

IN THE MATTER OF THE WILL OF DOMINGA BUTALID.—PROBATE PROCEEDINGS.—GAUDENCIO MENDOZA, PETITIONER AND APPELLANT.

G.R. No. 4029. January 25, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On November 17, 1905, Gaudencio Mendoza, as executor of Dominga Butalid, who died on the 18th of October of the same year, filed with the Court of First Instance, for its allowance and other probate proceedings, a will said to have been executed by the latter person on the 16th day of September of the same year.

Upon publication of the notice of the petition, Esteban Lumain y Butalid, Esteban Butalid, Nicolas Butalid, and Corcela Butalid, nephews and niece, respectively, and heirs of the deceased Dominga Butalid, appeared in court and contested the will, alleging "that the said Dominga Butalid, at the date of the execution of the said document, was not in the free use of her intellectual powers, on the following grounds, to wit: That the above-mentioned Dominga Butalid, then about 90 years old, was lying in bed seriously ill, senseless, and unable to utter a single word, so that she did not know what she was doing when she executed the will; that this document was executed under the influence and by the direction of Gaudencio Mendoza, as one of the heirs designated in said will."

An issue having been raised by this contest, the trial was commenced, both parties presenting their respective oral evidence, besides the documentary evidence exhibited by the petitioner.

This documentary proof consists of a will formerly executed by the said Dominga Butalid in the presence of (Jose" Conui y Vicente, a notary public in the Province of Bohol, and the number of witnesses required by law; it was dated March 31, 1897, and written on stamped paper of the fifth class, current term, the document on record being the first original copy issued with the formalities of the law to the testatrix by the same notary. According to this testament, executed with all the requirements prescribed by the law then in force, the testatrix, Dominga Butalid, as shown by her cedula exhibited to the notary, and from which her personal description was taken, was at that time 76 years old and had made her last will in twelve clauses, in the following manner: First, as to her personal circumstances, she declared that she was single, that her father and mother were dead, and that she could freely dispose of her estate; second, in regard to the designation of her heirs, she stated that, not having any obligatory heir, she designated as heirs Juanita Mendoza y Butalid, Januaria Mendoza y Butalid, Gaudencio Mendoza y Butalid, and in representation of Margarita Butalid, deceased, the children of the latter named Jose, Nicolas, Jacinto, Felix, Leogario, Maria, Ostoquia, and Emelda, all surnamed Clarin y Butalid; third, as to the legacies, she left some to Ciriaca Mendoza y Butalid, Eduarda Galab, Maria Quelelo, and Saturnina Loquento.

This will existing, duly executed in a solemn manner on the said date of March 31, 1897, another will appears, dated the 16th of September, 1905, which is the one contested, the same having been executed in conformity with the law in force, and consisting of ten clauses, the second of which corresponds to the second clause of the former will, and, like the other, relates to the testatrix's personal circumstances; and the third clause, concerning the

designation of heirs, is also an exact transcription of the corresponding clause in the other will. There are, therefore, instituted as heirs in the second will the same persons who were designated as such in the first, and the last will is almost the same in its fourth clause, but with the following discrepancies: (1) To Juanita Mendoza there were allotted in the first will, besides other property bequeathed to her in the second will, 50 head of cattle in the pueblo of Carmen, and 3 mango trees in Cogon, within the municipality of the capital, while by the second will the 50 head of cattle were omitted and replaced by 60 mango trees planted in Cogon, Mansasa, Bohol, and Manga, within the municipality, the capital of the province, and in the sitios of Sunculan and Tutulan, within the municipality of Daus; (2) by the first will Gaudencio Mendoza y Butalid was to receive 50 head of cattle, Januaria Mendoza another 50 head of cattle, and the children of the late Margarita Butalid were also to receive an equal number of head of cattle, besides other property bequeathed to Januaria and to the Clarin family under both wills, while in the second will the allotments of cattle were suppressed; (3) in regard to legacies, those contained in the first will, in favor of Eduarda Galab and Saturnina Loquente, servants of the testatrix, and consisting of one head of cattle to each, were revoked by the second will; (4) according to the ninth clause of the first will, Eduardo Calceta was indebted in the sum of 800, which he was to pay in equal parts to the heirs, and according to the second will (clause 8) said debt was reduced to 300, to be paid to the same heirs and in a similar manner; (5) the sixth clause of the first will is contained in the fifth clause of the second, and the sixth clause of the latter will is to be found in the fifth clause of the former; the last three clauses in the first will were suppressed, the tenth clause of the second will being that in which the testatrix requests Mateo Rocha to sign in her place. So that the terms of the first will, solemnly executed in the presence of a notary public and the required number of witnesses, are substantially preserved in their entirety, and by the clauses of this will neither the other nephews and niece of the testatrix nor the other parties contesting the same are in any wise favored with the exception of those who are designated as heirs or legatees, whose shares are alike in both wills. And with reference to Gaudencio Mendoza, who, in the last will, is appointed executor, and in the first will was to receive one-fourth part of the estate and a certain portion of property, the last will entitles him to only an even portion of the property mentioned in its fifth clause (formerly the sixth clause), by the terms of which it is ordered that the whole number of cattle be equally distributed among the four heirs.

