WILLS AND SUCCESSION — ATTESTATION CLAUSE

Cases holding a strict interpretation of the Attestation Clause: *Uy Coque vs, Navas,* 43 *Phil.* 405; *Sano vs. Quintana,* 48 *Phil.* 506; *Quinto vs. Morata,* 54 *Phil.* 481; *In Re Will of Saguinsin,* 41 *Phil.* 875; *In Re Will of Andrada,* 42 *Phil.* 180; *Gumban vs. Gorecho,* 50 *Phil* 30.

Cases holding a liberal interpretation of the Attestation Clause: *Aldaba vs. Roque,* 43 *Phil.* 378; *Ticson vs. Gorostiza,* 57 *Phil.* 437; *Grey vs. Fabie,* 40 *O. G.* 1st *Supp.* 193, *No.* 3, *May* 23, 1939; *Leynez vs. Leynez,* 40 *O. G.* 3rd *Supp.* 51 *No.* 7, *Oct.* 18, 1939; *Alcala vs. De Villa,* 40 *O. G.* 14th *Supp.* 131, *No.* 23, *April* 18, 1939; *Mendoza vs. Pilapil,* 40 *O. G.* 1855, *No.* 9, *June* 27, 1941; *Rallos vs. Rallos,* 44 *O. G.* 4938; *In Re Estate of Magdalena Ozoa,* 58 *Phil.* 928; *Sebastian vs. Panganiban,* 59 *Phil.* 653; *Sabado vs. Fernandez,* 40 *O. G.* 1844; *Rey vs. Cartagena,* 56 *Phil.* 282; *Rodriguez vs. Yap,* 40 *O. G.* 194; *Martir vs. Martir,* 40 *O. G.* 215.

Recent decisions of the Supreme Court on the Attestation Clause:

1

The Court of First Instance of Manila admitted to probate the alleged will and testament of the deceased Carlos Gil. The oppositor Pilar Gil Vda. de Murciano appealed to the Supreme Court alleging that the lower court erred in allowing the probate of said will on the ground that it was not executed according to the requirements of the law.

The attestation clause of the will in question does not state that the testator signed the will. It declares only that it was signed by the witnesses. However, in the last paragraph of the body of the will itself, the following is incorporated:

> "En testimonio de todo lo cual, firmo este mi testamento y en el margen izquierdo de cada una de sus dos paginas utiles con la clausula de atestiguamiento en presencia de los dos testigos, quienes a su vez firmaron cada una de dichas paginas y la clausula de atestiguamiento en mi presencia cada uno de ellos con la de los demas."

HELD: The attestation clause does not state that the alleged testator signed the will. It declares only that it was signed by the witnesses. This is a fatal defect, for the precise purpose of the attestation clause is to certify that the testator signed the will, this being the most essential element of the clause. Without it there is no attestation at all.

It is contended that the deficiency in the attestation clause is cured by the last paragraph of the body of the alleged will. At first glance, it is queer that the alleged testator should have made an attestation clause, which is the function of the witnesses. But the important point is that he attests or certifies his own signature, or, to be more accurate, his signature certifies itself. It is evident that one cannot certify his own signature for it does not increase the evidence of its authenticity. Consequently the last paragraph of the will cannot cure in anyway the fatal defect of the attestation clause of the witnesses. (GIL VS. MURCIANO, G. R. NO. L-3362, Prom. March 1, 1951)."

2

This is an appeal from an order of the Court of First Instance of Zambales admitting to probate the last will and testament of the late Jose Venzon. The main error assigned refers to the alleged lack of attestation clause in the will under consideration, or to the fact that, if there is such attestation clause, the same has not been signed by the instrumental witness, but by the testator himself, and it is claimed that this defect has the effect of invalidating the will.

