

**IN RE THE ESTATE OF THE DECEASED SOTERA BARRIENTOS.  
SAMUEL PERRY, PETITIONER, RESPONDENT AND APPELLANT, VS.  
VICENTE ELIO, PETITIONER, RESPONDENT AND APPELLEE.**

*G.R. No. 9089. January 05, 1915*

Ponente: ARAULLO, J.

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**ARAULLO, J.:**

Upon the decease of Sotera Barrientos, a resident of the municipality of Mambajao, Province of Misamis, 68 years of age, the wife of Samuel Perry in her third marriage, in the said municipality on August 31, 1912, two documents were presented in the Court of First Instance of the said province, each of which, according to those who respectively presented them, was the last will and testament of the said deceased.

The first document was filed on September 4, 1912, that is, four days after the death of the testatrix, by Vicente Elio, son of her first husband, and her brother-in-law; and the second on December 20 of the same year, 1912, by Samuel Perry, her surviving husband. Perry opposed probate of the first document, and Elio, in turn, that of the second. By agreement of both parties the two petitions were heard jointly, in order that the evidence introduced to support the one might be used to impeach the other. Likewise the court, on February 1, 1913, made one single order in both cases, whereby, after giving due weight to the evidence introduced and setting forth the findings of fact and of law that he deemed pertinent with respect to each of the said petitions and to the documents to which they respectively referred, he held that the said two wills were true and authentic, but that tho one executed on September 21, 1910, had been revoked by the one subsequently executed on August 26, 1912. He therefore denied the probate of the first, that is, of the one executed in favor of Samuel Perry, and ordered that the second will, in favor of the other petitioner, Vicente Elio, be probated as the last will and testament of the said Sotera Barrientos, disallowing with costs the claim of the respondent Perry.

The latter having appealed from the said order, his counsel alleges in this court that the trial court erred therein by holding: (1) That the deceased understood the terms and knew the effects of the document, the legalization of which as a will had been ordered by the court; (2) that the said document expressed the will and intention and constituted a free act of the deceased; (3) that the said document was signed with the name of the deceased in her presence and by her express order; (4) that such document was legally executed by the deceased; and, (5), that the will of September 21, 1910, was not entitled to probate.

In the document presented by Samuel Perry as being the will executed by the deceased Sotera Barrientos on the said 21st of September, 1910, the original of which, marked "Exhibit A," is found on page 8 of the record, the said deceased first names Perry as the devisee of one-third of her estate and afterwards names him the sole heir of the remainder, that is, of the other two-thirds. The said document appears to have been signed by the testatrix, Sotera Barrientos, and by three witnesses, and ratified by the testatrix on the same date, September 21, 1910, before the notary public Esteban Conception, of the municipality of Mambajao, Province of Misamis.

In the document presented in turn by Vicente Elio, also as the will executed by the same Sotera Barrientos on

August 26, 1912, the original of which, marked "Exhibit A," is found on page 11 of the record, it appears that the testatrix declared, in clause 3 thereof, that she was the wife of Samuel Perry, an American, by whom she had had no children and who was then, on that date, absent, he having forsaken her during her serious illness. In clause 6 it appears that it was her will that all her belongings, present and future, should become the sole and exclusive property of her son-in-law, Vicente Elio, whom in that proceeding she declared to be the heir of all her property, and she further declared that she revoked and annulled all the testamentary provisions that she had executed prior to that date. The said document concludes as follows:

"I likewise authorize Santos Matayabas to write and draw up the present will, as I am unable to do so.

"As it is impossible for me to sign the present will with my own hand and in my own writing, by reason of my advanced age and my debility, I authorize and beg Santos Matayabas, who is present, to do so at my request.

"At the request of Sotera Barrientos:

(Signed) "Santos Matayabas.

"Signed in the presence of:

(Signed) "Isidoro Sabido.

"Arcadio Rivera.

"Fran.co Aguilar

"Feliciano Valdihuesa.

"We, Isidoro Sabido, Arcadio Rivera, Francisco Aguilar, and Feliciano Valdihuesa, certify that the foregoing will was signed by Santos Matayabas at the request of the testatrix in our presence, that she stated that it was her will, and that it was signed by each of us at the request of the testatrix in her presence and in ours.

"Signed in Mambajao, August 26, 1912.

(Signed) "Isidoro Sabido.

"Arcadio Rivera.

"Fran.co Aguilar.

"Feliciano Valdihuesa."

In the order aforementioned, the lower court, referring to the document presented as a will by Samuel Perry, stated, after mentioning the testimony given by the witnesses at the hearing on the respective petition, that it was his opinion that the authenticity of the said document executed by Sotera Barrientos on September 21, 1910, had been proven; that in its execution all the formalities required by section 618 of Act No. 190 had been observed, and that, moreover, it did not contain any of the defects specified in section 634 of the same Act. The court did not, however, order the probate of this will, because, as has been said, he understood that it had been revoked by the subsequent will, that is, by the one presented by Vicente Elio.

