of whose will is involved in this suit.

This appeal arises out of an application on the part of Pedro Barut to probate the last will and testament of Maria Salomon, deceased. It is alleged in the petition for probate that Maria Salomon died on the 7th day of November, 1908, in the pueblo of Sinait, Ilocos Sur, leaving a last will and testament bearing date March 2, 1907. Severo Agayan, Timotea Inoselda, Catalino Ragasa, and A. M. Jimenez are alleged to have been witnesses to the execution thereof. By the terms of said will Pedro Barut received the larger part of decedent's property.

The original will appears on page 3 of the record and is in the Ilocano dialect. Its translation into Spanish appears at page 11. After disposing of her property the testatrix revoked all former wills by her made. She also stated in said will that being unable to read or write, the same had been read to her by Ciriaco Concepcion and Timotea Inoselda and that she had instructed Severo Agayan to sign her name to it as testatrix.

The probate of the will was contested and opposed by a number of the relatives of the deceased on various grounds, among them that a later will had been executed by the deceased. The will referred to as being a later will is the one involved in case No. 6284 already referred to. Proceedings for the probate of this later will were pending at the time. The evidence of the proponents and of the opponents was taken by the court in both cases for the purpose of considering them together.

In the case before us the learned probate court found that the will was not entitled to probate upon the sole ground that the handwriting of the person who it is alleged signed the name of the testatrix to the will for and on her behalf looked more like the handwriting of one of the other witnesses to the will than that of the person whose handwriting it was alleged to be. We do not believe that the mere dissimilarity in writing thus mentioned by the court is sufficient to overcome the uncontradicted testimony of all the witnesses to the will that the signature of the testatrix was written by Severo Agayan at her request and in her presence and in the presence of all of the witnesses to the will. It is immaterial who writes the name of the testatrix provided it is written at her request and in her presence and in the presence of all the witnesses to the execution of the will.

The court seems, by inference at least, to have had in mind that under the law relating to the execution of a will it is necessary that the person who signs the name of the testatrix must afterwards sign his own name; and that, in view of the fact that, in the case at bar, the name signed below that of the testatrix as the person who signed her name, being, from its appearance, not the same handwriting as that constituting the name of the testatrix, the will is accordingly invalid, such fact indicating that the person who signed the name of the testatrix failed to sign his

own. We do not believe that this contention can be sustained. Section 618 of the Code of Civil Procedure reads 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. * * *"

This is the important part of the section under the terms of which the court holds that the person who signs the name of the testator for him must also sign his own name. The remainder of the section reads:

"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."

From these provisions it is entirely clear that, with respect to the validity of the will, it is unimportant whether the person who writes the name of the testatrix signs his own or not. The important thing is that it clearly appears that the name of the testatrix was signed at her express direction in the presence of three witnesses and that they attested and subscribed it in her presence and in the presence of each other. That is all the statute requires. It may be wise as a practical matter that the one who signs the testator's name signs also his own; but that is not essential to the validity of the will. Whether one person or another signed the name of the testatrix in this case is absolutely unimportant so far as the validity of her will is concerned. The plain wording of the statute shows that the requirement laid down by the trial court, if it did lay it down, is absolutely unnecessary under the law; and the reasons underlying the provisions of the statute relating to the execution of wills do not in any sense require such a provision. From the standpoint of language it is an impossibility to draw from the words of the law the inference that the person who signs the name of the testator must sign his own name also. The law requires only three witnesses to a will, not four.

Nor is such requirement found in any other branch of the law. The name of a person who is unable to write may be signed by another by express direction to any instrument known to the law. There is no necessity whatever, so far as the validity of the instrument is concerned, for the person who writes the name of the principal in the document to sign his own name also. As a matter of policy it may be wise that he do so inasmuch as it would give such intimation as would enable a person proving the document to demonstrate more readily the execution by the principal. But as a matter of essential validity of the document, it is unnecessary. The main thing to be established in the execution of the will is the signature of the testator. If that signature is proved, whether it be written by himself or by another at his request, it is none the less valid, and the fact of such signature can be proved as perfectly and as completely when the person signing for the principal omits to sign his own name as it can when he actually signs. To hold a will invalid for the lack of the signature of the person signing the name of the principal is, in the particular case, a complete abrogation of the law of wills, as it rejects and destroys a will which the statute expressly declares is valid.

