

## NIEVES ARAUJO ET AL., PLAINTIFFS AND APPELLANTS, VS. GREGORIA CELIS, DEFENDANT AND APPELLEE.

*G.R. No. 2308. August 03, 1910*

Ponente: MAPA, J.

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### MAPA, J.:

Now for the second time the present cause has come on appeal to this court. In the decision rendered the first time and whereby a new trial was ordered, the court said in part what on account of its being here pertinent is transcribed below: [1]

"Rosario Darwin Araujo inherited from her mother, Asuncion Araujo y Belen, the hacienda known as Pangpang and other property. She subsequently married Jose Araujo y Celis, the defendant's son, and died on the 22d of January, 1888, leaving no descendants or ascendants, but only collateral relatives, of whom the plaintiffs in this case claim to be the nearest. They consequently alleged that they should succeed to the estate of the said Rosario, and asked that the property inherited by her from her mother be delivered to them as the heirs of the said Rosario. The property in question, according to the complaint, is now held by the defendant, who took possession of the same after the death of her son, Jose Araujo, the husband of the said Rosario, who died a year after the death of his wife - that is to say, in 1889.

"The defendant admits that the property in question belonged privately and exclusively to the wife, Rosario Darwin, but claims that Rosario died leaving a will in which she bequeathed all of her property to her husband, Jose Araujo, and that the latter having died without a will, she, the defendant, succeeded under the law to all of his property, rights, and actions, thereby lawfully acquiring all the property that had formerly belonged to her daughter-in-law, Rosario."

As the court below properly found, the only important and decisive question in this case is whether or not Rosario Darwin executed a legal and valid will in the form and manner alleged by the defendant. If so, the defendant's right to the property would be unquestionable. If not so, the contrary would necessarily be the result.

Now, in regard to this point of the execution of the will and the form in which it was executed, the trial judge in the judgment appealed from says as follows:

"I am convinced that Rosario Darwin made her will a short time prior to her death, which occurred in January, 1888, as herein before found. The weight of the evidence shows that the will in question was signed by eight different witnesses, among whom was the plaintiff, Nieves Araujo, who at that time and prior thereto was Rosario Darwin's tutoress. Rosario's signature was written at her own request and for the reason that she could not sign with her own hand on account of her debility, incident to her sickness, and this was done in the presence of or before Juan Celis, who at that time was the gobernadorcillo of the pueblo of Barotac Nuevo. The place where the will was executed was less than 2 leagues distant from the residence of a notary public duly appointed, Tomas Saenz, who then resided in Pototan. The will, after its execution and according to the best information that can be obtained from the evidence, was sent directly to the Court of First Instance and there was registered, inasmuch as it had been executed before the gobernadorcillo who certified to it instead of a notary.

"I am convinced that in the execution of this will this official acted in place of the notary and that the will was approved and registered, of course without calling the witnesses to the will before the court, but merely by an examination of the will to see whether all the formalities had been observed in its execution."

After a careful examination of the evidence, we are of opinion that the findings of fact of the judgment appealed from, just above transcribed, are in accord with the evidence. The fact that the pueblo of Barotac Nuevo, where the will of Nieves Araujo was executed, is less than 2 leagues distant from that of Pototan, the seat of the judicial district of the same name and the official location of the Court of First Instance and also of the notary of the said district during the Spanish regime, appears from the agreement arrived at by the parties at the trial, wherein it is shown that the distance between the town squares or plazas of the two pueblos mentioned is 9,515 meters. This detail of the distance, being one of capital importance in the present question, it is necessary to determine the exact meaning of the word legua or league, as a linear measure, for the purpose of ascertaining the effects of the laws under the authority of which the will referred to was executed.

The distance represented by the said measure has not always been the same. According to law 25, title 26, partida 2, a legua or league contained 3,000 steps; but law 5, title 9, book 9 of the Novisima Recopilacion, enacted for the purpose of establishing a uniform system of weights and measures throughout the kingdom of Spain, fixed it definitely at 20,000 feet.

"In order that the legua - this laws says textually - may correspond approximately with what everywhere in Spain has been and is called a legua, which is the distance a person ordinarily walks in one hour, it shall consist of 20,000 feet, and in all cases where the legua is concerned, in connection with the royal highways or in the courts or out of them, this shall be its measure."

This provision was the one that governed in the matter at the time of the execution of the will in question. Now, therefore, a meter is equivalent to a little more than 3 Spanish feet and 7 inches; hence 20,000 feet, or a legua, make 5,572 meters, and 2 leguas, consequently, 11,144 meters. Therefore the distance that lies between the pueblos of Barotac Nuevo and Pototan is evidently less than 2 leguas, since it is only 9,515 meters, according to the agreement had between the parties at the trial.