No objection having been made nor exception taken to the above-mentioned finding of the court with respect to the authenticity and due execution of the first will, to wit, that of September 21, 1910, there is no reason in the present decision to occupy ourselves with any matter to which the said will refers; we shall confine ourselves to an examination of the second will, as this latter is the subject of the appeal before us.

From the evidence presented by the petitioner Elio in support of the probate of the said second will, to wit, that dated August 26, 1912, it is shown that at the trial Vicente Elio himself testified, as did Santos Matayabas, who appears to have signed the document at the request of the testatrix, and the witnesses Feliciano Valdihuesa,

Arcadio Rivera, and Isidoro Sabido, whose names appear at the foot of the same document.

From the testimony of all of them, and especially from that of Vicente Elio, it is disclosed that on the morning of the said 26th day of August, 1912, Elio and Santos Matayabas, accompanied by the other three men above-named and by Francisco Aguilar, who had been previously invited by the said Elio, repaired to the house of Sotera Barrientos, who was then seriously ill. The four last-named men so invited went for the purpose of witnessing the will which, according to the petitioner Elio, the said woman was to execute. Entering upon further details, Elio testified that two or three days prior to that date, Sotera Barrientos had ordered him to draw up a document as her will, as witness called it, and for that purpose gave him, in a rough penciled draft, all the necessary data, details, particulars and instructions; that on Sunday morning, the 25th of August, as witness had already prepared the document, he read it to Sotera Barrientos in a clear voice and explained it to her point by point, paragraph by paragraph, and the latter approved the draft and told him to have Santos Matayabas make a clean copy of it, for Matayabas was her clerk and always did her work; that on the morning of the following day, the 26th, he had Matayabas write out the said document, copying it from the rough draft approved by Sotera Barrientos; that while Matayabas was writing it, witness remained beside him to explain to him such words, amendments and references of the rough draft as the copyist did not understand; and, finally, that when the clean copy had been made and the document was finished, at about 11 o'clock that same morning, witness, leaving Matayabas in his (Elio's) house, went to those of his neighbors, Rivera, Valdihuesa, and Sabido, and asked them to act as witnesses; that he made the same request to Francisco Aguilar, whom he found in Valdihuesa's house; that all of these four men acceded to his request, whereupon he returned to his own house to get Matayabas, left the house with the latter, who carried the will, an inkstand, a pen, and a blotter, and, joining the other men in the street, they all went up into the house of Sotera Barrientos.

Other testimony given by the petitioner Elio and his witnesses above mentioned tend to prove that, when all of them and the other witness Aguilar were in the house of Sotera Barrientos that morning and while she was sick and in bed, but sound in mind and physically capable of performing the act, and after she had been informed of the reason of their presence in her house, Santos Matayabas proceeded to read the document which Elio had brought with him; that upon being asked if that were her will and testament, she approved the clauses contained therein; that, as Sotera Barrientos was unable to sign the said document on account of her debility, though she tried to do so, first with a pencil and afterwards with a pen, Santos Matayabas signed for her at her request and in her stead in the presence of all the witnesses; and that these latter also signed in presence of the testatrix, and each one of them in presence of the others.

However, these same witnesses explained the manner in which Sotera Barrientos manifested her approval of the contents of the document read to her by Santos Matayabas and how she replied to the questions put to her relative to whether the statements contained in the said document were her last will and testament, by testifying that all she said was "yes." The reason why she could not answer in any other way the questions which were then put to her, as well as what occurred as a result of her asking Matayabas, as it is alleged she did, to sign for her, are also stated by some of the same witnesses in their testimony, which at the same time gives a sufficient idea of the condition in which the said patient was at that time. This testimony, or such part thereof as is pertinent to the points above referred to, is hereinbelow quoted, in order that the statements made by the said witnesses may be better understood:

Santos Matayabas:

"Q. Who requested you to sign this document, Exhibit A?—A. As one could no longer understand what that deceased was saying, she pointed me out and I understood the gesture to mean that I was to sign the document that had been executed and that I should sign in her stead. In view of this, as her sign was not well understood,

Mr. Vicente Elio repeated and approached her, asking whether she wished Santos Matayabas to sign; she answered 'yes.'

"Q. How did she reply, in Spanish or in Visayan?—A. In Visayan, saying: 'O-o.'

"Q. How do you know that Sotera Barrientos was unable to write her name on the date when the document Exhibit A was executed?—A. Because when the document was finished and read she was asked whether that document was her last will and she said yes, that it was her last will. In view of this, and as we saw that she was unable to sign because she was weak, we took a sheet of paper and raised her up to see whether she could write her signature. Then we gave her a pencil and she took hold of the pencil and made as if she would sign and as she was very weak she was unable to carry out her intention to do so. Again we handed her a pen with ink and tried to have her sign and she made as if she would sign, but it was utterly impossible for her.