The will in question winds up with the following clause:

> "In Witness whereof, I sign this testament or last will in the presence of the three witnesses, namely, Dr. Nestorio Trinidad, Don Baldomero Achacoso, and Mr. Proceso Cabal, as instrumental witnesses to my signing; this testament is written in three sheets marked by letters 'A', 'B', and 'C' consecutively on top of each sheet and upon my request and in my presence and also in the presence of each of the aforesaid instrumental witnesses, they also signed this testament already referred to.
>
> I hereby manifest that every sheet of the aforesaid testament, on the left-hand margin as well as the testament itself have been signed by me as also each of the witnesses has also signed in my presence and in the presence of each other."
>
> (SGD.) JOSE VENZON
>
> WITNESSES:
> (SGD.) NESTORIO TRINIDAD
> (SGD.) BALDOMERO L. ACHACOSO
> (SGD.) PROCESO CABAL

HELD: The clause quoted is the attestation clause referred to in the law which, in our opinion, substantially complies with its requirements. The only apparent anomaly we find is that it

appears to be an attestation made by the testator himself more than by the instrumental witnesses. This apparent anomaly, however, is not in our opinion serious nor substantial as to affect the validity of the will, it appearing that right under the signature of the testator, there appears the signature of the three instrumental witnesses.

Wherefore, the order appealed from is hereby affirmed. (CUEVAS VS. ACHACOSO, G. R. NO. L-3497, Prom. May 18, 1951)."

3

This is an appeal from an order of the Court of First Instance of Quezon admitting to probate the last will and testament of Enrique C. Zuniga who died on December 31, 1945. The oppositors, Juan Zuniga and Faustino Calanog, contend that the trial court erred in allowing the probate of said will, despite the defect in the attestation clause which does not state that the testator signed the will and each page thereof in the presence of the three instrumental witnesses.

The appellants invoke the case of Quinto vs. Morata, 54 Phil. 481, wherein was held that the attestation clause must be made in strict conformity with the requirement of Section 618 of Act 190 as amended.

The Attestation clause of the will in question is as follows:

> "That we, the undersigned witnesses, hereby certify that this last will and testament consisting of two pages, written in two sheets, each sheet composing a page, including the page in which this attestation clause is written; that each page is correlatively numbered in letters in the middle of the upper part of each page; and that the testator signed the will and on both pages at the left-hand margin of the page; and that we also signed at the left-hand margin of the will on both pages in the presence of the testator and in the presence and within sight of each other."

HELD: The flaw attributed to the attestation clause in question is that, although it states that the testator signed the will and on both pages at the left hand margin, it does not certify that the testator signed "in the presence of the instrumental witnesses." In decisions of this court posterior to the case relied upon by the appellants, the probate of wills containing attestation clauses similarly assailed had been sustained. (*In Re Estate of the Deceased Magdalena Ozea,* 58 *Phil.* 928; *Sebastian Panganiban,* 59 *Phil.* 653, 655). Following the later trend, we are constrained to sustain the appealed judgment. Indeed, the word "we" in the sentence of

the attestation clause in dispute, above quoted, although expected to relate to the attesting witnesses, may also refer both to the testator and to the attesing winesses. It is likewise obvious that the attesting witnesses could not have certified—as they did—that the testator signed the will and all the pages thereof, at the left-hand margin, if said testator did not sign in their presence. The case ultimately is one more or less, of grammatical imperfection. (DIA vs. ZUNIGA AND CALANOG, G.R. NO. L-1162 Prom. May 30, 1951).

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It should be noted that in the case of Gil vs. Murciano the Supreme Court seemed to have applied a strict interpretation of the Attestation clause, while in the cases of Cuevas vs. Achacoso, and Dia vs. Zuniga, the high court applied a liberal interpretation of the attestation clause. However, under Article 809, of the New Civil Code, there can no longer be any controversy when defects and imperfections in the form of the attestation or in the language used therein arise because Article 809 in effect has adopted the liberal view of interpretation. The said article provides that:

> "In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of article 805."

It is therefore clear, that extrinsic evidence or evidence *aliunde* is admissible in order to prove substantial compliance. The cases of Gil vs. Murciano, Cuevas vs. Achacoso and Dia vs. Zuniga, although decided after the effectivity of the New Civil Code was not decided in the light of Article 809 because the respective wills in question were executed prior to the effectivity of the New Civil Code. Hence the law applicable is the law in force at the time the said wills were made. (Art. 795)

It must be noted, however, that the present status of article 809 is so broad that even defects not found in the body of the will could be cured by extrinsic evidence or evidence *aliunde.* In his criticism on the New Civil Code, Justice J. B. L. Reyes stated:

> "I submit that the rule here is so broad that no matter how imperfect the attestation clause happens to be, the same could be cured by evidence aliunde. It thus renders the

attestation of no value in protecting against fraud or really defective execution. The rule must be limited to disregarding those defects that could be supplied by the examination of the will itself; whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, and whether all the persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings." (*Observations on the New Civil Code, Lawyer's Journal, Nov.* 30, 1950).

