

ed the action of unlawful detainer has no jurisdiction. The action should, therefore, be dismissed on two grounds, lack of jurisdiction and pendency of another action between the same parties over the same cause. Nothing can be gained by the continuation of the case in the court below.

## XVII

*In re: Will and Testament of the deceased Reverend Sancho Abadia. Scverina A. Vda. De Enriquez, et al., Petitioners-Appellees, vs. Miguel Abadia, et al., Oppositors-Appellants, No. L-7188, August 9, 1954, Montemayor, J.*

1. WILLS; PROBATE OF WILL; VALIDITY OF WILL AS TO FORM DEPENDS UPON LAW IN FORCE AT TIME OF EXECUTION; TITLE OF LEGATEES AND DEVISEES UNDER WILL VESTS FROM TIME OF EXECUTION. — The validity of a will as to form is to be judged not by the law in force at the time of the testator's death or at the time the supposed will is presented in court for probate or when the petition is decided by the court but at the time the instrument was executed. One reason in support of the rule is that although the will operates upon and after the death of the testator, the wishes of the testator about the disposition of his estate among his heirs and among the legatees is given solemn expression at the time the will is executed, and in reality, the legacy or bequest then becomes a completed act.
2. ID.; EXECUTION OF WILLS; LAW SUBSEQUENTLY PASSED, ADDING NEW REQUIREMENTS AS TO EXECUTION OF WILLS; FAILURE TO OBSERVE FORMAL REQUIREMENTS AT TIME OF EXECUTION INVALIDATES WILL; HEIRS INHERIT BY INTESTATE SUCCESSION; LEGISLATURE CAN NOT VALIDATE VOID WILLS. — From the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the Constitution against a subsequent change in the statute adding new legal requirements of execution of wills, which would invalidate such will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution then upon his death he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements or which dispenses with such requirements as to execution should be allowed to validate a defective will and thereby divest the heirs of their vested rights in the estate by intestate succession. The general rule is that the Legislature can not validate void wills (57 Am. Jur., Wills, Sec. 231, pp. 192-193).

*Manuel A. Zosa, Luis B. Ladonga, Mariano A. Zosa and B. G. Advincula for Oppositors and Appellants.*

*C. de la Victoria for Petitioners and Appellees.*

## DECISION

MONTEMAYOR, J.:

On September 6, 1923, Father SANCHO ABADIA, parish priest of Talisay, Cebu, executed a document purporting to be his Last Will and Testament now marked Exhibit "A". Resident of the City of Cebu, he died on January 14, 1943, in the municipality of Aloguinsan, Cebu, where he was an evacuee. He left properties estimated at ₱8,000 in value. On October 2, 1946, one Andres Enriquez, one of the legatees in Exhibit "A", filed a petition for its probate in the Court of First Instance of Cebu. Some cousins and

nephews who would inherit the estate of the deceased if he left no will, filed opposition.

During the hearing one of the attesting witnesses, the other two being dead, testified without contradiction that in his presence and in the presence of his two co-witnesses, Father Sancho wrote out in longhand Exhibit "A" in Spanish which the testator spoke and understood; that he (testator) signed on the left hand margin of the front page of each of the three folios or sheets of which the document is composed, and numbered the same with Arabic numerals, and finally signed his name at the end of his writing at the last page, all this, in the presence of the three attesting witnesses after telling that it was his last will and that the said three witnesses signed their names on the last page after the attestation clause in his presence and in the presence of each other. The oppositors did not submit any evidence.

The learned trial court found and declared Exhibit "A" to be a holographic will; that it was in the handwriting of the testator and that although at the time it was executed and at the time of the testator's death, holographic wills were not permitted by law still, because at the time of the hearing and when the case was to be decided the new Civil Code was already in force, which Code permitted the execution of holographic wills, under a liberal view, and to carry out the intention of the testator which according to the trial court is the controlling factor and may override any defect in form, said trial court by order dated January 24, 1952, admitted to probate Exhibit "A", as the Last Will and Testament of Father Sancho Abadia. The oppositors are appealing from that decision; and because only questions of law are involved in the appeal, the case was certified to us by the Court of Appeals.