"Q. In view of that, what was done then?—A. We made her lie down and we asked her what person she wished to point out as the one who should sign in her stead.

"Q. Then what did the testatrix say?—A. She said these words, but they could not be understood, because she could not speak well, and it was then that she made some gestures and she indicated to me by certain signs that I interpreted to mean that she wished me to understand that I should sign.

"Q. What else?—A. In view of this, we wished to clear up the matter so Mr. Vicente Elio asked her whether she desired Santos to sign.

"Q. What did she say then?—A. She replied by saying 'yes.'

"\* \* \* \* \*

"Q. Did you or did you not observe the physical condition of Sotera Barrientos at the very moment the will was made?—A. We being there, I observed, I looked.

"Q. But did you observe her physical condition?—A. Yes, sir.

"Q. What was the physical condition of Sotera Barrientos at the very moment the will was made? Can you tell us?—A. She was very weak on account of her sickness and her words could hardly be understood; her words were no longer very clear.

"Q. What do you mean to say by that—that her words could hardly be understood and that her words were no longer very clear?—A. I mean that when I was there she was pretty weak and her words could not be distinctly understood; and as it was to be understood and seen by her replies to the questions she was asked by one of us, I understood that she was in her right mind.

"Q. How do you know that she was in her right mind?—A. By her replies to the questions that were asked her.

"Q. If what she said could not be well understood, how do you know that she replied to the questions you people put to her?—A. She clearly pronounced the word 'yes.'

"Q. What else did you observe as to the physical condition of Sotera at the moment of the making of the will Exhibit A of case No. 1943?—A. I can not say much about it, because in my judgment she clearly replied 'yes;' to all the questions addressed to her she replied 'yes.'

"\* \* \* \* \*

"Q. What questions did one of you put to her?—A. The first question that Isidoro Sabido asked the sick woman when we entered was: 'We have come here for the will which you ordered to be made. Our purpose is to ascertain from you whether that is really and truly your will.' Then she replied in this way: 'Yes, it is.' After that, Isidoro Sabido said: 'Listen, because we are going to read what the will says.' Immediately after this the

will was read to her point by point, clause by clause; she was asked whether it was an expression of her wishes, and she replied yes. When the will was read she replied by the same word yes. When the will was read Isidoro Sabido asked whether she knew the people who were then and there present, and she replied yes. This done, Feliciano Valdehueza, who was beside me, for I was standing by one of the bedposts, was pointed out and she was asked whether she recognized Feliciano Valdehueza, and she replied yes. She was asked to name him and some time elapsed before she replied and afterwards she made some movements with her head as if wishing to say that she did not remember the name of the person concerning whom she had been questioned."

Feliciano Valdehueza:

"Q. And why did she not sign with her own hand and in her own writing this document Exhibit A?—A. If I am not mistaken, she could not sign on account of her sickness; her hand was shaky.

"Q. Why did you sign this document Exhibit A?—A. Because I served as a witness.

"Q. Where were you when Santos Matayabas signed this document Exhibit A?—A. I was present.

"\* \* \* \* \*

"Q. Why did Santos Matayabas read this document Exhibit A?—A. So that Sotera Barrientos might hear whether the words contained in the document were an expression of her wishes

"Q. During the time this document Exhibit A was being read, was Sotera Barrientos questioned, or was she not, with respect to the contents of this document Exhibit A?— A. Each time the reading was resumed, she was questioned; she was continually questioned.

"Q. What was she asked then ?—A. Whether the contents of the will were an expression of her wishes.

"Q. What did Sotera Barrientos then reply?—A. She answered with this word: 'Yes.'

"Q. When Sotera Barrientos replied with that word 'yes,' did you see her?—A. I was listening.

"Q. Who spoke to Santos Matayabas in order that he might sign this document Exhibit A in the name and on behalf of Sotera Barrientos?—A. When she could not sign, they had her select from among those present the person who should sign in her stead and on her behalf and she indicated Santos Matayabas. Then Don Vicente repeated, asking whether she pointed out Santos Matayabas, and she replied with the word: 'Yes.'

"Q. What was then the physical condition of the testatrix Sotera Barrientos, on the date when the document Exhibit A was prepared?—A. A woman tried to raise her up, but as the woman was unable to do so, Don Vicente Elio assisted her.

"Q. What else?—A. She being in that condition, they wished her to try to sign; they gave her a pencil for the purpose, but she could not sign because her hand was shaky. Then they gave her a pen but with it she was unable to sign. Then she was told to select from among the persons present the one who should sign for and in her stead.

"Q. But what was the physical condition of the deceased, Sotera Barrientos, on that date?—A. It was hardly such and they made her lie down, because she was quite weak.

"Q. What do you mean by 'it was hardly such?'—A. On account of her debility they made her lie down.

"\* \* \* \* \*

"Q. Did you hear Dona Sotera Barrientos say any other word than yes while you were there?—A. I heard nothing else; only yes.