There have been cited three cases which it is alleged are in opposition to the doctrine which we have herein laid down. They are *Ex parte Santiago* (4 Phil. Rep., 692), *Ex parte Arcenas* (4 Phil. Rep., 700), and *Guison vs. Concepcion* (5 Phil. Rep., 551). Not one of these cases is in point. The headnote in the case last above stated gives an indication of what all of the cases are and the question involved in each one of them. It says:

"The testatrix was not able to sign her name to the will, and she requested another person to sign it for her. Instead of writing her name he wrote his own upon the will. Held, That the will was not duly executed."

All of the above cases are precisely of this character. Every one of them was a case in which the person who signed the will for the testator wrote his own name to the will instead of 'writing that of the testator, so that the testator's name nowhere appeared attached to the will as the one who executed it. The case of *Ex parte Arcenas* contains the following paragraph:

"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.' All this must be written by the witness signing at the request of the testator."

The only question for decision in that case, as we have before stated, was presented by the fact that the person who was authorized to sign the name of the testator to the will actually failed to sign such name but instead signed his own thereto. The decision in that case related only to that question.

Aside from the presentation of an alleged subsequent will the contestants in this case have set forth no reason whatever why the will involved in the present litigation should not be probated. The due and legal execution of the will by the testatrix is clearly established by the proofs in this case. Upon the facts, therefore, the will must be probated. As to the defense of a subsequent will, that is resolved in case No. 6284 of which we have already spoken. We there held that said later will was not the will of the deceased.

The judgment of the probate court must be and is hereby reversed and that court is directed to enter an order in the usual form probating the will involved in this litigation and to proceed with such probate in accordance with law.

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

CONCURRING

TORRES, J.:

The undersigned agrees and admits that section 618 of the Code of Civil Procedure does not expressly require that, when the testator or testatrix is unable or does not know how to sign, the person who, in the presence and under the express direction of either of them, writes in the name of the said testator or testatrix must also sign his own name thereto, it being sufficient for the validity of the will that the said person so requested to sign for the testator or testatrix write the name of either in his own handwriting.

Since this court began to decide cases with regard to the form, conditions and validity of wills executed in accordance with the provisions of the Code of Civil Procedure, never has the specific point just above mentioned been brought into question. Now for the first time it is affirmed in the majority opinion, written by the learned and distinguished Hon. Justice Moreland, that, not being required by the said code, the signature of the name of the person who, at the request of the testator or testatrix, writes the name of either of the latter to the will executed, is not necessary.

Various and considerable in number have been the decisions rendered by this court in which, as will be seen further on, upon applying the said section 618 of the Code of Civil Procedure and requiring its observance in cases where the testator or testatrix is unable or does not know how to sign his or her name, expressly prescribe the practical method of complying with the provisions of the law on the subject. Among these decisions several were written by various justices of this court, some of whom are no longer on this bench, as they have ceased to hold such position.

Paragraph 2 of the syllabus of case No. 2002, *Ex parte Delfin Santiago*,^[1] concerning the probate of a will, reads as follows:

"Wills, authentication of. Where a will is not signed by a testator but by some other person in his presence and by his direction, such other person should affix the name of the testator thereto, and it is not sufficient that he sign his own name for and instead of the name of the testator."

Paragraph 1 of the syllabus of case No. 1708, *Ex parte Arcenas*,^[1] in the matter of the probate of a will, states:

"1. Wills, requisites of; Civil Code, article repealed.—Article 695 of the Civil Code was repealed by section 618 of the Code of Civil Procedure; consequently where a testator is unable to sign his name, the person signing at his request must write at the bottom of the will the full name of the testator in the latter's presence, and by his express direction, and then sign his own name in full."

In the syllabus of decision No. 2586, *Tomas Guison vs. Maria Concepcion*,^[2] the following statements appear:

"Wills; inability to sign; signature by another.—The testatrix was not able to sign her name to the will, and she requested another person to sign it for her. Held, That the will was not duly executed. (Following *Ex parte Arcenas et al.*, No. 1708, August 24, 1905; *Ex parte Santiago*, No. 2002, August 18, 1905.)"

The following syllabus precedes decision No. 3907:^[3]

"Execution of wills.—Where it appears in a will that the testator has stated that by reason of his inability to sign his name he requested one of the three witnesses present to do so, and that as a matter of fact, the said witness wrote the name and surname of the testator who, stating that the instrument executed by him contained his last will, put the sign of the cross between his said name and surname, all of which details are set forth in a note which the witnesses forthwith subscribed in the presence of the testator and of each other, said will may be probated.