The new Civil Code (Republic Act No. 386) under Art. 810 thereof provides that a person may execute a holographic will which must be entirely written, dated and signed by the testator himself and need not be witnessed. It is a fact, however, that at the time that Exhibit "A" was executed in 1923 and at the time that Father Abadia died in 1943, holographic will were not permitted, and the law at the time imposed certain requirements for the execution of wills, such as numbering correlatively each page (not folio or sheet) in letters and signing on the left hand margin by the testator and by the three attesting witnesses, requirements which were not complied with in Exhibit "A" because the back pages of the first two folios of the will were not signed by any one, not even by the testator and were not numbered, and as to the three front pages, they were signed only by the testator.

Interpreting and applying this requirement this Court in the case of *In re Estate of Saguinsin*, 41 Phil. 875, 879, referring to the failure of the testator and his witnesses to sign on the left hand margin of every page, said:

"x x x. This defect is radical and totally vitiates the testament. It is not enough that the signatures guaranteeing authenticity should appear upon two folios or leaves; three pages having been written on, the authenticity of all three of them should be guaranteed by the signature of the alleged testatrix and her witnesses."

And in the case of *Aspe v. Prieto*, 46 Phil. 700, referring to the same requirement, this Court declared:

"From an examination of the document in question, it appears that the left margins of the six pages of the document are signed only by Ventura Prieto. The noncompliance with section 2 of Act No. 2645 by the attesting witnesses who omitted to sign with the testator at the left margin of each of the five pages of the document alleged to be the will of Ventura Prieto, is a fatal defect that constitutes an obstacle to its probate."

What is the law to apply to the probate of Exh. "A"? May we apply the provisions of the new Civil Code which now allows holographic wills, like Exhibit "A" which provisions were invoked by the appellee-petitioner and applied by the lower court? But

Article 795 of this same new Civil Code expressly provides: "The validity of a will as to its form depends upon the observance of the law in force at the time it is made." The above provision is but an expression or statement of the weight of authority to the effect that the validity of a will is to be judged not by the law in force at the time of the testator's death or at the time the supposed will is presented in court for probate or when the petition is decided by the court but at the time the instrument was executed. One reason in support of the rule is that although the will operates upon and after the death of the testator, the wishes of the testator about the disposition of his estate among his heirs and among the legatees is given solemn expression at the time the will is executed, and in reality, the legacy or bequest then becomes a completed act. This ruling has been laid down by this Court in the case of *In re will of Riosa*, 39 Phil. 23. It is a wholesome doctrine and should be followed.

Of course, there is the view that the intention of the testator should be the ruling and controlling factor and that all adequate remedies and interpretations should be resorted to in order to carry out said intention, and that when statutes passed after the execution of the will and after the death of the testator lessen the formalities required by law for the execution of wills, said subsequent statutes should be applied so as to validate wills defectively executed according to the law in force at the time of execution. However, we should not forget that from the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the constitution against a subsequent change in the statute adding new legal requirements of execution of wills which would invalidate such a will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution then upon his death he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements or which dispenses with such requirements as to execution should be allowed to validate a defective will and thereby divest the heirs of their vested rights in the estate by intestate succession. The general rule is that the Legislature can not validate said wills (57 Am. Jur., Wills, Sec. 231, pp. 192-193).

In view of the foregoing, the order appealed from is reversed, and Exhibit "A" is denied probate. With costs.