"Q. Then when you said that she always replied correctly to the questions, she continually said yes?—A. Yes;

that is what I said, yes.

"Q. Then your sole reason for believing that she understood the questions, is that she always replied yes?—A. Yes; every time they questioned her, she replied yes."

Arcadio Rivera:

"Q. In what capacity did you sign that will ?—A. I signed the will because when the will was read Mrs. Sotera Barrientos approved it.

"Q. Who read it?—A. Santos Matayabas.

"Q. How do you know that Sotera Barrientos approved the contents of this will ?—A. Because when the document was read to her she was asked whether that document was an expression of her wishes, and she laboriously replied yes.

"Q. Why do you say that she replied laboriously? What do you mean by that?—A. Because she was sick.

"\* \* \* \* \*

"Q. Do you know why Santos Matayabas signed this document Exhibit A ?—A. I know.

"Q. Did he sign this document?—A. It had been agreed that the document should be signed.

"Q. Who agreed?—A. I, Isodoro Sabido, Feliciano Valdehuesa, and Santos Matayabas.

"Q. What I ask you is why did Santos Matayabas sign this document Exhibit A?—A. The reason why he signed the document was because it had been agreed upon and he was asked to sign by Vicente Elio.

"\* \* \* \* \*

"Q. Did you or did you not see Sotera Barrientos sign this Exhibit A that is now before you ?—A. Only at the request of Sotera Barrientos.

"Q. What do you mean by 'at the request?'—A. She did not sign, because she was sick; and when they were going to have her sign, because she was weak.

"Q. Explain what it is that you mean by those words 'at the request.'—A. As she was no longer able to sign, Santos did so only on request, because she was sick.

"Q. Do you or do you not mean to say that Santos signed the will ?—A. He signed it.

"Q. Why did Santos Matayabas sign this document?— A. Santos Matayabas signed because our master had ordered the five of us to sign it.

"Q. Who is that master?—A. Mr. Vicente Elio.

"\* \* \* \* \*

"Q. When you went to the house of Sotera Barrientos on the day this document Exhibit A was prepared, did you go alone or in the company of others?—A. I went with Isodoro Sabido, Feliciano Valdehuesa, and Francisco Aguilar.

"Q. When you all arrived at the house of Sotera Barrientos, what did they do there?—A. They did nothing there when we arrived. The will was already prepared, and we were the last to arrive. Something remained yet to be done to this document and when we arrived we witnessed the completion of the document.

"Q. Which is the part of this document Exhibit A that was prepared in the house of Sotera Barrientos and

witnessed by all of you?—A. Here it is (pointing to a paragraph which reads: 'We, Isidoro Sabido, Arcadio Rivera, certify,' etc.).

"Q. Was the document read before it was signed, or was it not?—A. It was read.

"Q. Who read it?—A. Santos Matayabas.

"Q. After Santos Matayabas had read this document Exhibit A, what was done?—A. After it was read, the sick woman was asked whether she was willing to sign it and afterwards she replied yes, that she was going to sign. She was also asked by Vicente whether she wished to sign, and she said yes.

"Q. What else?—A. For this reason they raised her up and gave her a pencil to sign with, and as this could not be done they then asked her who it was she wanted to sign, and she said these words: 'O—o' (yes) and pointed to a man by her feet.

"Q. Who was that person whom she pointed out?— A. Santos Matayabas.

"Q. Then what did she do when she had pointed out Santos Matayabas?—A. Nothing else.

"Q. Did Vicente Elio say anything then or not?—A. Nothing else.

"\* \* \* \* \*

"Q. Did you speak to Mrs. Sotera Barrientos while you were in the house?—A. No, sir.

"Q. Why did you sign the will?—A. I signed it because after it was read, master said 'All of you sign it.'

"Q. By 'master' do you refer to Vicente Elio?—A. Yes, sir."

Isidoro Sabido:

"Q. Why did Santos sign?—A. Santos signed at the request of the testatrix.

"Q. Why did Santos Matayabas sign at the request of the testatrix? Did the testatrix not know how to sign?— A. Yes, she did; but she was no longer able to.

"Q. Why was she unable to sign?—A. Perhaps on account of her sickness she had not the strength to sign.

"Q. How do you know that the testatrix was unable to sign?—A. I know it, because in the beginning when Mr. Vicente Elio asked: 'Would you like to sign?' she said: 'Yes; why not?' and then they gave her a paper and a pencil to see whether she could or not. She could no longer do so, but would have been pleased to sign.

"Q. What was done, in view of the fact that she was unable to sign the document?

"\* \* \* \* \*

"A. Then Mr. Vicente Elio named at the request of her signature.

"\* \* \* \* \*

"Q. What do you mean by your answer that 'Mr. Vicente Elio named at the request of her signature?'—A. Mr. Elio named Santos Matayabas at the request of the signature of the testatrix.

"Q. He named him for what?—A. To sign.

"Q. Who named?—A. Mr. Elio.

