

ESTATE OF THE DECEASED VICTORINA VILLARANDA. EUSEBIA LIM, PETITIONER AND APPELLANT, VS. JULIANA CHINCO, OPPOSITOR AND APPELLEE.*G. R. No. 33592. March 31, 1931*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-33592/>**STREET, J.:**

This is a contest over the probate of a paper writing purporting to be the will of Victorina Villaranda y Diaz, a former resident of the municipality of Meycauayan, Province of Bulacan, who died in the Hospital of San Juan de Dios, in the City of Manila, on June 9, 1929. The deceased left no descendants or ascendants, and the document produced as her will purports to leave her estate, consisting of properties valued at P50,000, more or less, chiefly to three collateral relatives, Eusebia, Crispina, and Maria, of the surname of Lim. This instrument was offered for probate by Eusebia Lim, named in the instrument as executrix. Opposition was made by Juliana Chingo, a full sister of the deceased. Upon hearing the cause the trial court sustained the opposition and disallowed the will on the ground that the testatrix did not have testamentary capacity at the time the instrument purports to have been executed by her. From this judgment the proponent of the will appealed.

The deceased was a resident of Meycauayan, Province of Bulacan, and was about 80 years of age at the time of her death. On the morning of June 2, 1929, she was stricken with apoplexy, incident to cerebral hemorrhage, and was taken in an unconscious condition, seated in a chair, to her room. Doctor Geronimo Z. Gaanan, a local physician of Meycauayan, visited the old lady, with whom he was well acquainted, three or four times, the first visit having occurred between 6 and 7 p. m. of June 3d. Upon examining the patient, he found her insensible and incapable of talking or controlling her movements. On the same day the parish priest called for the purpose of administering the last rites of the church, and being unable to take her confession, he limited himself to performing the office of extreme unction. Doctor Isidoro Lim, of Manila, was also called upon to visit the patient and he came to see her two or three times. With his approval, it was decided to take the woman to the hospital of San Juan de Dios in Manila, and on the morning of June 5, 1929, the ambulance from this hospital arrived, in charge of Doctor Guillermo Lopez del Castillo, a resident physician of the hospital. At about 11 o'clock a. m. on that day she was embarked on the ambulance and taken to the hospital, where she died four days later.

The purported will, which is the subject of this proceeding, was prepared by Perfecto Gabriel, a practicing attorney of Manila, whose wife appears to be related to the chief beneficiaries named in the will. This gentleman arrived upon the scene at 9 or 10 o'clock on the forenoon of June 5, 1929. After informing himself of the condition of the testatrix, he went into a room adjacent to that occupied by the patient and, taking a sheet from an exercise book, wrote the instrument in question. He then took it into the sick room for execution. With this end in view Gabriel suggested to Doctor Lopez del Castillo that he would be pleased to have Doctor Castillo sign as a witness, but the latter excused himself for the reason that he considered the old lady to be lacking in testamentary capacity. Another person present was Marcos Ira, a first cousin of the deceased, and attorney Gabriel asked him also whether or not he was willing to sign as one of the witnesses. Ira replied in a discouraging tone, and the

attorney turned away without pressing the matter. In the end three persons served as witnesses, all of whom were in friendly relations with the lawyer, and two relatives of his wife. The intended testatrix was not able to affix her signature to the document, and it was signed for her by the attorney.

The vital question in the case is whether the supposed testatrix had testamentary capacity at the time the paper referred to was signed. Upon this point we are of the opinion, as was the trial judge, that she had not. The proof shows by a marked preponderance that the deceased, on the morning of June 5, 1929, was in a comatose condition and incapable of performing any conscious and valid act. The testimony of Doctor Gaanan and Doctor Lopez del Castillo is sufficient upon this point, and this testimony is well corroborated by Paciana Diaz and Irene Ahorro. The first of these witnesses was the one who chiefly cared for the deceased during her last illness in Meycauayan until she was carried away to the hospital in Manila; and the second was a neighbor, who was called in when the stroke of apoplexy first occurred and who visited the patient daily until she was removed from Meycauayan.

The testimony of these witnesses is convincing to the effect that the patient was in a continuous state of coma during the entire period of her stay in Meycauayan, subsequent to the attack, and that on the forenoon of June 5, 1929, she did not have sufficient command of her faculties to enable her to do any valid act. Doctor Lim, the physician from Manila, testified for the proponent of the will. His testimony tends to show that the patient was not suffering from cerebral hemorrhage but from uraemic trouble, and that, after the first attack, the patient was much relieved and her mind so far cleared up that she might have made a will on the morning of June 5th. The attorney testified that he was able to communicate with the deceased when the will was made, and that he read the instrument over to her clause by clause and asked her whether it expressed her wishes. He says that she made signs that enabled him to understand that she concurred in what was written. But it is clear, even upon the statement of this witness, that the patient was unable to utter intelligent speech. Upon the authority of *Perry vs. Elio* (29 Phil., 134), the paper offered for probate was properly disallowed.

The judgment appealed from will therefore be affirmed, and it is so ordered, with costs against the appellant.

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

Malcolm and Johns, JJ., concurred, but being absent at the date of the promulgation of the opinion, their names do not appear signed thereto.—AVANCEÑA, C. J.

Romualdez, J., dissenting:

I am of opinion that the will in question is genuine and that it was drawn up and signed with all the legal requisites; therefore, I vote for its allowance, and the consequent reversal of the judgment appealed from.

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