*Paras, C.J., Pablo, Bengzon, Padilla, Alex Reyes, Jugo Bautista Angelo, Labrador, Concepcion, and J. B. L. Reyes, J.J., concur.*

### XVIII

*Antonio Uy, Petitioner-Appellant, vs. Jose Rodriguez, Mayor of the City of Cebu, Respondent-Appellee, G. R. No. L-6772, July 30, 1954, Labrador, J.*

**ADMINISTRATIVE LAW; PUBLIC OFFICERS; CIVIL SERVICE LAW; REMOVAL OF DETECTIVES.** — The ousted detective states that he is not a civil service eligible but that it does not appear from the record that his appointment as member of the detective force was temporary in character or for periods of three months merely, and that he had been reappointed every three months until his separation now in question. The Mayor of Cebu claims that said detective's position is primarily confidential and, therefore, Executive Order No. 264, series of 1940, of the President of the Philippines is applicable to the petitioner; that detectives in the City of Cebu pertain to the "detective service," which is distinct from the city police force and, therefore, the provisions of Republic Act No. 557, which require investigation prior to dismissal of a member of the city police force, are not, applicable. *Held:* The above-mentioned circumstances, in addition to the fact that said detective was promoted as senior detective inspector, show that his appointment is not in a temporary capacity. He may

not, therefore, be dismissed or removed except in accordance with the provisions of Republic Act No. 557. (*Palamine vs. Zapada*, April 1954 *Gaz.*, p. 1566; *Mission vs. Del Rosario*, April 1954 *Gaz.*, p. 1571; *Abella vs. Rodriguez*, L-6867, June 29, 1954.)

*Fernando S. Ruiz and Emilio A. Matheu* for the petitioner and appellant.

*Jose L. Abad and Quirico del Mar* for the respondent and appellee.

### DECISION

LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu dismissing the petition for mandamus instituted in that court by Antonio Uy against Jose Rodriguez, mayor of the City of Cebu. Petitioner Antonio Uy was appointed deputy inspector of the detective force, police department, of the City of Cebu on July 1, 1946. On July 1, 1947, he was promoted to the position of senior detective inspector. He held this position from that date until September 5, 1952, when the respondent city mayor dispensed with his services on the ground that he can no longer repose his trust and confidence in him. Upon receiving this notice of dismissal, petitioner requested the mayor to reinstate him, but the latter refused to do so. Hence, this action of mandamus.

The court *a quo* held that the position held by the petitioner is primarily confidential and, therefore, Executive Order No. 264, series of 1940, of the President of the Philippines is applicable to the petitioner; that detectives in the City of Cebu pertain to the "detective service," which is distinct from the city police force and, therefore, the provisions of Republic Act No. 557, which require investigation prior to the dismissal of a member of the city police force, are not applicable.

The question raised in this special civil action has already been decided squarely by us in the cases of *Palormine, et al vs. Zapada, et al*, G. R. No. L-6901, promulgated March 15, 1954; *Mission, et al vs. Del Rosario*, G. R. No. L-6754, promulgated February 26, 1954; and *Abella vs. Rodriguez*, G. R. No. L-6867, promulgated June 29, 1954. In said cases, we have held that a member of the detective force of Cebu City is a member of the police department of said city and may not be removed except in accordance with the provisions of Republic Act No. 557.

The statement submitted by the petitioner shows that he is not a civil service eligible, but neither does it appear from the record that his appointment as member of the detective force was temporary in character or for periods of three months merely, and that he had been reappointed every three months until his separation. These circumstances, in addition to the fact that he was promoted as senior detective inspector, show that his appointment is not in a temporary capacity. He may not, therefore, be dismissed or removed except in accordance with the provisions of existing law.

The judgment appealed from is hereby reversed, and the respondent city mayor is ordered to reinstate the petitioner to his former position of senior detective inspector in the detective force of the City of Cebu, with right to arrears in salary from the time of his separation to the date of his reinstatement. Without costs.

### ERRATA

Re: In the matter of the last will and testament of Jose Vaño, deceased. Teodoro Vaño, Petitioner and Appellant, vs. Paz Vaño, Vda. De Garces, et al., Oppositors and Appellees, G. R. No. L-6303, June 30, 1954. (L. J., p. 448, Sept. 30, 1954.)

In the above-mentioned case, Pedro Re. Luspo's name should have appeared as lawyer for the petitioners and appellants instead of his brother Roque R. Luspo and his former partner, Vicente L. Faenar, who handled the case in the lower court and lost it. On appeal to the Supreme Court, Atty. Pedro Re. Luspo took over and won the case.