"Q. Whom did Mr. Vicente Elio name?—A. Santos Matayabas.

"Q. Why did Vicente Elio name Santos Matayabas to sign?—A. Because the testatrix was no longer able to

sign.

"Q. What did you see or hear there? Say whether you saw or heard anything there before Vicente Elio named Santos Matayabas.—A. Nothing.

"Q. Were no words spoken?—A. Mr. Elio named Santos Matayabas to write the signature of Dona Sotera instead of the signature of Sra. Tiray and she was willing to have Santos Matayabas sign at her request.

"Q. How do you know that Sotera Barrientos was willing?—A. Because Mr. Elio asked the testatrix whether Santos Matayabas should sign her name.

"Q. And what happened after Mr. Elio had asked whether she was willing to have Santos Matayabas sign?—A. She replied yes, she was willing.

"Q. Who replied?—A. The testatrix.

"Q. In what manner did she reply?—A. She replied yes, by nodding her head.

"Q. What word did she employ?—A. 'Yes.'

"Q. Did she say nothing but that word?—A. She only said yes.

"\* \* \* \* \*

"Q. When this document Exhibit A was prepared, what was the physical condition of the testatrix?—A. As I observed after various questions had been asked her, I saw that she had the, what do you call it—.

"Q. What was the condition of the patient?—A. She was in good spirits.

"\* \* \* \* \*

"Q. Tell all you know.—A. I do not understand the meaning of the words 'physical condition;' they are beyond my understanding.

"Q. What was her mental condition ?—A. She was lying down.

"Q. What else do you know about her physical condition ?—A. As in the questions, she replied to various questions, I observed that when she replied, it was in the affirmative.

"Q. What questions did you ask Sotera Barrientos then?—A. After reading: the will, I asked whether she approved all the words it contained. She replied yes.

"Q. What else did you ask her?—A. Whether it was of her own free will. She replied yes. I asked her whether she knew Feliciano Valdehueza. She replied yes. Later, when I asked her what was the name of Feliciano Valdehueza, she did not know his name.

"Q. Did she say that she did not know his name?—A. But she did not reply at once. She was no longer able to speak and merely made a movement with her head.

"Q. What other conversation did you then have with the testatrix?—A. No more after that question.

"\* \* \* \* \*

(Referring to the will in question, Exhibit A of Case No. 1943):

"Q. Why did you sign this document?—A. Because I understood that the testatrix executed that will.

"Q. Who requested you to sign this document?—A. Mr. Vicente Elio.

"Q. And the only reason you have for believing that the testatrix had executed a will, was because she said yes in answer to a question?—A. Yes.

"Q. Who asked those questions ?—A. I did."

Vicente Elio also testified as follows:

"Q. When you folks arrived at house of the testatrix, who were there?—A. The servants.

"Q. How did you find the testatrix?—A. Lying down, as nearly always.

"Q. What was the physical condition of the testatrix on the day the will was signed?—A. With respect to her health, she was pretty weak and for several days the doctors had been attending her.

"Q. Was the testatrix attended by any duly licensed physician during her sickness ?—A. Yes, sir; Dr. Felipe Arenas.

"\* \* \* \* \*

"Q. How long had Doctor Arenas been attending the testatrix before her death?—A. If my memory serves me correctly, from the beginning of July, 1912.

"Q. On that date, August 26, 1912, was Doctor Arenas attending her, or was he no longer doing so?—A. Yes, sir; until the day of her death.

"Q. At the time that will was signed, August 26, 1912, was any conversation carried on with the testatrix?— A. Yes, sir.

"\* \* \* \* \*

"Q. With whom did the testatrix speak at the time the will was signed, on August 26,1912?—A. Before the reading of the will, first with me and then with Isidoro Sabido.

"Q. What did you say to the testatrix?—A. I said to her: 'Tiray' (that was her pet name), 'these gentlemen are acting as witnesses to the reading and signing of the will.'

"Q. What was her reply?—A. 'Yes.'

"Q. Did you say anything else to the testatrix?—A. I spoke to her about the signature, because she was my step-mother.

"Q. What did you say with respect to the signature of the will ?—A. She replied to the questions of Isidoro Sabido as to whether that document expressed her free and spontaneous wishes. I told her that she had to sign, and she replied yes.

"Q. Did she then sign the will?—A. She attempted to sign, but could not.

"Q. Why could she not?—A. Because her hand was so weak.

"Q. In view of the fact that she was unable to sign, what did she do?—A. As she was unable, in spite of her insistence, I told her to choose one of the five men to sign at her request.

"Q. What did she do?—A. She replied in a low voice, only heard by me, speaking in my ear the name 'Santos' and pointed him out, for he was at her side.

"Q. What was done when she spoke that name 'Santos' and pointed him out?—A. In order that the rest might know it, I repeated in a loud voice: 'Santos Matayabas.' The testatrix replied: 'Yes.'

"Q. After she had made that reply to the question, what did Santos Matayabas do?—A. Immediately thereafter Santos Matayabas signed.

