3 Phil. 426

[G.R. No. 1439. March 19, 1904]

ANTONIO CASTAÑEDA, PLAINTIFF AND APPELLEE, VS. JOSE E. ALEMANY, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

(1) The evidence in this case shows to our satisfaction that the will of Dona Juana Moreno was duly signed by herself in the presence of three witnesses, who signed it as witnesses in the presence of the testatrix and of each other. It was therefore executed in conformity with law.

There is nothing in the language of section 618 of the Code of Civil Procedure which supports the claim of the appellants that the will must be written by the testator himself or by someone else in his presence and under his express direction. That section requires (1) that the will be in writing and (2) either that the testator sign it himself or, if he does not sign it, that it be signed by some one in his presence and by his express direction. Who does the mechanical work of writing the will is a matter of
indifference. The fact, therefore, that in this case the will was typewritten in the office of the lawyer for the testatrix is of no consequence. The English text of section 618 is very plain. The mistakes in translation found in the first Spanish edition of the code have been corrected in the second.

(2) To establish conclusively as against everyone, and once for all, the facts that a will was executed with the formalities required by law and that the testator was in a condition to make a will, is the only

purpose of the proceedings under the new code for the probate of a will. (Sec. 625.) The judgment in such proceedings determines and can determine nothing more. In them the court has no power to pass upon the validity of any provisions made in the will. It can not decide, for example, that a certain legacy is void and another one valid. It could not in this case make any decision upon the question whether the testatrix had the power to appoint by will a guardian for the property of her children by her first husband, or whether the person so appointed was or was not a suitable person to discharge such trust.

All such questions must be decided in some other proceeding. The grounds on which a will may be disallowed are stated in section 634. Unless one of those grounds appears the will must be allowed. They all have to do with the personal condition of the testator at the time of its execution and the formalities connected therewith. It follows that neither this court nor the court below has any jurisdiction in this proceeding to pass upon the questions raised by the appellants by the assignment of error relating to the appointment of a guardian for the children of the deceased.

It is claimed by the appellants that there was no testimony in the court below to show that the will executed by the deceased was the same will presented to the court and concerning which this hearing was had. It is true that the evidence does not show that the document in court was presented to the witnesses and identified by them, as should have been done. But we think that we are justified in saying that it was assumed by all the parties during the trial in the court below that the will about which the witnesses were testifying was the document then in court. No suggestion of any kind was then made by the counsel for the appellants that it was not the same instrument. In the last question put to the witness Gonzales the phrase " this will " is used by the counsel for the appellants. In their argument in that court, found on page 15 of the record, they treat the testimony of the witnesses as referring to the will whose probate they were then opposing.

The judgment of the court below is affirmed, eliminating therefrom, however, the clause ” el cual debera ejecutarse fiel y exactamente en todas sus partes.” The costs of this instance will be charged against the appellants.

Arellano, C. J., Torres, Cooper, Mapa, McDonough, and *Johnson, JJ.,* concur.

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