

TESTATE ESTATE OF FLORENCIA R. MATEO. PERFECTO GABRIEL, PETITIONER AND APPELLEE, VS. RITA R. MATEO ET AL., OPPONENTS AND APPELLANTS.*G.R. No. 26545. December 16, 1927*

Ponente: AVANCEÑA, J.

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The judgment appealed from allowed the will of Florencia Mateo dated February 6, 1923, composed of two used sheets to probate. The will appears to be signed by the testatrix and three witnesses on the left margin of each of the sheets, by the testatrix alone at the bottom, and by the three witnesses after the attestation clause. The testatrix died on August 13, 1925. Opposition to such probate was filed by Rita Mateo, the testatrix's sister, and by other relatives.

The three attesting witnesses to this will, testifying in this case, declared that the signatures of the testatrix were written in their presence and that they signed their names in the presence of the testatrix and of each other. The testatrix from girlhood knew how to sign her name and did so with her right hand; but, as the right side of her body later became paralyzed, she learned to sign with her left hand and for many years thereafter, up to the time of her death, she used to sign with that hand. Opponents allege that Florencia Mateo did not sign this will.

There are three salient arguments among those adduced by the opponents in support of their opposition.

The attesting witnesses testified that the testatrix signed before they did. The signatures of the testatrix on the left margin of the two sheets of the will are between the signatures of the two witnesses Vidal Ranoa and Julio Gabriel, and below her surname is the signature of the other witness Felicisimo Gabriel. The signatures of Vidal Ranoa and Julio Gabriel are on a level with each other, while that of Felicisimo Gabriel is found a little lower down. The testatrix's signatures start on the line with Felicisimo Gabriel's signature, but tend to rise and her surname reaches a level with Julio Gabriel's signature.

It is said that this direction of the testatrix's signature was due to the fact that when it was written Felicisimo Gabriel's signature was already there, and so she had to write her surname upwards in order to avoid interfering with that of Felicisimo Gabriel, which would have been the case had she continued on the horizontal line on which she had written her first name. From this detail it is pretended to draw the inference that the attesting witnesses signed before the testatrix, contrary to their testimony that she signed before they did. This deduction, however, is unnecessary. It may be inferred with equal, if not greater, logic that the testatrix signed before him, and when it came to the witness Gabriel's turn, he, finding the space below the testatrix's signature free, signed his name there. On the other hand, it may be noted that the testatrix's other signature at the bottom of the will also shows a more or less marked tendency to rise, notwithstanding the fact that there was no signature with which she might interfere if she continued to write in a straight horizontal line. Furthermore, if, as the opposition alleges, the testatrix's signature is not genuine and was placed there by another person, it is strange that the latter should have done so in such a way as to write it above Gabriel's signature while following the

horizontal, line, when this could have been avoided by simply putting it a little higher. And this may be attributed to carelessness in the first case, but it cannot be so explained in the second.

Attention is also called to the apparently different kinds of ink used by the testatrix in her signature and by the attesting witnesses. Really an examination of these signatures reveals a somewhat deeper intensity of ink in the signature of the testatrix than in those of the attesting witnesses. It is alleged that this circumstance cannot be reconciled with the declaration of the attesting witnesses that they used the same pen and ink as the testatrix. But, only one of these witnesses declared this. The other one was not sure of it and said that he did not perfectly remember this detail. The third scarcely made reference to this particular. At all events, this apparent difference in ink may be merely due—supposing that the same ink and pen were used—to the difference in pressure employed in writing these signatures, as is reasonable to suppose when we consider that the testatrix was a paralytic and wrote with her left hand; or it may have been due to the fact that the attesting witnesses dipped lightly in the ink while the testatrix dipped the pen so as to take up the ink from the bottom of the well. To bring out this irregularity, the opposition presented the expert Del Rosario who asserted, among other things, that the signature of the testatrix is more recent than that of the attesting witnesses. If this opinion is correct and if, as alleged, the testatrix's signature is forged, it would mean that the forgers, after having prepared the will and made the witnesses sign, allowed some time to elapse before forging the testatrix's signature, which supposition is not at all probable, nor has it been explained.

At all events, even admitting that there is a certain question as to whether the attesting witnesses signed before or after the testatrix, or whether or not they signed with the same pen and ink, these are details of such trivial importance, considering that this will was signed two years before the date on which these witnesses gave their testimony, that it is not proper to set aside the will for this reason alone.

The attesting witnesses to this will, who testified also as witnesses at the trial of this case, showed themselves to be intelligent and honest, one of them being a lawyer of twelve years' practice, and there is no reason to reject their testimony, and to suppose that they were untruthful in testifying, and that they falsified the will in question.

Lastly, attention is called to the unreasonableness of the testatrix in not leaving anything to the principal opponent, her sister Rita Mateo, and to her nephews and nieces, to whom she had been so affectionate during life. But as to the affectionate relations between the deceased and the opponents, only the opponent Rita Mateo testified, and she only stated that she was on good terms with her sister during the latter's lifetime; that the said sister used to give her a sack or some gantas of rice, and, at times, a little money; that she held all her nephews and nieces in equal regard. But even supposing that this were so, there is nothing strange in the testatrix having left nothing to the opponents, or in her having left all of her estate to the only heir instituted in her will, Tomasa Mateo, who is also one of her nieces. And not only is it not strange, but it seems reasonable, since, according to the evidence of the opposition itself, Tomasa Mateo had been taken in by the testatrix when the former was but 3 years old, and from then on up to the time of her death had never been separated from her.