"Q. How do you know? Were you there at that moment?—A. Yes; in the first place, to see whether the servants were giving her food and medicine, for it was I who took care of her, notwithstanding my wife's sickness. In the second place, to see whether the testatrix might wish to make any amendments, corrections, or amplifications, for Santos Matayabas was not able to make them himself."

As seen by the preceding testimony, on the occasion to which the witnesses refer, that is, at the time they and Elio presented themselves at the house of Sotera Barrientos with the document prepared by Elio in order that it might be executed as her will, the weakness of the testatrix was so great that not only was she unable to sign the said instrument, all the means employed for that purpose having been in vain, but she had also lost the power of speech, for, according to Matayabas, what she said could no longer be understood, nor were the signs that she made well understood. According to Sabido, she was no longer able to talk; she merely made movements with her head, although, as all these witnesses testified, she gave it to be understood that the document that had been read to her was her will and expressed her wishes, because she replied to the questions which were put to her to ascertain whether such it was, by saying yes; but, according to the witness Rivera, this reply was made with great effort. One of the witnesses, Matayabas, was of the opinion that the patient was in a sufficiently good physical condition to perform the act and that she had the use of her faculties, because she replied clearly by the word "Yes," and this word was her answer to all the questions that were put to her. The witness Valdiviezo testified that his reason for believing that Sotera Barrientos understood the questions that were addressed to her, was that she always replied yes.

This same testimony also shows that Santos Matayabas signed the said document at the request of the testatrix because she was unable to do so herself; that she designated Matayabas for that purpose by means of signs and replied by the word yes to the question asked her by Elio in regard to the signing of the document. One of the witnesses, however, Arcadio Rivera, stated in his testimony that Santos Matayabas signed it because he had been designated by the testatrix, without Vicente Elio's then saying anything; but the same witness, upon being asked why Santos Matayabas signed the said document, replied: "Santos Matayabas signed because our master had directed us five to sign," and added that that master was Vicente Elio. The signature of Santos Matayabas does, in fact, appear immediately after the words, "At the request of Sotera Barrientos," found in the said document Exhibit A, as may be seen by the part thereof quoted in this decision, and it is also true that that signature was written by Matayabas.

However, aside from what has already been said on the subject of the statements made by the witnesses regarding the designation of Matayabas which, they asserted, was made by Sotera Barrientos to sign the said document for her, account must be taken of the fact that the witness Arcadio Rivera, in his testimony above quoted, after saying that together with the other three witnesses he went to the house of Sotera Barrientos that morning and upon being asked what was done there when they arrived, said that something remained yet to be done to the said document and they witnessed its completion, and when afterwards asked which was the part of the document prepared in the house of Sotera Barrientos and witnessed by them, replied: "Here it is," pointing out the paragraph which begins with the words: "We, Isidoro Sabido, Arcadio Rivera, \* \* \* certify," etc., that is, the paragraph that immediately follows the signatures of Santos Matayabas himself and the four witnesses, which are preceded by the following paragraphs:

"I likewise authorize Santos Matayabas to write and draw up the present will, as I am unable to do so.

"As it is impossible for me to sign the present will with my own hand and in my own writing, by reason of my advanced age and my debility, I authorize and beg Santos Matayabas, who is present, to do so at my request."

So then, it appears from this testimony of Arcadio Rivera that when Vicente Elio, in company with Santos Matayabas and the witnesses, presented himself in the house of Sotera Barrientos in order that she might execute her will, bringing with him as such the document Exhibit A, there had already been written in the said document the second of the two paragraphs above quoted; and that in this second paragraph the statements appears that, as it was impossible for the lady to sign the will in question with her own hand and in her own writing, on account of her advanced age and her debility, she authorized and begged Santos Matayabas, who was present, to do so at her request, or, what amounts to the same thing, Rivera's testimony shows that that particular paragraph, as well as all the first part of the said document, had been written by Santos Matayabas himself in Vicente Elio's house, that morning, a few moments before their arrival at the house of Sotera Barrientos.

This clearly indicates that when Vicente Elio prepared the aforementioned will by having it copied in his house and under his own direction by Santos Matayabas, he was convinced that Sotera Barrientos could not sign the said document on account of her advanced age and her debility, and that he already knew the woman's condition, she being almost speechless, incapable of making herself understood even by means of signs and only able to articulate the word "Yes;" for that document was written that same morning, a few moments before he appeared with the witnesses at the house of the sick woman and there tried to have her execute her will. This fact also conclusively proves that the designation of Santos Matayabas to sign the said will at the request of the testatrix had been made by Elio before he went with the witnesses to Sotera Barrientos' house, and that the statement of himself and the witnesses as to what occurred as regards their efforts to obtain from her the designation of a person who should sign at her request on that occasion, even granting it to be true, was no more than a mere form to set forth what Elio himself had in view, so as to give to the said document the character of a will, for he well knew that, by reason of the condition of the patient and her inability to manifest her wishes, she could not make the designation which was necessary for the purpose intended by him. And if that act of thoughtful preparation on the part of Vicente Elio shows, if not his conviction, as above stated, at least his fear that Sotera Barrientos might not be in a condition to be able to designate the person who should sign the instrument for her, either because of the advanced stage of her sickness or because of her inability perhaps to express her wishes in regard to the matter, it is also a proof that the testatrix was unable to express her will in such manner as to make known unmistakably what she wished and meant by replying with the monosyllable "Yes," to the questions which the aforementioned witnesses testified were asked her with respect to the said document at the time it was being read.