"When the essential requisites of section 618 of the Code of Civil Procedure for the execution and validity of a will have been complied with, the fact that the witness who was requested to sign the name of the testator, omitted to state the words 'by request of.....the testator,' when writing with his own hand the name and surname of the said testator, and the fact that said witness subscribed his name together with the other witnesses and not below the name of the testator, does not constitute a defect nor invalidate the said will."

The following statement appears in the syllabus of case No. 4132, in the matter of the will of Maria Siason:^[1]

"The recital of the name of the testator as written below the will at his request serves as a signature by a third person."

Moreover, among the grounds given as a basis for this same decision, the following appears:

"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*. 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."

In the syllabus of decision No. 4454,^[2] *Ex parte Ondevilla et al.*, the following appears:

"The testatrix was unable to sign her will with her own hand and requested another person to sign for her in her presence. This the latter did, first writing the name of the testatrix and signing his own name below: Held, That the signature of the testatrix so affixed is sufficient and a will thus executed is admissible to probate. (*Ex parte Arcenas*, 4 Phil. Rep., 700.)"

The syllabus of decision No. 5149^[3] sets forth that: "The legality of a will is not affected by the insertion, supposed to have been made subsequently, of another name before that of the testator when such name may be treated as nonexistent without affecting its validity."

Among the conclusions contained in this last decision the following is found:

"Although the said words 'For Simplicia de los Santos be considered as inserted subsequently, which we neither affirm nor deny, because a specific determination either way is unnecessary, in our opinion the signature for the testatrix placed outside of the body of the will contains the name of the testatrix as if she signed the will, and also the signature of the witness who, at her request, wrote the name of the testatrix and signed for her, affirming the truth of this fact, attested by the other witnesses then present. And this fully complies with the provisions of section 618 of the Act."

It is true that in none of the decisions above quoted was the rule established that the person who, at the request of the testator or testatrix, signed the latter's or the former's name and surname to the will must affix his own signature; but it is no less true that, in prescribing the method in which the provisions of the said section 618 were to be complied with, it was stated that, in order that a will so executed might be admitted to probate, it was an indispensable requisite that the person requested to sign in place of the testator or testatrix, should write the latter's or the former's name and surname at the foot of the will in the presence and under the direction of either, as the case might be, and should afterwards sign the instrument with his own name and surname.

The statement that the person who writes the name and surname of the testator or testatrix at the foot of the will should likewise affix his own signature thereto, name and surname, though it be considered to be neither a rule nor a requisite necessary to follow for the admission of the will to probate, yet it is unquestionable that, in inserting this last above-mentioned detail in the aforesaid decisions, it was deemed to be a complement and integral part of the required conditions for the fulfillment of the provisions of the law.

It is indisputable that the latter does not require the said subscription and signature of the person requested to affix to the will the name of the testator or testatrix who is not able to sign; but by stating in the decisions hereinabove quoted that the name and surname of the said person should be affixed by him, no act prohibited by law was recommended or suggested, nor may such a detail be understood to be contrary or opposed to the plain provisions thereof.

In the preceding decision itself, it is recognized to be convenient and even prudent to require that the person requested to write the name of the testator or testatrix in the will also sign the instrument with his own name and surname. This statement induces us to believe that, in behalf of the inhabitants of this country and for the sake of an upright administration of justice, it should be maintained that such a signature must appear in the will, since no harm could accrue to anyone thereby and, on the contrary, it would serve as a guarantee of the certainty of the act performed and also might eliminate some possible cause of controversy between the interested parties.

The undersigned feels it his duty to admit that, though convinced of the complete repeal of article 695 of the Civil Code and, while he concedes that, in the examination and qualification of a will for the purpose of its probate, one has but to abide by the provisions of the said section 618 of the Code of Civil Procedure, the sole law applicable in the matter, yet, perhaps imbued with and strongly impelled by a traditional conception of the laws which he has known since his youth, relative to the form of execution of testaments, he believed it to be a very natural and common sense requisite that the signature, with his own name and surname, of the person requested to write in the will the name and surname of the testator or testatrix should form a part of the provisions of the aforementioned section 618. He undoubtedly thought, perhaps mistakenly, that such a requisite of the signature of the person before referred to—a requisite deemed to be convenient and prudent in the majority opinion—formed a part of the provisions of the law, since the latter contains nothing that prohibits it. The aforementioned different decisions were drawn up in the form in which they appear, and signed without dissent by all the justices of the court on various dates. None of them hesitated to sign the decisions, notwithstanding that it was expressly held therein that the person above mentioned should, besides writing in the will the name and surname of the testator or testatrix,

also sign the said instrument with his own name and surname.

