

IN RE ESTATE OF TOMASA NEPOMUCENO, DECEASED, SANTOS CARTAGENA, PETITIONER AND APPELLEE, VS. ISAIAS LIJAUCO AND ESPERANZA ZAVALLA, OPPONENTS AND APPELLANTS.

G.R. No. 9677. December 15, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Laguna admitting a will to probate and dismissing the opposition thereto.

It appears that Tomasa Nepomuceno executed a will on the 3d day of March, 1913, but her attorney having been informed that the will was signed by herself when only two of the three attesting witnesses were present, he advised her that the will be reexecuted and that the testatrix sign the will in the presence of all three attesting witnesses. Accordingly, on the day following, the will was reexecuted and all of the formalities required by law were observed.

It is contended on the part of the appellants that the will was not executed in the manner required by law and that the testimony of the attesting witnesses was not sufficiently uniform to demonstrate that all of the formalities required by law had been complied with.

We are unable to agree with this contention. It appears clear from the testimony of the attesting witnesses that the testatrix signed the will in their presence and that, at her request, each one of the witnesses in the presence of the testatrix and of the other two attesting witnesses signed the will. This is all that the law requires and while there may be some hesitation in the testimony of some of the witnesses, we are satisfied that the evidence, such as it is, taken in connection with the attesting clause attached to the will, which was made and signed at the time the will was executed and which carries with it the presumption of correctness, is sufficient to sustain the finding of the trial court that the will was properly executed and should be probated.

It is contended on this appeal that it is not an essential requisite of a will that the testator sign it in the presence of the three attesting witnesses. We are of the opinion that this contention is not sound. While the first part of section 618 of the Code of Civil Procedure does not expressly require that the testator sign the will in the presence of the attesting witnesses, the second part thereof does require that fact to appear in the attestation clause and this court has always held that such a requisite is essential to the due execution of the will. The second part of section 618 provides that "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."

The judgment appealed from is affirmed, with costs against the appellants.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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