This being established, we believe that the gobernadorcillo of Barotac Nuevo lacked the power to legalize in his official capacity, by exercising notarial functions, the will of Rosario Darwin. It is a question of a nuncupative or open will executed in the year 1888. In accordance with laws 1 and 2, title 18, book 10, of the Novisima Recopilacion, then in force, such a will could be executed validly in any of the following modes: First, before an escribano or notary and three witnesses, residents of the place where the will is executed; second, without an escribano, but with five witnesses of the same neighborhood; third, with only three resident witnesses, when there are not five in the pueblo qualified as residents and there is no escribano; and fourth, in the presence of seven witnesses, whether residents or not, although no escribano was present. It was essential in all cases to certify in due form the legality and authenticity of the will in order that it might have full force and effect in law. For this reason, when the escribano took no part in the execution of the will and the document therefore lacked the character of a public instrument, its certification was necessary and indispensable by summoning the witnesses before the judge in order that they might in a proper case recognize their respective signatures and testify with regard to the certainty of the execution of the instrument. (Law 4, title 2, partida 6.) This testification was not necessary where the will was executed before an escribano, because it then acquired, by the intervention of the said official, the character of a public instrument, which, without need of any other support, was an attestation and full proof in itself. It is to be noted here that, although the extrajudicial public attestation necessary to legalize wills and other public documents was entrusted exclusively to the royal or" public escribanos by virtue of laws 7 and 8, title 23, book 10, of the Novisima Recopilacion, by exception, power was granted to the gobernadorcillos

of some pueblos of the Philippines to legalize such instruments, owing to the scarcity of escribanos and to the difficulty of communication between the pueblos of the Islands.

It clearly appears from the evidence that the will of Rosario Darwin, as executed before the gobernadorcillo of Barotac Nuevo, was considered from the very first and on all occasions as a public document, for which reason it was protocolled in the registry of the escribano or notary of Pototan, without previous attestation having been made of its due execution in the form provided by law for wills not legalized by a notary or public escribano. It is recited in the judgment appealed from, in exact conformity with the evidence:

"After its execution (the will), \* \* \* was sent directly to the Court of First Instance and there was registered \* \*  
\* of course without calling the witnesses to the will before the court, but merely by an examination of the will in order to see whether all the formalities had been observed in its execution."

As the gobernadorcillo of Barotac Nuevo did not have the authority to legalize the said will, as hereinabove stated, it is seen that it was completely null as a public document, and that as a private one it was invalid and could not produce any effect in law because it was never properly attested.

And the gobernadorcillo of Barotac Nuevo lacked the authority to legalize wills for the reason that, as already before stated, this pueblo was less than 2 leguas distant from that of Pototan, at that time the judicial seat of the district to which the pueblo of Barotac Nuevo pertained. The authority granted to the gobernadorcillos to legalize public instruments was limited to those of the pueblos that were more than 2 leguas distant from their respective seats of government; the others were expressly prohibited from exercising this function. The provision of paragraph 7 of the auto acordado of August 31, 1860, approved by royal order of January 18, 1865, is definite in regard to this point. "The gobernadorcillos" - it says textually - "of the pueblos that are at a distance of 2 leguas or less from their respective seats of government shall abstain from legalizing public instruments" It is true that this prohibition was later, by article 7 of the Notarial Law of 1862, amplified to comprise a distance of 4 leguas, and was extended to the Philippines by royal decree of February 15, 1889, the provision of which is here cited only to show the restrictive tendency or spirit that prompted the granting of the power mentioned to the gobernadorcillos of certain pueblos; and, indeed, it could not have been otherwise, if we take account of the fact that this concession constituted an exception, and a very special one, to the laws that conferred authority exclusively upon the public escribanos or notaries to make extrajudicial public attestations. The said power of the gobernadorcillos, being of a peculiarly special character, should be strictly and exactly limited to the express terms of the law, in accordance with which the gobernadorcillo of Barotac Nuevo could not validly legalize the will of Rosario Darwin.

It is said in the judgment appealed from that the recording of the aforesaid will in the register of the notary of Pototan induces the presumption that it had been executed in conformity with the laws in force on the date of its execution. Supposing this to be true, for the purposes of discussion, such a presumption, *juris tantum* as it is, gives way and must give way before full proof to the contrary, and the evidence adduced at the trial shows, beyond the slightest doubt, that the said will was legalized by a gobernadorcillo who absolutely lacked the legal capacity to perform such an act. The subsequent registration of the will could not remedy the nullity.

The complaint relates to the hacienda named Pangpang and various other properties specified therein, but in the brief filed in this instance by the appellants they restrict their claim to the said hacienda, all claims relative to such other properties, the present existence of which certainly does not appear as clearly proved at the trial, being thus apparently abandoned by them. For this reason the decision of this court can only deal with the hacienda mentioned, which must be delivered by the defendant to the plaintiffs inasmuch as, by virtue of the foregoing facts, the defense alleged by the defendant against the said delivery can not be considered in law.

The defendant entered into the possession of the Pangpang hacienda with the support of the apparently legal and just title conferred by the will of Rosario Darwin. She was on this account a possessor in good faith and legitimately appropriated the fruits collected from the said hacienda until she was legally interrupted in her possession. (Art. 451, Civil Code.) Such interruption is produced by the summons served upon the possessor to appear at the trial. (Art. 1945 of the same code.) Consequently, the said defendant must return to the plaintiffs the fruits collected from and after that moment; but, as the date when the defendant was judicially summoned does not appear in the bill of exceptions, we fix that of the answer to the complaint as the beginning of the period for the restitution of the fruits collected by her. So ordered.

Arellano, C. J., Torres and Johnson, JJ., concur.

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[1] 6 Phil. Rep., 223

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