An attempt was made, however, to prove by means of the witnesses Valdehueva and Rivera that Sotera Barrientos was in sound mind and had a perfect knowledge of the things done on that occasion. Valdehueva testified that they and their companions were served with beer; that Sotera Barrientos inquired how many bottles had already been opened, and that, as Vicente Elio replied to her that there were four, she said: "Justo na; basta" (That'll do now; that's enough.) As the lady was unable to articulate any other word than the monosyllable "Yes," or to make herself understood by signs; as her voice was not perceptible to those around her, as shown by the fact related by Elio of his having to place his ear very close to the patient in order to hear, as he said, the name "Santos" uttered by her when she designated Santos Matayabas to sign the document for her; and as she did not say a single word when it was necessary for her to speak, in order to show at least that she understood the questions asked her, it is truly remarkable that she should have been able to inquire how many bottles of beer had been opened and to say: "Justo na; basta," that is, that there were already enough, when they told her that there were four. The extraordinary nature of this occurrence, entirely opposed to the actual facts as related by the same witnesses and by Vicente Elio, shows that the statements made by Valdehueva and Rivera are not true. On the contrary, the absurdity and unlikelihood of those statements, in relation to the facts aforementioned, prove that these witnesses were interested in supporting the claim of the petitioner who had presented them, and that they were disposed to serve and accommodate him.

In conclusion, the only proof that the document, the probate of which as the will of Sotera Barrientos was requested by Vicente Elio, is an expression of the real wishes of the testatrix, consists, according to those same witnesses, in that she replied to Isidoro Sabido with the monosyllable "yes" when Santos Matayabas read the said document and she was asked whether it expressed her wishes. However, it is very doubtful whether the sick woman, in the condition in which she was, understood what Matayabas read to her, nor can the fact of her having said "yes" be accepted as an absolute proof that she understood what was read, for, as the same witnesses testified, she made this same reply to all the questions that were then put to her, an answer which could be interpreted as being either approval and agreement in regard to those questions or indifference to all that was happening about her. Aside from this, one of the witnesses, Valdehueza, testified that the patient was continually plied with questions, giving the impression that the interrogatories were made during the reading of the document, that is, as each clause was read; while from the testimony of Matayabas, Rivera and Sabido himself, it is to be gathered that the patient was questioned by the latter only after the reading of the document, although, according to Matayabas, it was read point by point, clause by clause. Furthermore, if these three witnesses told the truth, there is still less reason to believe that the patient was able at one time to apprehend all the contents of the document and to understand the meaning of each one of the clauses of the same. Therefore, the reply made by her on that occasion by the monosyllable "Yes," if such monosyllable conveyed to her any meaning at all or expressed any idea she had in mind, must have been vague and indefinite.

On the other hand, the petitioner himself, Elio, prepared the document, so he testified, from a rough draft which had been furnished him by Sotera Barrientos two or three days before and which contained the necessary data and instructions. He has not said who made out this draft; he did not present it at the trial, and it could not have been written by Sotera Barrientos. It was also Elio who, on that same morning of the 26th of August, in his own house, in his presence and under his direction, after having, as he testified, shown to the testatrix the rough draft prepared by him, had Santos Matayabas make a clean copy of it and immediately after the document had been written invited the four witnesses and with them and Matayabas went to Sotera Barrientos' house. There Elio took a large if not a principal part in all that was done and in all that happened in the immediate vicinity of the patient. He also it was who first informed the sick woman of the reason for the presence of them all in the house, and afterwards spoke to her about the signature. He served as the sole and direct intermediary between the patient and Matayabas and the others to inform them that the woman, so he testified, had chosen Matayabas to sign the said document at her request. He afterwards witnessed all that Matayabas and the rest then did there. Account must also be taken of the fact that Elio was the only person to be benefited by the execution of the pretended will, for, as hereinbefore stated, besides his appearing in that document as the sole devisee of all the property of the testatrix, the statement appears in one of its clauses, as being made by the testatrix, that her husband, Samuel Perry, had abandoned her in her serious sickness—a fact that was not proved—and that she revoked and annulled the testamentary provisions previously made by her, which were no others than those contained in the document presented by this same Perry for probate as the will of the said deceased and in which she instituted him as her sole heir. There are, therefore, more than sufficient reasons for holding that the document presented by Vicente Elio for probate as the will of Sotera Barrientos does not express her true and spontaneous desires. All the circumstances connected with the alleged execution of that so-called will lead us to this conclusion.

