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WILLS AND HIJUELAS

By LOUIS H. WARNER

IN NO section are wills more interesting than along the Rio Grande, in New Mexico. This is not true of old wills alone. It applies equally to many of recent date among the Spanish-speaking people. In many instances, there was a delightful informality about their execution, and yet I know of no region where, generally speaking, there seemed to be a more genuine desire to carry out the wishes of the deceased with such exactness. In the old days before our occupancy, the cost of legal paper and of execution before some official was prohibitive, so naturally there grew up this informality of which I speak. Sometimes the designated executors actually drew up and signed the instrument with all the formality that would have attended a regular execution and, all heirs agreeing, the wishes of the person, who no doubt died before his signature could be obtained, became effective. He had evidently talked over with the members of his family the method he wished adopted. They saw to it that this was done. And the most remarkable thing of all was the general contentment that followed. Rarely do wills seem to have been contested; almost never were results changed. All of which speaks volumes for the respect, yes, almost reverence, for the wishes of the dying. I know of no greater devotion, particularly to the parents, than here shown.

In 1812, a considerable estate was left. The testator made many specific bequests; there was a residue, which was divided in three parts:

1. To prisoners, to be expended under the care of the governor.
2. To bashful women and maidens, the padre to select.
3. To the most unfortunate persons, the padre to select.

This shows the confidence accorded to the selected officials. It is indicative of that followed down to compadres or members of the family selected as administrators and executors.

In the work of the Pueblo Lands Board it became necessary to ascertain the ownership of very small pieces of land, sometimes as small as .002 of an acre. It is difficult to picture such a small claim; one wonders how it could have arisen. However, many a will has referred to two limbs of a tree; the ground upon which the tree stood, the ownership of the land upon which the tree stood until the tree died. So I was not altogether surprised to read in a will executed in the Española district a bequest of "three parts of a tree." It became of importance to know how much land was conveyed, so, very naturally, while seated at luncheon next a federal judge and a university president a few days later, I asked the question: "How many parts has a tree?" The looks I received from both only aroused my desire for light, so, more seriously still, I repeated the inquiry. As I look back on the occasion I am amused at how busy each became with other things. Suffice it to say, no information was forthcoming. Then I turned to a member of an old Spanish family, one who has mixed with his people in their various walks of life. He, at least, had an answer—"four." Now just why a tree should be divided into four parts I do not know, but the answer seemed reasonable and in the absence of anything better I accepted it.

Quite apart from this, but in the same will, there appeared the bequest of one half of a cow; no disposition was made of the balance; which part was actually bequeathed did not appear.

About the same time I noticed another will. Apparently the woman making it had none too high a regard for her husband and she had considerable to convey. Her children shared equally, but to the husband went a mattress, a blanket and a pillow.

The division of rooms was the rule rather than the exception—so many *vigas* to each, as will appear in subsequent examples. Land was often divided into strips of equally numbered *varas* based on a water course, and thence running indefinitely into space.

In an 1850 will there appeared:

“Being in full and natural judgment, memory and understanding, taking for my intercessor the ever immaculate, Most Serene, Queen of the Angels, fearing death, which is natural, and desiring to save my soul and to prevent doubts and disputes after my decease, I make my will as follows:

“I direct that my burial be according to the regular customs and that my body be placed upon the earth and not upon any table.”

Then followed a great many individual bequests. Often the will had first a very elaborate profession of faith; then an account of the marriage or marriages, and the children from each, living or dead! then followed a declaration of all property, sometimes to the most minute detail; then the disposition of it, a record of debts owed by and to the testator, and the designation of executors. Of course there was no standard form, but as a rule this general idea was followed.

A fairly recent will in the San Juan area was, in part, as follows:

“I declare . . . that being ill and knowing that we are mortal and knowing that I have heirs and property to bequeath to them, I execute in the following way:

“I leave two small rooms with doors to the street to my two servants, with three mattresses, one for each and one for Chato, with blankets.

“To N. thirty-seven *vigas* in the house, eight being in the kitchen, nine in the large room, nineteen in the parlor on west side and three in the little room south of the parlor.

“To T. four *vigas* in the little room which is inside the parlor of N.; eight *vigas* in the room of the garden, nineteen *vigas* in the little parlor of the garden, five *vigas* in the kitchen and two *vigas* in the gallery.

"To F. for his wife Maria, nineteen vigas in the little gallery, six vigas in the little hallway, fourteen vigas in the big kitchen and the front porch outside of the house."

To the uninitiated, the *viga* is the roof beam. The marvel to me is how it was possible to give parts of a house, yes, even of a room, to various heirs and have so little friction result. Of course, frequently, heirs would sell their respective interests and in this way rooms or houses became owned by a single party. However, in the old days, this does not seem to have been the rule.

A simple and direct will follows:

"I, . . . , in the presence of Señor . . . , whom I authorize and empower to write my last will and testament, which he will write as I dictate and he will write as if I were doing it personally, all before L. and M. as witnesses:

"I place all in charge of my administrators and executors and charge them before God and Man to fulfill their administration equally between my heirs, and I request the closing of my administration as soon as this property is arranged."

Down in Algodones in 1879 an estate of an eight-room house, corral and courtyard was to be divided equally into seven parts, yet I venture to say it was done to the complete satisfaction of all. In fact, in this particular case, the heirs executed an instrument confirming this and it was filed with the executors. Certainly this and many like cases called for an excellent type of tact and diplomacy. There was some personal property in the above case by which adjustments could be made. To one seventh also went 10 goats; to another, 1 burro. This agreement among the heirs was as follows:

"In consequence of the unanimous agreement of all the heirs, it was admitted and agreed by one and all that the division of the said lands would be made beginning at the lower end, which is from south to north, and divided from the oldest to the youngest, according to the age of the heirs. Signed, executed and sealed January 30, 1879."