Such are the terms and the legal nature of the two wills, which must not be overlooked in discussing the purpose of the action brought by the so-called nephews and niece of the late testatrix.

Everything relating to the terms of the will, its date and signature by the witnesses having been established, the same is contested on the following grounds: That the testatrix was about 90 years old, and according to the cross-examination she was 100 years old or was at least 93 years of age; that she was lying in her bed, seriously ill, senseless, and unable to speak a single word, in such condition that when she executed the will she did not know what she was doing, and according to the testimony of the witnesses her body was bent and she could only walk with the help of a walking stick.

In opposition to the first allegation mentioned above, we find, in the will executed in 1897, that according to the cedula of the testatrix the notary public stated therein that she was then 76 years old, so that in 1905 she must have been 84 years of age only.

In regard to the second allegation it is admitted that the contested will was, according to the witnesses subscribing the same, executed on the afternoon of Saturday, the 16th of September, and that on the following morning the holy viaticum was administered to the testatrix though her death did not occur until the 18th of the following October.

The witnesses for the contesting parties, brought before the court to show the state of things and chiefly the mental condition of the testatrix during those two days, are Filomena Lumay, Guillerma Taporoc, and Esteban

Dalap. The first witness testified only that she could not hear the testatrix making any answer; the second speaks about groans of the testatrix, and this witness seems to be the only one to refer to this detail, as though she wished to certify the mental incapacity of the patient; although said witness asserts that the testatrix, when questioned with these words "ima, ima, what hurts you," replied with groans, and the same witness when cross-examined as to whether or not the patient became angry when her body was being rubbed, the former said that on the contrary, the patient thanked her for it. The third witness, sacristan of the parish, who assisted the priest in the administration of the viaticum, although he tended to corroborate the state of unconsciousness of the patient on the day following the date of the execution of the will, by his testimony he has nevertheless demonstrated to the contrary, because he states that, when the viaticum was administered, to the ritual questions regarding her religious creed (although the witness in his capacity of sacristan was obligated to reply), the patient answered "yes, I believe" "I believe in it;" and the witness, being pressed by the counsel for the contesting parties, recited textually in his own dialect the words used by the patient in her reply to the priest; he further testified that the patient confessed to the priest on the previous night, and about this he was very sure; and it being the point under discussion, that on Sunday the will was not executed, the witness testified that when he was gathering together the paraphernalia used for the viaticum he overheard Jose Bautista, the person who wrote the will, "questioning the patient about the number of mango trees," which could not have taken place if the patient were truly in a senseless condition.

In the case of *Hernaez vs. Hernaez*,^[1] decided by this court, the base of the impugment was that the testatrix, on the date of the execution of the will, was more than 80 years old and was so ill that she had received the sacraments three days before, and two days later she died; that some time before her form was bent, and that she used to give contradictory orders on account of her senile weakness ; an attempt was made to prove that the testatrix was so seriously ill that she could not speak; that, on account of her old age, she walked with her body bent and used to give contradictory orders, and that, when she received the sacraments, she could not be understood when she spoke. This court, however, laid down the doctrine that a presumption exists in favor of the sanity of the testator, and the obligation to prove the mental incapacity of the latter rests upon the party opposing the probate of the will.

Therefore, it does not appear as proven, not even by the witnesses for the opposing party, that the testatrix was more than 100, or 93, or even 90 years old, that she was seriously ill, and that she could not speak a word; rather quite the contrary appears from a disinterested consideration of the declarations made by two of these witnesses, who state facts which do not show any lack of intelligent continuity of purpose. The four witnesses to the will unanimously affirm the perfectly sane condition of the testatrix, no positive contradiction or reason making their testimony incredible appearing from the record. It has not been shown up to the present why it should not be believed.

Against the testimony of Mateo Rocha it is said in the brief of the appellees that he could not determine at once the number of doors in the room of the deceased; that he said first that he had written the will, and afterwards that he had not; that the deceased was able to leave her bed, while the other witnesses state that she could only move her head; that he was frightened when he knew that the will was to be impugned. In all of this, the important question is the one relating to the person who wrote the last will, regarding which the existence of the contradiction is not true; this witness repeatedly declared that the one who wrote the will was Juan Bautista, who read the former will to the testatrix, and that the latter pointed out what was to be modified, omitted, or partially omitted, as the part relating to the cattle, because these animals were already dead, and the legacies to the two servants who were no longer in her service. To the question of the court, "What was the first thing you did?" he replied: "Dominga Butalid ordered the old will to be read; each paragraph was translated into Bisaya, and then she ordered what she had said before to be stricken out, and caused the number of mango trees to be increased to

sixty, and the lands of Masasa.