Without being understood to criticise the provision contained in the said section 618 of the Code of Civil Procedure, it will not be superfluous to mention that the system adopted in this section is the same as was in vogue under the former laws that governed in these Islands, with respect to witnesses who were not able or did not know how to sign their testimony given in criminal or civil cases, in which event any person at all might write the name and surname of the witness who was unable or did not know how to sign, at the foot of his deposition, where a cross was then drawn, and, this done, it was considered that the instrument had been signed by the witness, though it is true that all these formalities were performed before the judge and the clerk or secretary of the court, which thereupon certified that such procedure was had in accordance with the law.

The difference is that in the will, pursuant to section 618 of the Code of Civil Procedure, the person who writes the name and surname of the testator or testatrix does so by the order and express direction of the one or of the other, and this fact must be recorded in the will; but in the matter of the signature of a deposition, the witness, who could not or did not know how to sign, did not need to designate anyone to write the deponent's name and surname, and in practice the witness merely made a cross beside his name and surname, written by whomever it be.

With regard to the execution of wills in accordance with the provisions of previous statutes, among them those of the Civil Code, the person or witness requested by the testator or testatrix who was not able or did not know how to sign, authenticated the will by signing it with his own name and surname, preceded by the words "at the request of the testator or testatrix." Paragraph 2 of article 685 of the Civil Code contains the following provisions bearing on the subject:

"Should the testator declare that he does not know how, or is not able to sign, one of the attesting witnesses or another person shall do so for him at his request, the notary certifying thereto. This shall also be done if any one of the witnesses can not sign."

So that, prior to the enforcement in this country in 1901 of the Code of Civil Procedure, the procedure prescribed by the old laws with respect to the signing of a will by a testator or testatrix who did not know how or who could not sign, consisted in that the person appointed and requested by the testator or testatrix to sign in his or her stead, such fact being recorded in the will, merely affixed at the bottom of the will and after the words "at the request of the testator," his own name, surname and paraph.

It is not at all strange that the attorneys of this country, imbued with and inspired by these legal provisions, which, it may be said, are traditional to them in the ideas they have formed of the existing laws in the matter of procedure in compliance therewith as regards the execution and signing of a will, should have believed that, after the name and surname of the testator or testatrix had been written at the foot of the will, the person who signed the instrument in the manner mentioned should likewise sign the same with his own name and surname.

If in various decisions, it has been indicated that the person who, under the express direction of the testator or testatrix, wrote the latter's or the former's name and surname, should also sign the will with his own name and surname, and since this suggestion is not opposed or contrary to the law, the undersigned is of opinion that it ought not to be modified or amended, but that, on the contrary, it should be maintained as a requisite established by the jurisprudence of this court, inasmuch as such a requisite is not contrary to law, to public order, or to good custom, is in consonance with a tradition of this country, does not prejudice the testator nor those interested in an inheritance, and, on the contrary, constitutes another guarantee of the truth and authenticity of the letters with which the name and surname of the testator or testatrix are written, in accordance with his or her desire as expressed in the will.

Even though the requisites referred to were not recognized in jurisprudence and were unsupported by any legal doctrine whatever, yet, since it is in harmony with the juridical usages and customs observed in this country, it ought, in the humble opinion of the writer, to be maintained for the benefit of the inhabitants of the Islands and for the sake of a good administration of justice, because it is not a question of a dangerous innovation or of one prejudicial to the public good, but a matter of the observance of a convenient, if not a necessary detail, introduced by the jurisprudence of the courts and which in the present case has filled a vacancy left by the positive written law.

The foregoing considerations, which perhaps have not the support of better premises, but, in the opinion of the undersigned, are conducive to the realization of the purposes of justice, have impelled him to believe that the proposition should be enforced that the witness requested or invited by the testator or testatrix to write his or her name to the will, should also subscribe the instrument by signing thereto his own name and surname; and therefore, with the proper finding in this sense, and a reversal of the judgment appealed from, that the court below should be ordered to proceed with the probate of the will of the decedent, Maria Salomon, in accordance with the law.

[1] Not published.

[1] 4 Phil. Rep., 692

[1] 4 Phil. Rep., 700.

[2] 5 Phil. Rep., 551.

[3] Abaya vs. Zalamero (10 Phil. Rep., 357).

[1] 10 Phil. Rep., 504.

[2] 13 Phil. Rep., 470.

[3] Macapinlac vs. Alimurong (16 Phil. Rep., 41).

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