The opposition presented Doctor Banks as expert. He testified that the signatures of the testatrix in the will are not genuine. The petitioner, on the other hand, presented another expert, Pedro Serrano Laktao, who affirmed that these signatures are genuine. But, over the testimony of these experts, we have the categorical and positive declaration of veracious witnesses who affirm that these signatures were written by the testatrix herself.

The judgment appealed from is affirmed, with costs against the appellants. So ordered.

Johnson, Villamor, Romualdez, and Villa-Real, JJ., concur.

JOHNS, J., with whom concur STREET, MALCOLM, and OSTRAND, JJ., dissenting:

Appellants assign the following errors:

"FIRST ERROR

"The Honorable Court a quo erred in imputing as theory of the oppositors 'that the deceased did not know how to write except with her right hand and that due to sickness of paralysis during the last few years of her life she became physically unable to hold the pen and to write her name and surname.'

"SECOND ERROR

"The Honorable Court a quo erred in finding that the three disputed signatures on the two pages of Exhibit A are signatures of Florencia R. Mateo based on mere 'possibility,' and in not holding them spurious as shown by specific, un rebutted findings of Drs. Charles S. Banks and Jose I. del Rosario.

"THIRD ERROR

"The Honorable Court a quo erred in giving credit to the testimonies of the so-called instrumental witnesses in Exhibit A.

"FOURTH ERROR

"The Court a quo erred in admitting Exhibit A to probate."

Hence, the only questions presented are questions of fact. Time and experience has taught us that but little, if anything, is ever accomplished by writing a dissenting opinion on such questions. Be that as it may, this is one case in which we feel that it is our duty to dissent and to state the reasons why.

The decisive question in this case is whether or not the signatures of Florencia R. Mateo both to the body of the will and on the margin of the pages are true and genuine. It must be admitted that if it be a fact that her signature to the body of the will is true and genuine, and that her signatures on the margin of the pages are not true and genuine, then the will in question is null and void.

In the trial of the case in the court below, much evidence was introduced for the oppositors tending to show that neither one of the signatures of Florencia R. Mateo appearing on the will were true and genuine, and both Drs. Charles S. Banks and Jose I. del Rosario so testified and gave their reasons why. Enlarged photographs of her signatures were introduced in evidence which were admitted to be true and genuine, and of her signatures to the will, and a comparison and detailed analysis was made of the differences between them, both as to the character and formation of the letters of her name, the length and height of the letters, and the space between them, and the length and the slant of the signatures, from which Doctor Banks, in particular, testified that the signatures of Florencia R. Mateo to the will were forgeries, and that her three respective signatures on the will were not made at the same time or with the same pen or ink. In that particular, his testimony was corroborated by that of Jose I. del Rosario.

We have been taught that mathematics, chemistry and photography are exact sciences. It appears from an ocular inspection and without the aid of even a magnifying glass that there is a very marked difference between the signature of Florencia R. Mateo to the body of the will and as it appears on the margin of the pages of the will, both as to the character and formation of the letters and the space between them, and the height, length and slant of the signatures, all of which can be seen and detected with the naked eye without the aid of an expert or a photographic enlargement of the letters. It is also apparent to the naked eye that the three respective signatures of Florencia R. Mateo appearing on the will "were each made with different ink, and that they were all made with

different ink than that used by the witnesses to the will. It is also apparent to the naked eye that each of her signatures as they appear on the margin of the will were made over and above and, hence, after the signature of the witness J. Gabriel. It is true that the will upon its face appears to have been executed with all of the required legal formalities, and that the witnesses to the will testified that the signatures of the deceased were true and genuine. Be that as it may, both chemistry and photography are an exact science, and all of that oral evidence is flatly contradicted by that of both chemistry and photography, in addition to all which, it is apparent to the naked eye and without the aid of either science, that the signatures in question were not made at the same time, and that the two signatures appearing on the margin of the will were made after, over and above the name of the witness J. Gabriel.

The will recites that Florencia R. Mateo is "sixty-eight years of age," and it purports to have been executed on February 6, 1923, and the record is conclusive that she was born February 22, 1850, and that at the time of the alleged execution of the will, she was nearly 73 years of age. It also appears that the will in question was prepared by attorney Perfecto Gabriel, was executed in his office, and that by its terms, he was named as the sole executor, and that although he was called as a witness on a minor point, he was not questioned and did not testify as to how and when the will was executed, or by whom it was signed or as to the genuineness of either of the signatures of Florencia R. Mateo, all of which are the very storm center of this contest. Perfecto Gabriel having prepared the will which was executed in his own office, it is strange, indeed, and to say the least very suspicious, that he was not called as a witness to testify about the questioned signatures and as to whether or not they were true and genuine.

We are not prepared to say as to whether all of the signatures of Florencia R. Mateo as they appear on the will are forgeries, but we are clearly of the opinion that her signatures as they appear on the margin of the pages of the will are not true and genuine, and that they were not made at the same time or place or by the same person as her signature which appears to the body of the will. In either event the will in question was never legally executed by Florencia R. Mateo, and is, therefore, null and void.

For such reasons, we are forced to dissent.

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