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[G.R. No. 28. March 06, 1902]

IN THE MATTER OF THE ESTATE OF DOLORES GARCES.

D E C I S I O N

LADD, J.:

This is an appeal, from an order of the Court of First Instance of Ilocos Norte, denying the petition of the appellant to raise to the formality of a public instrument (*escritura*) the open will of his deceased wife, Dona Dolores Garces. The will was executed without the services of a notary according to the provisions of articles 700 and 702 of the Civil Code relative to wills executed *in articulo mortis*. It was reduced to writing and signed by the testatrix and seven witnesses. The court denied the application upon the sole ground that it did not appear that the will, had been executed by one single act.

Six of the witnesses to the will were examined by the judge, one witness having died before the hearing. All of the witnesses testified expressly that the will was executed by one single act. Concerning the hour when this execution took place all were not agreed. Four of them testified that it took place approximately between the hours of 6 and 7 of the evening. One testified that it occurred at 3 o'clock of the afternoon and one that it was done during the time between 3 o'clock in the afternoon and 8 o'clock in the evening, approximately.

The judge deemed these statements, apparently contradictory, concerning the hour when the will was made, as destructive of the force of credibility of the unanimous statement of all of the witnesses to the effect that the will was executed in one single act. We do not so consider the aforesaid statements. The four witnesses who testified that the execution took place between 6 and 7 might have referred only—as is reasonable to suppose—to the formal act of executing the same, or, in other words, to the final reading of the document to the testatrix in the presence of the witnesses, the manifestation by the testatrix of her approval of the same, and the act of signing by the testatrix and the witnesses, which acts naturally

would not consume more than a short time. On the other hand, the witness who testified that the execution took place during the period from 3 to 8 might have understood that the execution included all of the procedure, drawing up the will in writing, and including all that was done with reference to the same preparatory to the final formalities. The execution, in this sense, might easily have lasted several hours as the witness stated. The last witness, who testified that the execution took place at 3 might have had in mind the first step in the process of the execution, using the term in this last sense. Thus explained the testimony of all of the witnesses is found to agree in the essential particulars and we are inclined to believe that this interpretation is the true one. Even though it were impossible to reconcile the different statements in question, we would not be disposed to give to a contradiction of this sort, which is upon a merely accessory circumstance, the weight that has been given thereto by the lower court.

We believe that the due execution of the will was sufficiently proved.

And therefore the order appealed from should be reversed and the document which appears in the record is declared the will of the deceased, Dona Dolores Garces, verified by the witnesses, it being understood that this declaration is without prejudice to third persons. The said will is ordered to be inscribed in the proper notarial record or protocol.

Arellano, C. J., Torres, Cooper, Willard, and Mapa, JJ., concur.
