43 Phil. 405

**[ G. R. No. 17430. May 31, 1922 ]**

**IN THE MATTER OF THE ESTATE OF GERONIMA UY COQUE, DECEASED. ANDREA UY COQUE ET AL., PETITIONERS AND APPELLEES, VS. JUAN NAVAS L. SIOCA, SPECIAL ADMINISTRATOR OF THE ESTATE OF GERONIMA UY COQUE, DECEASED, OPPONENT AND APPELLANT.**

**D E C I S I O N**

**OSTRAND, J.:**

This is an appeal from an order of the Court of First Instance of Samar, admitting a will to probate.

The validity of the will is attacked on the ground that the testatrix was mentally incapacitated at the time of its execution and on the further ground that it was not executed in the form prescribed by section 618 of the Code of Civil Procedure as amended by Act No. 2645.

The transcript of the testimony taken in the probate proceedings not appearing in the record, we cannot review the findings of the court below as to the sanity of the testatrix. This leaves for our consideration only the question as to whether the omission of certain formalities in the execution of the will are fatal to its validity.

Section 618 of the Code of Civil Procedure as amended by Act No. 2645 reads:

> "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 written in the language or dialect known by the testator and signed by him, 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. The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as

> aforesaid, each and every page thereof, on the left margin, and said pages shall be numbered correlatively in letters placed on the upper part of each sheet. The attestation shall state the number of sheets or pages used, upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of three witnesses, and the latter witnessed and signed the will and all pages thereof in the presence of the testator and of each other."

The formal defects of the will in question occur in its attestation clause which, in translation, read as follows:

> "We, the undersigned witnesses of this will, state that it has been shown to us by the testatrix as her last will and testament. And as she cannot sign her name, she asked that Mr. Filomeno Piczon sign her name in the presence of each of us, and each of us, the witnesses, also signed in the presence of the testatrix."

It will be noted that the attestation clause does not state the number of pages contained in the will nor does it state that the witnesses signed in the presence of each other. Neither do these facts appear in any other part of the will.

Statutes prescribing the formalities to be observed in the execution of wills are very strictly construed. As stated in 40 Cyc., at page 1097, "A will must be executed in accordance with the statutory requirements; otherwise it is entirely void. All these requirements stand as of equal importance and must be observed, and courts cannot supply the defective execution of a will. No power or discretion is vested in them, either to superadd other conditions or dispense with those enumerated in the statutes."

This court has also frequently held that a will should not be probated unless in its execution there has been a strict compliance with all the requisites prescribed in section 618 of the Code of Civil Procedure. It is true that in the case of Abangan vs. Abangan (40 Phil., 476) the court upheld the validity of a will consisting of only two pages, the first containing all the testamentary dispositions and being signed by the testator at the bottom and by both the testator and the witnesses in the margin, the second page containing only the attestation clause with the signatures of the witnesses at the bottom but without marginal signatures. The decision was based on the ground that it could not have been the intention

of the legislator to require, as an essential to the validity of the will, that all the signatures appear twice on the same page as such a requirement would be entirely purposeless. This decision is no doubt sound; that in statutory construction the evident *intent* of the legislator controls will probably not be disputed.

But it must not be forgotten that in construing statutory provisions in regard to the formal requisites of a will, we are seeking to ascertain the intent of the legislator and not that of the testator; the latter's intention is frequently defeated through non-observance of the statute.

The purpose of the Legislature in prescribing the rather strict formalities now required in the execution of a will are clearly revealed by comparing section 618, supra, as originally enacted with the amended section quoted above. The original section reads:

> "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. 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."

The amendments or changes introduced by Act No. 2645 are (*a*) that the will must now be executed in a language or dialect known to the testator; (*b*) that the testator and witnesses must sign each page on the left margin; (*c*) that the pages be numbered correlatively; (*d*) that the attestation clause shall state the number of sheets or pages used in the will and (*e*) that it must appear from the attestation clause itself that the testator and witnesses signed in the form and manner required by law and that this can no longer be proven by evidence *aliunde*.

The changes mentioned under (*d*) and (*e*) are the only ones which need be considered in the present case. The purpose of requiring the number of sheets to be stated in the attestation

clause is obvious; the document might easily be so prepared that the removal of a sheet would completely change the testamentary dispositions of the will and in the absence of a statement of the total number of sheets such removal might be effected by taking out the sheet and changing the numbers at the top of the following sheets or pages. If, on the other hand, the total number of sheets is stated in the attestation clause the falsification of the document will involve the inserting of new pages and the forging of the signatures of the testator and witnesses in the margin, a matter attended with much greater difficulty.

The purpose of the new requirement that it must appear in the attestation clause that the testator and the witnesses signed in the presence of each other and that the fact cannot be proved by evidence *aliunde* is, perhaps, less obvious, but, in view of the well-known unreliability of oral evidence, it is clear that a statement in the attestation clause will afford more satisfactory evidence of the fact to be proven. In any event, the fact that the old rule in regard to admissibility of oral evidence to prove that the testator and witnesses signed in the manner prescribed by the law evidently had been found unsatisfactory and was deliberately varied by amendment shows that the Legislature attached importance to the matter. If so, the courts will not be justified in enervating the amendment by too liberal a construction.

We therefore hold that the two defects noted in the attestation clause of the alleged will renders it null and void and that it cannot be admitted to probate. The order appealed from is reversed with the costs against the appellee. So ordered.

*Araullo, C. J., Avanceña, Villamor,* and *Romualdez, JJ.,* concur.

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*CONCURRING*

**MALCOLM**, *J.*,

I concur. Further, I do not think that the testatrix had mental capacity to make a valid will.

Date created: June 05, 2014