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[G.R. No. 2002. August 18, 1905]

EX PARTE NEMESIO DELFIN SANTIAGO-PROBATE PROCEEDINGS.

D E C I S I O N

CARSON, J.:

This is an appeal from an order of the Court of First Instance of the Province of Bulacan denying probate of a certain document, purporting to be the last will and testament of one Esperanza Cecilio, deceased, on the ground that the name of the said Esperanza Cecilio was not attached to said document, either by herself or by some other person for her and at her request.

The name of the deceased is nowhere attached to the instrument, but the concluding paragraph reads as follows-

> "In witness whereof, and at my request, on account of my weakness and inability to sign my name, this document has been written by Mr. Eugenio Agustines, and after having been executed and read to me I have caused him to sign it, in this town of Polo, barrio of Pariancillo, this 6th day of July, 1903—"

And to this is attached the signature of the said Eugenio Agustines, followed by the usual attesting clause and the signatures of the witnesses.

It is contended that this is, in effect, and to all intents and purposes, the signature of the testatrix attached to the document; that it is in accordance with the usual and legal form by which, under

Spanish law, persons unable to write have heretofore signed all written instruments; and that it comes fairly within the provisions of the first and second official translations of section 618 of Act No, 190, prescribing the mode whereby last wills and testaments must be authenticated.

We are of opinion, however, that the signature of the deceased is not attached to the document in question in accordance with the provisions of section 618 of Act No. 190, and that the form adopted is not sufficient to authenticate a will. It matters not what may have been the form usually adopted prior to the publication of this act, or whether a particular form of signature may be sufficient for the authentication of an ordinary written instrument. The form which must be adopted in the signing of wills is expressly prescribed in this act, and must be followed. The English text is positive, clear, and explicit, and prescribes, as one of the requisites of a valid will, that it be "signed by the testator, or by the testator's name written by some other person in his presence and by his express direction."

It is true that the translation found in the first and second editions of Act No. 190, as published by the Philippine Commission, is so imperfect as to raise grave doubts as to the meaning of this section, but section 1 of Act No. 63 provides that—

> "In the construction of all acts which have been or shall be enacted by the United States Philippine Commission, the English text shall govern, except that, in cases of ambiguity, omission, or mistake, the Spanish text may be consulted to explain the English text."

Counsel for the appellant urges that since it is evident that the document in question was executed for and as the last will and testament of the deceased, and as the manner in which the signature should be attached to a will is a mere formality, the document should be admitted to probate, even though it be held that the formal authentication adopted by the deceased was not in exact conformance

with the method prescribed by law. We hold however, that "no proof of good faith can avail or supply the requisites of the law," for any other rule would open the door to mistake and fraud, and tend to encourage fraudulent imposition in the establishment of spurious wills. (Neil *vs*. Neil, 1 Leigh (Va.), 6.)

In some English cases (*In re* Clark, 2 Curt, 329, and *In re* Blair, 6 Notes Cas., 529) it was held that it was "immaterial that the person signing for the testator sign his own name instead of the name of the testator," and this is the contention of the appellants in this case, but it is to be observed that the English Statute of Frauds (29 Carl. II, chap. 29) and the English Statute of Wills (I Viet, chap. 2(>) under which these English decisions were rendered provide that a will, to be valid, must be signed "by the testator or by some other person in his presence and by his direction," whereas our statute provides that it must be signed "by the testator, or by *the testator's name* written by some other person, in his presence and by his express direction."

The provisions of the imperfect Spanish translations, to which our attention has been directed, are strikingly similar, in effect, to the English statute, and were we permitted to accept those translations as authoritative we might be compelled to admit the force of the appellant's contention, but the English text of section 618 of Act No. 190, and the correct translation thereof, as found in Volume I of the compilation of public laws enacted by the Philippine Commission, differs from the English statute in that it is expressly provided therein, as one of the requisites to a valid will, that when signed by a person other than the testator it must be signed by the testator's name, written by such other person.

The order appealed from is affirmed, with the costs of the appeal against the appellant. After the expiration of twenty days judgment will be entered in conformity here-with and the cause will be returned to the lower court for execution. So ordered.

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

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