

ESTATE OF THE DECEASED BASILIA TANTOCO. VICENTE FERNANDEZ, PETITIONER AND APPELLANT, VS. DOMINGO TANTOCO ET AL., OPPONENTS AND APPELLEES.*G. R. No. 25489. September 08, 1926*

Ponente: STREET, J.

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This is an appeal from an order of the Court of First Instance of the Province of Bulacan, denying probate to an instrument propounded as the will of Basilia Tantoco, deceased.

It appears that on September 9, 1925, Basilia Tantoco, aged 62 years, executed an instrument purporting to be her will, she being at the time a patient in the San Juan de Dios Hospital in the City of Manila. Her death occurred a few days after the will was executed, and application for probate was made by father Vicente Fernandez, parish priest of Malolos. Opposition to probate was made by three brothers and a nephew of the deceased. At the time set for the submission of proof with respect to the execution of the will, the proponent introduced the three attesting witnesses to the instrument, namely, Vicente Platon, Fidel Macapugay, and Placido Suarez, as well as Aurea Gaspar, sister-in-law of the deceased who had been in attendance upon her at the hospital. The instrument shows every external requisite of proper execution, but the trial judge refused to allow it to be probated, for the reason that the three attesting witnesses are not in harmony upon the point whether all three of said witnesses were present together at the time and place when the testatrix and the witnesses affixed their signatures to the document. No testimony was submitted by the opposition, and the criticisms made by the trial judge with respect to the sufficiency of the proof of execution arise exclusively upon the testimony of the witnesses for the proponent.

A careful examination of the transcript forces us to the conclusion that the will in question was in every respect properly executed, and we are of the opinion that error was committed by the trial court in refusing probate.

It appears that the testatrix was single and had no forced heirs. For years prior to her death she had observed a need of school facilities in Malolos; and, moved by charitable impulses, she had dedicated a building with its accessories and the lot upon which it stood to school purposes. Being desirous that this work should be continued, she provided in her will that the property above referred to, indicated as item A in her will, should be delivered to the parish priest for certain religious uses and for the assistance of a catholic school in Malolos, to be conducted by the authority of the catholic church under the administration of the priest. This item constitutes one of the principal clauses of the will.

For many years Vicente Platon, an attorney of Malolos, has from time to time done legal service for the testatrix; and about the year 1920 he wrote a will for her containing the same substantial disposition with respect to the property above-mentioned as is found in the contested instrument. A codicil to the same will was on a later occasion executed by the testatrix with the assistance and on the advice of Sr. Platon.

When her final illness came upon her, the testatrix expressed a desire to make some further changes in her will,

and Sr. Platon therefore redrafted the entire document and carried it to the hospital for execution by her on September 9, 1925. Sr. Platon, as the officiating attorney, was naturally charged with the duties incident to procuring the execution of the will, and he at first invited the attending physician, Dr. Nicanor Jacinto, to act as one of the subscribing witnesses; but Doctor Jacinto excused himself on the ground that he feared that, if he acted as a subscribing witness to the will, he might become complicated in a family quarrel which would be prejudicial to him as a physician. He undertook, however, to procure someone to act in his place and he accordingly brought in Doctor Fidel Macapugay, a resident physician in the hospital, who took his place. The other intending witness was one Placido Suarez.

The testimony of the attorney, Sr. Platon, is in our opinion in every respect worthy of credit, and he gives a detailed account of the incidents connected with the execution, which could in our opinion have been given only by a person who had his attention fixed upon the occurrences connected therewith. He shows that the testatrix understood the contents of the instrument and that its provisions were found to be in conformity with her wishes. At the time of the execution of the instrument she was sitting up in her bed and was able to affix her signature in a clear and legible hand at the close of the will and upon each of its pages, as the law requires.

The recitals of the closing paragraph in the will and of the attesting clause are full and complete in every respect and they show that the mind of the attorney was advertent to the requisites of proper formal execution. According to Sr. Platon, after the testatrix had signed all of the sheets, Doctor Macapugay followed, signing at the end of the attesting clause and upon the margin of each sheet. Then came Placido Suarez who likewise signed at the end of the attesting clause and upon each sheet. Finally Sr. Platon himself affixed his signature at the bottom of the attesting clause and at the bottom of the space used for signatures in the margin, Macapugay testified somewhat vaguely and evasively; and although he admitted having seen the testatrix sign and the fact that all the signatures of himself are genuine, he exhibited a weak memory with respect to other things that occurred. In particular he suggests that he left the room before Sr. Platon had finished signing all of the sheets, and he does not remember seeing Placido Suarez in the room at all.

The other subscribing witness, Placido Suarez, pretended that Macapugay was not present when Suarez signed; and, while admitting his own signature, he claims not to be able to recognize the other signatures appearing on the sheets. We have no hesitancy in saying that the testimony of this witness shows a manifest and deliberate departure from the truth.

In weighing the testimony of the attesting witnesses to a will, the statements of a competent attorney, who has been charged with the responsibility of seeing to the proper execution of the instrument, is entitled to greater weight than the testimony of a person casually called to participate in the act, supposing of course that no motive is revealed that should induce the attorney to prevaricate. The reason is that the mind of the attorney, being conversant with the requisites of the proper execution of the instrument, is more likely to become fixed on details; and he is more likely than other persons to retain those incidents in his memory.

It is admitted by all of the witnesses that Aurea Gaspar was present in the room at the time the will was executed, and she corroborates Sr. Platon upon the point that all of the witnesses were present throughout the ceremonies attending the execution of the will. This witness speaks with apparent frankness, and we believe her testimony to be true, notwithstanding the fact that she possibly has a minor interest in the establishment of the will.

In case of opposition to the probate of a will the proponent is legally bound to introduce all of the subscribing witnesses, if available. They are therefore forced witnesses so far as the proponent is concerned, and he is not bound by their testimony to the same extent that a litigant is bound by the testimony of witnesses introduced in ordinary course. It follows that the proponent of a will may avail himself of other proof to establish the

instrument, even contrary to the testimony of some of the subscribing witnesses, or all of them.

With respect to the will now in question a prima facie case for the establishment of the document was made out when it appeared that the instrument itself was properly drawn and attested and that all of the signatures thereto are authentic. These facts raise a presumption of regularity; and upon those facts alone the will should be admitted to probate in the absence of proof showing that some fatal irregularity occurred. And such irregularity must be proved by a preponderance of the evidence before probate can be denied.

The order appealed from is therefore reversed and the instrument Exhibit C is declared to be the last will and testament of Basilio tantoco. So ordered, without express pronouncement as to costs.

Avanceña, C. J., Johnson, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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