Jose Reyes
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BOOK REVIEWS

COMMENTS ON THE RULES OF COURT. Vols. I, II, III. Third Edition. By Manuel V. Moran. The Modern Book Company, 1950. Leather-bound, ₱135.00.

"For want of a nail ..... a kingdom was lost."

How many cases have been lost for want or inadequacy of evidence? Is it not true that a case is only as strong as the facts proved to support it? And that matters of fact are proved only by means of evidence? Therefore, evidence may be regarded as the prop upon which the "enforcement or protection of a right, the prevention or redress of a wrong, or the establishment of the status or right of a party or of a particular fact" rest; hence, the need for an authoritative and adequate guide on the rules of evidence both for the students of law and the law practitioners. One such guide is Moran's Comments on the Rules of Court in three volumes, which is not only authoritative and adequate but also painstakingly exhaustive.

The author starts his first volume with a foreword to the third edition, which is the subject-matter of this review. By way of supplementing previous objects and purposes which prompted Mr. Chief Justice Moran in contributing three editions to the library of Philippine law and jurisprudence, two factors brought forth the resultant publication of the 1950 edition, *viz.*, a) the necessity of a new edition after all copies of the preceding edition have been exhausted, and b) the numerous decided cases involving vital questions of procedure and evidence which came since the publication of the second edition. It is not without reason, however,

that we mention the elements that characterized the first and second editions of this outstanding legal project: of the first, comments were directed mostly to pivotal points; of the second, the general plan of organization and division of materials logically organized therein is given emphasis.

The presentation of the subject-matter covered by the provisions of the Rules of Court is as clear as it is simple. It is to the interest of the student, more than to the members of the bar, that such a method is used. The codal form—where the provisions are stated *verbatim*—is made the basis of a working knowledge on how the comments are thereafter presented.

Mr. Chief Justice Moran leaves no stone unturned in giving us the pertinent cases decided by our courts relative to the point in question. Not content with merely these, he adds excerpts of American jurisprudence which carry persuasive influence. And on points where there is no accepted jurisprudence, the author gives his personal opinion, which in legal circles have in more than one instance offered food for legal thought.

In the second volume, it will be noted that the author gives the rules *verbatim* and in their numerical order. He makes use of the annotations to simplify such terminologies as appear vague and ambiguous. A commentary follows revealing the source of the law, its nature and scope, its applicability, and winds up pinpointing its correlation with other provisions, substantive or procedural in nature. Dealing with the wilderness of cases and statutes relating to procedure, he makes a selective effort to take into consideration as much as possible all the important legal problems that arise from everyday procedure and to point out the basic principles that govern judicial action in solving them.

In the third volume, the author proceeds from a statement of the "rules of evidence which in this jurisdiction are grouped under Rule 123 of the Rules of Court." Since by virtue of Section 13, Art. VIII of the Philippine Constitution the "existing laws on pleading, practice and procedure" were repealed, the statement of each rule under Rule 123 is followed by a reference to the statute from which the rule was taken. Sources other than repealed statutes are also mentioned. Definition of terms necessary to a complete understanding of each rule is freely used throughout the whole book. Each main term is further classified and each classification further defined. Where examples are needed to clarify a point, such examples are cited from accepted authorities on the subject. Legal terms are distinguished to avoid confusion.

As an aid to a better appreciation of some rules, the underlying reason or reasons for their promulgation are given. Fundamental principles and requisites involving certain rules laid down by decided cases, both here and abroad, and by leading authorities are cited profusely in order to insure a correct understanding of the rules. The scope beyond which some rules may not be applied is clearly set out.

New Civil Code provisions affecting certain rules are presented after the rule affected so that an immediate comparison and cor-