4 Phil. 700

[G.R. No. 1708. August 24, 1905]

EX PARTE PEDRO ARCENAS, FELISBERTA ACEVEDO ET AL.—PROBATE PROCEEDINGS.

D E C I S I O N

TORRES, J.:

On October 12, 1901, before Felipe Villasis y Castaneda, a notary public of the municipality of Capiz, and in the presence of three witnesses, residents thereof, Jose de los Santos e Isada, also a resident of that city, executed his last will and testament, and to this effect exhibited to the notary and attesting witnesses a private document purporting to be his last will, and stated that he wished to acknowledge it as such; but the said testator, on account of his ill health, did not sign the same, and at his own request the witness Naval Amisola Vidal y Reyes signed in his stead. The other witnesses and the notary public also signed the testament.

Subsequently Pedro Arcenas, one of the executors under the said will, presented the same for probate, the usual proceedings were had in the Court of First Instance, and notwithstanding the fact that the parties interested were cited, no one appeared to oppose the probating of the said will. Sandalio Garcia and Andres Protasio, two of the witnesses to the will, were examined. They testified under oath that the testator had voluntarily executed the same but on account of his ill health did not sign, the witness Naval A. Vidal signing in his stead at the testator’s request; they further testified that the attesting witnesses had signed the will in the presence of each other. At this stage of the proceedings the clerk presented to the judge the register of public instruments for the year 1901, where the original of

the said will was recorded.

The two heirs named in the will, to wit, Felisberta and Jose Acevedo, petitioned the court on the 28th day of September, 1902, to examine the notary Villasis, and the witness Naval Amisola Vidal as to the authenticity of the will itself, but the court, without passing upon this petition, in a decision rendered October 1, 1903, disallowed the said will on the ground that it was not signed by the testator Jose de los Santos, nor by the testator's name written by Naval A. Vidal, as required by section 618 of the Code of Civil Procedure, and could not, therefore, be considered as the last will and testament of the said Jose de los Santos. From this decision the said heirs appealed to this court.

The Code of Civil Procedure went into effect on the 1st day of October, 1901, as provided in Act No. 212 of the Philippine Commission, approved August 31, 1901, so that the said Code of Civil Procedure was in full force and effect on the 12th day of October of the same year when the will in question was executed by the testator, Jose de los Santos e Isada, who, as well as all the citizens of the Philippine Islands, was obliged to conform in the execution of wills with the law governing the subject.

Section 618 of the Code of Civil Procedure, which relates to the requisites of wills, repealed, among others article 695 of the Civil Code, the second paragraph of which reads as follows:.

> "Should the testator declare that he does not know how, or is not able, to sign, one of the attesting witnesses or another person shall do so for him at his request, the notary certifying thereto. This shall also be done if any one of the witnesses can not sign."

This provision of the Civil Code has been expressly modified by the provisions of section 618 of the Code of Civil Procedure, which reads as follows:

> "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 foregoing is, in the opinion of the American members of this court, a correct translation of the English text of the section quoted.

It will be noticed from the above-quoted section 618 of the Code of Civil Procedure that where the testator does not know how, or is unable, to sign, it will not be sufficient that one of the attesting witnesses signs the will at the testator's request, the notary certifying thereto as provided in article 695 of the Civil Code, which, in this respect, was modified by section 618 above referred to, but it is necessary that the testator's name be written by the person signing in his stead in the place where he would have signed if he knew how or was able so to do, and this in the testator's presence and by his express direction , so that a will signed in a manner different than that prescribed by law shall not be valid and will not be allowed to be probated.

Where a testator does not know how, or is unable for any reason, to sign the will himself, it shall be signed in the following manner: "John Doe, by the testator, Richard Roe;" or in this form: "By the testator, John Doe, Richard Roe." All this must be written by the witness signing at the request of the testator.

The English text df the before-mentioned section 618 of the Code of Civil Procedure is clear, this section not having been modified since the promulgation of the said code, and if the Spanish translation of said code was incorrect in the first two editions it has at last been corrected in a third edition thereof, and, in our opinion, the correct Spanish translation of the said section is as quoted in this decision.

There is lacking in the testament in question an essential requisite which affects its validity, the omission of which can not be excused by the erroneous translation in the first two editions of the said code, which translation is not such as would justify a failure to comply with its provisions, since Act No. 63 of the Philippine Commission, approved December 21, 1900, provides that in the construction of all acts which have been enacted, or shall be enacted, by that legislative body the English text shall govern, except that in obvious cases of ambiguity, omission, or mistake the Spanish text may be consulted to explain the English text. In this case the English text is clear and, in the opinion of the American members of this court, there is no ambiguity, omission, or mistake which would require a consultation of the Spanish text to explain it.

Therefore, under the law now in force, the witness Naval A. Vidal should have written at the bottom of the will the full name of the testator and his own name in one of the forms given above. He did not do so, however, and this failure to comply with the law is a substantial defect which affects the validity of the will and precludes its allowance, notwithstanding the fact that no one appeared to oppose it.

The trial court states in its decision that from the evidence introduced the court is convinced that the document in question contained the last will of the deceased as to the disposition of his property; but no decision in this case would be proper unless in strict accordance with the law, no matter how harsh such decision may be. The allowance of this defective will would be a violation of the law.

The judgment appealed from should be affirmed and the will in

question, executed at Capiz on the 12th of October; 1901, by the deceased, Jose de los Santas e Isada, is hereby disallowed. After the expiration of twenty days judgment shall be entered accordingly and the case remanded to the Court of First Instance for proceedings in conformity here-with. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.,* concur.
Willard, J., did not sit in this case.

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