

SANTIAGO GALVEZ, PETITIONER AND APPELLANT, VS. CANUTA GALVEZ, OPPONENT AND APPELLEE.*G.R. No. 6650. December 05, 1913*

Ponente: TORRES, J.

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This appeal was raised by counsel for Santiago Galvez from the judgment of October 25, 1910, whereby the Honorable Simplicio del Rosario, judge, denied the petition presented by the said Galvez for the probate of the will, Exhibit B, and appointed as administratrix of the testator's estate, the latter's only legitimate daughter, Canuta Galvez, under condition that she furnish bond in the sum of P2,000 for the faithful discharge of the duties of her office.

Counsel for Santiago Galvez petitioned the Court of First Instance of Bulacan for the probate of the will which it was alleged Victor Galvez executed in the dialect of the province, on August 12, 1910, in presence of the witnesses Juan Dimanlig, J. Leoquinco, and Nazaria Galvez. This instrument appears also to have been signed by the witness Lorenzo Galvez, below the name and surname of the testator. (p. 3, B. of E., translated into Spanish on p. 5.)

Further on in the same record, pages 6 to 7, there appears another will written in Tagalog and executed on the same date by Victor Galvez in presence of the witnesses Cirilo Paguia, Florentino Sison, and Juan Mendoza.

In the course of the proceedings various witnesses were examined by the petitioner and by the respondent, Canuta Galvez, the only daughter of the alleged testator, and the attorney Antonio Constantino stated that he waived the right to present evidence and acquiesced in the petition made by Santiago Galvez for the probate of the will, in view of a transaction entered into by the parties; but the court did not accept the compromise, on the ground that it is improper to hold that a will is the faithful expression of the last wishes of a decedent, upon the mere fact of the parties' petitioning to that effect, when such will, as in the case at bar, was assailed at the commencement of the suit.

After due trial the judgment aforementioned was rendered, from which an appeal was entered by counsel for the petitioner, Santiago Galvez.

This case deals with the probate of the second will executed by Victor Galvez on August 12, 1910, and signed in his presence by the witnesses Juan Dimanlig, Nazaria Galvez, and J. Leoquinco, and, as the testator was no longer able to sign on account of his sickness, Lorenzo Galvez, at his request, affixed his own signature to the instrument, for him and below his written name. This will, written in Tagalog and translated into Spanish, is marked as Exhibit B and is found on pages 3 and 5 of the bill of exceptions.

The other will, written in Tagalog and marked Exhibit A, was presented during the proceedings; it was the first one the testator executed on the same date, and, for the purpose of correcting an error contained in this first will, he executed another will, the second, which is the one exhibited for probate.

Notwithstanding the opposition by Canuta Galvez, the testator's daughter, who alleged that her father, owing to his very serious sickness with cholera, lacked the intellectual capacity and clear judgment requisite for making a will, and notwithstanding her testimony adduced in corroboration of her brief, the record sufficiently proved the contrary; the subscribing witnesses to the will affirmed under oath that they were present when Victor Galvez, then sick in his house, stated to them that the document read before them by Lorenzo Galvez contained his last will and testament, and that, as the testator was no longer able to sign, he charged his nephew Lorenzo to do so in his stead, which the latter did by affixing his own signature to the document, after having written at the foot of the same the name and surname of the testator, Victor Galvez, who, as these witnesses observed, was of sound mind and in the full enjoyment of his mental faculties; he talked intelligently and with perfect knowledge of what was taking place. They further testified that they all, including the said Lorenzo Galvez, signed the will in the presence of the testator, Victor Galvez, who was at the time lying on his bed.

In order to hold that Victor Galvez, on account of serious sickness, was not then of sound mind and did not have full knowledge of his acts and, therefore, waif incapable to execute a will, it is necessary that the proceedings disclose conclusive proof of his mental incapacity and of his evident lack of reason and judgment at the time he executed his will in the presence of the witnesses whose signatures appear at the foot thereof, for these witnesses positively affirmed that Victor Galvez, on executing his will, showed that he was in full possession of his intellectual faculties and was perfectly cognizant of his acts.

The physician Dr. Vicente de Jesus, in his testimony, referred to the effects and results of cholera on a patient in ordinary cases and in the regular course of this disease; but his statements, taken in general, cannot, in the present suit, serve as a ground upon which to predicate incapacity, for the reason that he did not examine Victor Galvez, nor did he even see him between the hours of 12 in the morning and 3 in the afternoon of the 12th of August, 1910, during which period the testator ordered his will drawn up and the attesting witnesses signed it, Galvez having died at about 6 o'clock that same afternoon. It may be true that cholera patients do, in the majority of cases, become incapacitated in the manner described by the witnesses; but there may be exceptions to the general rule, and to judge from the testimony of the witnesses who saw and communicated with the patient Victor Galvez at the time he executed his will, his physical and mental condition must have been an exception, since he demonstrated that he had sufficient energy and clear intelligence to execute his last will in accordance with the requirements of the law.

Besides the attestation of the aforesaid subscribing witnesses, the contents of the will and the testator's positive determination to rectify the error he incurred in the execution of his first will, show that Victor Galvez was in his sound mind and was perfectly aware of his duties in respect to the legal, inviolable rights of his daughter and sole heir, Canuta Galvez.

Inasmuch as, in the drafting and execution of the second will (Exhibit B), signed in the name of the testator by Lorenzo Galvez and the witnesses Juan Dimanlig, Nazaria Galvez, and J. Leoquinco, the formalities prescribed by section 618 of the Code of Civil Procedure were observed, for the testator's name appears written at the foot of the will and under this name Lorenzo Galvez signed by direction of the testator himself, and the instrument was also signed by the attesting witnesses before mentioned who affirmed that they heard and attested the dispositions made by the testator and witnessed the reading of the will, that they were present when the said Lorenzo Galvez signed the will in the name of the testator and that they signed it in the presence of all the persons assembled in the latter's house, the conclusion is inevitable that Victor Galvez, in executing his will, did so with a sound mind and the full use of his mental faculties; therefore, the will must be admitted to probate.

For the foregoing reasons, with a reversal of the judgment appealed from in so far as it denies the probate of the said will, we hereby hold that the same was duly executed by Victor Galvez and expresses his last wishes, and we

affirm the rest of the said judgment, with respect to the appointment, as administratrix, of Canuta Galvez, the testator's daughter and sole heir.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

Trent, J., dissents.

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