In the case of *Delafield vs. Parish* (25 N. Y., 9, 36), citing the case of *Barry vs. Bultin* (1 Curt. Eccl. Rep., 637), it is said that, "if a party writes or prepares a will under which he takes a benefit, that is a circumstance which ought generally to excite the suspicion of the court, and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument, in favor of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased." Many decisions of the courts of various states of the United States establish the same principle. In the case at bar, so

many and of such a nature are the acts that were performed by Vicente Elio with respect to the execution of the alleged will; such was his participation in those which in turn were performed by the five witnesses sought by him expressly for that purpose ; and such are the suspicions which, with regard to the whole matter, arise from the very significant circumstance that, although the decedent was survived by her husband, two sisters and a brother, he was the sole beneficiary under the alleged will, a document which annulled the one previously executed by the said testatrix in favor of her husband; that, after closely and carefully examining the evidence introduced at the trial, not only do those suspicions linger, but we are convinced that the document in question does not express the true will of the decedent.

Furthermore, in order that a will may be deemed valid, that is executed by one person and signed by another on account of the testator's inability to sign, the law requires (sec. 618, Code Civ. Proc.) that it shall have been signed under the express direction or by the express order of the testator. In the present case, as we have already seen, when Elio and his companions took the said document to the house of Sotera Barrientos, there to be executed as her will, it already contained a statement in the paragraph preceding the space reserved for the signatures of the testatrix and the witnesses, to the effect that, as the testatrix was unable to sign the will by reason of her advanced age and her debility, she authorized and begged Santos Matayabas to do so at her request. There is no proof whatever that Vicente Elio was instructed by Sotera Barrientos to have that statement inserted in the said document, when, as he testified, the drafting and preparation of the instrument was commended to him. It is evident, therefore, that it was all merely the idea and purpose of Elio himself. With respect to this feature of the case, although from the testimony given by Santos Matayabas and Feliciano Valdiviezo it is gathered that the testatrix indicated by means of signs, which, as Matayabas testified, were incomprehensible, her desire that the latter should sign the document as she was unable to do so, yet both the witnesses Rivera and Sabido gave it to be understood, in referring in turn to that incident, that it was Elio himself who named Santos Matayabas as the person who should sign for Sotera Barrientos, and this in fact must have been so, because Elio said, in explaining also what then occurred there: "As she (Sotera Barrientos) was unable to sign in spite of her insistence, I told her to choose one of the five men in order that he might sign at her request. She replied to me in a low voice, only heard by me, speaking in my ear the word 'Santos' and pointed him out, for he was at her side;" and, finally, "in order that the rest might know it, I repeated in a loud voice: 'Santos Matayabas?'" and "immediately thereafter Santos Matayabas signed." These statements all show that it was Elio's suggestion that Sotera Barrientos should select from among them the one who should sign the document; that he was the only person who spoke to the sick woman and in a low voice, placing his ear close to her, and who, as he testified, heard her pronounce the name "Santos;" and, finally, also it was he who in turn pointed out Santos Matayabas as the party designated by her for the purpose mentioned. As in the document drawn up and prepared by Elio himself Santos Matayabas was already designated to sign at the request of Sotera Barrientos, before the latter was asked by Elio, as he stated, the question mentioned by him; as Elio himself was to be benefited by the will then attempted to be executed; and as Elio's intervention in that selection was direct and exclusive, for, as he testified, it was he alone who heard the word "Santos"—a selection which after all was entirely useless, since the person chosen for the intended purpose was already designated in the document by Elio himself—no other conclusions can be reached than that Santos Matayabas not only did not sign the said document under the express direction and order of Sotera Barrientos, but also did not even do so at her request or in obedience to her own will, because the will of Vicente Elio, who drew up and prepared the document, was already expressed therein and to his will it appears, was that of Sotera Barrientos' subordinated in all respects, not only with reference to the signing of the instrument, but also with regard to all else connected with the alleged execution of the so-called will of this testatrix.

For the foregoing reasons, and taking account of the fact that Samuel Perry, the widower of the deceased Sotera Barrientos, has also requested the probate of the document presented by him, under date of September 21, 1910,

as being the last will and testament of the decedent—a will the legality and due execution of which were recognized by the lower court in the order appealed from, notwithstanding which it was not admitted to probate for the reason that it was held to have been revoked by the other later document presented by Vicente Elio as the will of the said decedent—we revoke the order appealed from and deny the petition for the probate of the aforementioned document dated August 26, 1912, presented by Vicente Elio as the last will and testament of the said decedent, Sotera Barrientos; without special finding as to costs. In view of this decision, the lower court will proceed as the law requires with regard to the petition made by Samuel Perry for the probate of the document presented by him dated September 21, 1910, as the last will and testament of the said decedent. So ordered.

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

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