"Q. What was done after the perusal of the old will?—A. It was written.

"Q. Who did the writing?—A. Juan Bautista."

And in reply to cross-examination, he said:

"Yes, sir; she made him do the copying and when they arrived at the paragraph relating to the cattle, she caused it to be taken out, which paragraph was marked by Juan with a pencil; * * * when the will was finished, Juan asked her if she knew how to sign; she replied in the negative, and then Juan asked who was to sign in her stead, to which she said that I should sign."

This witness was then instructed by her as to where he ought to sign.

Against the testimony of Juan Bautista nothing else is stated, except that he has replied by means of subterfuges when he was examined about the conversation he had with one of the witnesses of the oppositors. "It does not appear to be so," "I did not say those words," "I have not said such words" "I was there all the time"—these are the replies given in relation to the statement of the witness Cirila de Torralba, by whose statement it was attempted to prove that Juan Bautista had left a party of friends, in the former's house, on Sunday the 17th in order to go and finish the will; this statement is inconsistent with another made by the said lady's husband for the purpose of showing that on the same day Mateo Rocha had been at that house and said that he was astonished at the fact that a will had been signed the previous day, the 16th, when the deceased could no longer speak. In spite of all this, in accordance with the above-stated declaration of the witness Esteban Dalap, a sacristan, the following question was asked this witness:

"Do you not remember either that the old woman did not reply when you asked her how many mango trees were to be stated in the will, at 10 o'clock on Sunday morning?

"A. How could the old woman reply, if I did not go there?"

Gaudencio Mendoza, the petitioner, in reply to cross-examination, said that he was instituted as an heir, the same as "his sister Juanita, who lived with the old woman, and Januaria Mendoza, and Sr. Olarin and his sister."

"Q. Besides this, is there no testamentary clause in favor of any other relative?—A. In that will there is none; neither in the old nor in the new will."

Relating to Guillerma Taparoc, a witness of the opposition, already mentioned:

"Q. Did Guillerma rub her stomach?—A. She wanted to do so, but the old woman did not wish it; for this reason she became angry.

"Q. Guillerma's husband is her first nephew. Is not Mendoza his surname?—A. Yes, sir.

"Q. Were you not a friend of hers?—A. No, sir.

"Q. Have you had any disagreement (disgusto) with her?—A. I do not know whether she had any.

"Q. But have any misunderstandings occurred, on account of which she had animosity against you?—A. I can not say."

The will of 1897 being a public document, authorized by a notary, who testifies to its contents, and under which the testatrix would have died, had the other will of 1905 not been executed, it can be inferred by means of the evidence, whether the last will of the deceased was substituted or not by some person intending to obtain benefit

for himself or for anyone else by imagining what has not taken place; and certainly nobody is benefited by the will of 1905, except Camilo Calceta, with reference to the balance of a debt which appeared as 800 pesos in the will of 1897, and as 300 pesos in that of 1905. The petitioner Gaudencio Mendoza, who was instituted as heir in the former will, to a considerable portion of the property besides the portion which might be assigned to him on dividing pro rata with the other three heirs the cattle and the lands where the same pastured, has by virtue of the second will this equal portion only, losing the other part; and if the execution of the latter will is attributed to his influence and direction, his intention in changing benefit for prejudice can not be explained.

The last will, which makes a reduction in the quantity of the property only (and this property being of only one kind, namely the cattle, and tilings pertaining thereto), and said will being amendatory of conditions which could not be fulfilled eight years after its execution, on account of the death of the cattle distributed by her in portions of 60 and 50 head to each of the four heirs, a substitution of the will of the testatrix can not be presumed, much less when such substitution is attributed to one of the heirs, and he being the least benefited in the last will alleged to have been substituted; it further appears that no benefit is obtained by the substitution, but, on the contrary, a considerable diminution of the portions allotted.

If, by the cross-examination of this same witness regarding any testamentary disposition in favor of any other relative, it is meant to insinuate that all the desires of the testatrix were not honestly expressed, then they were supposing what has been denied—that is, that the testatrix was in full possession of all her faculties because she expressed a wish which was not included in the will—and this allegation should be explicit and duly proven. On the other hand, the two wills are identical in the designation of the heirs, the fact which determines the testate succession, while the opposition and the evidence tend only to show an intestate succession in which other relatives may be included, on account of differences resulting from the certification of the proceedings, which would not appear to be a legitimate and necessary consequence of a declaration of nullity of the last will.

Upon these bases, we reverse the judgment appealed from, and hereby declare the will presented for legalization to be valid and sufficient, without any special ruling as to costs. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

[1] 1 Phil. Rep., 689.

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