

MARIANO LEANO, PETITIONER AND APPELLANT, VS. ARCADIO LEANO, OBJECTOR AND APPELLEE.

G.R. No. 9150. March 31, 1915

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record satisfactorily discloses that Cristina Valdes, deceased, placed her cross against her name, attached by some other person to the instrument offered for probate which purports to be her last will and testament, in the presence of the three witnesses whose names are attached to the attesting clause, and that they attested and subscribed the instrument in her presence and in the presence of each other.

We are of the opinion that the placing of the cross opposite her name at the conclusion of the instrument was a sufficient compliance with the requirements of section 618 of the Code of Civil Procedure, which prescribes that except where wills are signed by some other person than the testator in the manner and form therein indicated, a valid will must be signed by the testator. The right of a testator to sign his will by mark, executed animo testandi, has been uniformly sustained by the courts of last resort of the United States in construing statutory provisions prescribing the mode of execution of wills in language identical with, or substantially similar to that found in section 618 of our code, which was taken from section 2349 of the Code of Vermont. (Page on Wills, par. 173, and the cases there cited in support of the doctrine just announced.)

The trial judge was of contrary opinion, and declined to admit the instrument to probate as the last will and testament of the decedent. We are of opinion, however, that the evidence of record satisfactorily establishes the execution of that instrument as and for her last will and testament in the manner and form prescribed by law.

The judgment entered in the court below should therefore be reversed, without costs in this instance, and the record remanded to the court below, where judgment will be entered admitting the instrument in question to probate in accordance with the prayer of the petitioner. So ordered.

Arellano, C. J., and Araullo, J., concur.

Moreland, J., concurs in the result.

TORRES, J., dissenting:

I am of the opinion that the judgment should be affirmed.

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