1 Phil. 720

[G.R. No. 905. February 12, 1903]

ISABEL VELASCO Y RESURRECCION, PLAINTIFF AND APPELLEE, VS. FRANCISCO LOPEZ Y LOPEZ, DEFENDANT AND APPELLANT.

D E C I S I O N

LADD, J.:

The plaintiff is one of the next of kin, and the defendant the testamentary heir, of Santiago Velasco, who died at Kamacpacan, in La Union, December 4, 1895. The plaintiff seeks a declaration that Velasco's will is void on several grounds, only one of which, in the view we have taken of the case, it will be necessary to consider.

The will in question was an open one, executed before a notary and three witnesses. The date of the execution of the will is expressed therein in the following words, via: "In San Fernando, on the twenty-second of December, eighteen hundred and ninety-three." The hour is not stated. It is claimed that this omission invalidates the will.

Book III, Title III, Chapter I, article 695, of the Civil Code, provides with reference to open wills as follows: "The testator shall express his last will to the notary and to the witnesses. After the testament has been drafted in accordance with the same, stating the place, year, month, day, and hour of its execution, it shall be read aloud," etc. Book III, Title III, Chapter I, article 687, provides that "Any will,, in the execution of which the formalities respectively established in this chapter have not been observed, shall be void."

The word "formalities," in the connection in which it is here used, refers to the mode or form in which the juristic act of executing a will is to be performed. As respects each one of the several classes of wills established by the Code, certain directions are given as to the manner in which the intention of the testator must be expressed. Article 687, establishing a sanction to secure the observance of these rules, provides that if they are not followed, the will shall have no legal existence.

The sanction of article 687 is general. No exceptions are recognized. Its language excludes the idea of a distinction between essential and nonessential formalities. All the formalities prescribed are equally essential, and in order that an expression of testamentary intention may operate as a will, producing legal results as such, it must be clothed with all these formalities, however insignificant they may be in themselves, or however meaningless they may be when considered in relation to the circumstances of the particular case.

Such is obviously the effect of article 687 considered independently, and we find nothing in the other provisions of the Code on the subject of wills which directly modines the meaning of this article or inferentially indicates a different legislative intent.

The place where and the time when a juristic act is performed are often material circumstances in determining its validity or consequences. Ordinarily the time relation of the act is sufficiently defined by fixing the year, month, and day. Article 695 provides that in an open will the time of execution must be fixed by expressing not only these details but also the hour. The law thus explicitly defines, as respects open wills., in what this particular formality shall consist. Nothing is left to inference, as would be the case, for example, if the provision were merely that the will should be dated. There is no room for interpretation.

Although a will has always been considered an essentially formal instrument, the expression of the date with the detail prescribed in article 695 is an unusual, and may perhaps be regarded as an unnecessary requirement. This provision, however, was not without precedent in foreign systems of legislation at the time of its enactment (see article 771 of the Civil Code of Guatemala of 1877), and it has since been followed in at least one foreign Code (see article 892 of the Civil Code of Honduras of 1899).

Its purpose is easily perceived. It is to provide against such contingencies as that of two competing wills executed on the same day (Quintus Mucius Scaevola, Commentaries, Vol. 12, p. 425; Manresa *id*., Vol. 5, p. 508), or of a testator becoming insane on the day on which the will was executed (Manresa, *ubi supra*). We may assume that the framers of the Code regarded the requirement as a desirable one for these and perhaps for other reasons. No. 15 of the law establishing the bases in accordance with which the Code was to be framed provides, with reference to the subject of successions, that “the substance of the existing legislation respecting testaments in general, their form and solemnities shall be maintained * * * and the law now in force reduced to order and systematized, and supplemented with such provisions as may tend to secure authenticity and facility in the expression of wills.” The framers of the Code doubtless understood that in requiring in open wills the expression

not only of the year, month, and day of their execution but also of the hour, they* were following the precept of the law of bases by preserving the existing rule (Alcubilla, Dictionary of Spanish Administration, Vol. 9, p. 749) and providing an additional safeguard of authenticity.

But we are not concerned with the expediency of the provision in question, nor is it necessary for us to satisfy ourselves as to the considerations which led to its adoption. The language of the law is too plain and unambiguous to justify us in entering upon such inquiries for the purpose of ascertaining the legislative intent. And to the argument that the requirement has no appreciable practical utility and is calculated in a great majority of the cases in which it may be invoked for the purpose of invalidating a will to work injustice and hardship, by defeating the purposes of the testator and disappointing the expectations of his intended beneficiaries, it is a sufficient answer to say that we must administer the law not as we think it ought to be but as we find it and without regard to consequences. We are not authorized to distinguish where the law has made no distinction. If we could hold in this case that the expression of the hour might be omitted in an open will, we might, with equal reason, in a case where the testator's testamentary capacity was unquestioned and no claim was made that the will had been revoked by a subsequent one, hold that the day, the month, or the year could be omitted; so we might hold that two witnesses instead of three were sufficient, and in short we might go on disregarding one formality after another, in order to subserve the justice of the particular case, until we had repealed the entire system established by the Code.

We have discovered nothing in the jurisprudence of the supreme court of Spain which is in conflict with the views above expressed.

In a decision of November 17, 1898, a holographic will dated January 2, 1895, but written on stamped paper of 1894, was held valid, although article 688 provides that in order that will's of this class may be valid they must be written "on stamped paper corresponding to the year of their execution." The decision is put upon the ground that the date of a holographic will is not absolutely determinative of the time of its execution; that the time of the execution of a holographic will, there being in that class of wills no legal requirement of unity of act, comprehends the entire period required to complete the work of drafting the will, provided there is no voluntary suspension of the work by the testator; that such period may and commonly does extend over several days; and that in the case then under consideration the proximity of the date of the will to the termination of the preceding year afforded reasonable ground for supposing that its execution had been begun in 1894. It is

clear from the reasoning of the court that in a case where it was shown that stamped paper of a different year from that of the execution of the will had been used, the failure to comply with the requirement of the law would be held to entail the nullity of the will an open will had been executed, certified in accordance with article 699 in the will that it had been read by him, but without using the precise language of article 695, which provides that the will shall be read “aloud.” The court held that the statement of the notary sufficiently indicated that the formality of reading the will aloud as provided in article 695 had been followed. In this case also it is to be inferred that if it had not been impliedly stated by the notary that this formality had been complied with the omission to so state would have invalidated the will.

In a decision of April 4, 1895, a number of erasures, corrections, and interlineations made by the testator in a holographic will, had not been noted under the signature of the testator, as provided by paragraph 3 of article 688. It was held that the will was not thereby invalidated as a whole, but at most only as respects the particular words erased, corrected, or interlined. But the requirement of paragraph 3 of article 688 is not in any true sense one of the formalities of the holographic will, which are all enumerated in paragraph 2 of that article; it is a formality the scope of which is limited upon a proper construction of the law to the particular parts of the instrument affected by it. It is upon this ground, among others, that the decision is rested by the court, and the casttis therefore no authority for the proposition that any of the formalities which in their nature affect the will as an entirety, applying equally to all parts of it, can be disregarded without rendering it invalid.

On the other hand, although the exact question presented in .this case appears never to have been expressly decided, there are numerous cases in which wills have been declared void for nonobservance of formal requirements (judgments of February 16, 1893; May 31, 1893; May 5, 1897; July 14,1899; February 12,1901; June 1,1901)., and from the language used by the court in the judgments qf June 5, 1894, and June 18, 1896, it may be fairly inferred that the provision in question is understood to be of a like imperative character.

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

Mapa, J., did not sit in this case.

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