

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, Juco 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 re-appointed 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 *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 25, 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 Garcia, et al. Opponents and Appellees, G. R. No. L-6103, June 29, 1954. (L. J., p. 445, Sept. 30, 1954.)*

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