In 1896, after the formalities, a will stated:

"To . . . , whom I name as my heiress, and without any obstacle whatever, I leave as all my property an *hijuela* belonging to me."

Now this *hijuela* was her title, so that what it amounted to was that her house and her lands as shown and evidenced by the *hijuela* were left to the heir referred to. It was a simple and universal method of conveyance in the old days to endorse over the title papers. This idea was here carried out in the will.

From a will executed at Santa Fé is the following:

"I, . . . , a resident of the city and county of Santa Fé, Territory of New Mexico, finding myself in perfect health and entirely in my sane judgment of senses and potentials, fearing that death . . . :

"Declare that I was married according to the regulations of our Holy Mother church, in the first nuptials with the deceased A. B. and there being no children living, all my wife's property was turned over to her father at the time of her death.

"I declare that I actually find myself married according to the orders of our Mother of the Holy Church, in second nuptials with my wife L. M.

"I declare that to A. should be given the land of the Voca Calla.

"I declare that to B., my brother, should be given the corral and shed situate on the east side of the House of his residence and besides that eight oxen and eight cows, of which B. C. has to pay from what I have given him as undivided property.

"I declare and ordain that to C., daughter of D., be tendered a room and half of the hall in which E. actually lives, situate on the west of the room assigned to F.

"I declare and constitute my wife, A., as my universal heir of all my real estate and personal property, so that she will possess, enjoy and use forever all my real and personal property and chattels, furniture and credits that are due me, at the time of my death, after delivering and paying the orders above made by me above mentioned and my debts that I lawfully owe."

One will carried this admonition:

"I do not disinherit the children that have absented themselves from their home, but I hope they will return home with repentance as the Prodigal Son had on returning to his father's house. I advise all my family to preserve in their hearts during their lives a holy fear of offending God and to care for and protect their mother to the end of her life. To my grandchildren also, I ask them to look after their mother so they will care for them."

Another of about this period recited that his wife had brought nothing to the matrimony and never received anything. That the testator had inherited the property willed from his deceased parents or had acquired it subsequent to marriage. That he had 12 children whom he acknowledged as his legitimate heirs and that he wished that the property of which he died possessed should be divided equally among them.

Often wills carried specific directions as to certain tracts. One directed that land in La Ciénega Postura be used to defray the expenses of the last illness and funeral. In the same will, a place of "The middle" was also disposed of. Two were to receive it but it was acknowledged that four others each had a tree in that area.

Another very reverently recited his faith and declared he was owed by no one and owed nothing except his soul to his God, who had created it and as pertaining to him alone. The total cost of the funeral was \$68 and 4 reales, and a particular lot was sold to cover this. Then the administrator worked out an intricate distribution. One share was one *viga* of the house; three *cuartas* of land, eleven *reales* in cash; five and one-half *varas* of land in El Tanque.

This was covered by an *hijuela* signed and delivered by the administrator and became thereafter the basis for the legal title in the particular heir.

Often a will recited what the testator brought to the marriage. In 1852 a woman listed it as: two mares, one

not broken, one colt, one cow, one bull, one box, a four-room house and kitchen utensils. Then she states that, after her husband has withdrawn his corresponding paternal and maternal tutelage and inheritance of the property acquired during marriage, equal parts were to be used to pay rights and bequests of this her testament and the residue was to be divided.

In 1861 by will a man declared his entire estate to consist of certain land, a four-room house and porch, an oven, a burro, farming tools and furniture. Of this he left a *valso fete* or curve of land in land by the road to a woman for her honest services.

A curious statement based on a verbal will was executed by the two administrators. It follows:

“Know all by these presents, how we, the children and sole heirs of our deceased father, who left this temporal life and passed to the mansion of the just, as we hope; This happened September 8, 1895, between 11 and 12 of said day, and to fulfill and execute his last will and to draw up same, we have come together peacefully and harmoniously on this 4th day of October, 1895.

“So declared deceased, my last will is this before God and all present, A. and B. as witnesses of this declaration.

“I declare being seriously ill but sound of mind and of complete judgment. I declare to have seven children whom I name and acknowledge as my lawful heirs.”

Among the bequests was the large tree in the center and the part he possessed in the tree at the west end. He left to be agreed among them by equal division four large horses, one small one, one burro, one wagon, one set of harness, two plows.

All this was signed by those designated by the deceased to settle his estate. Then follows the worked-out distribution which the several heirs signed with the further statement that they were contented and satisfied.

In an 1861 will the testator asked a humble funeral; nevertheless, it was stated a grand one was given. The heirs all agreed to this and certain tracts were sold to cover

the expense. Then the partition of the residue was agreed upon and a statement in detail signed by all.

In 1815 after the formal statement a will recited in detail the possession of two house rooms, some land, five pictures, three mattresses, four chairs, one stove, two carpets, one box, one set of harness. Among the bequests were to one four chairs and a wardrobe; to another the harness and box; to another a cupboard, one chair and one table.

Nearly a century later we find a will of all property conditioned on care and the defrayal of all expenses of sickness and death; also the assuming of any indebtedness. In this three rooms and five trees were left.

An undated will, but probably old, acknowledges that the testator's first wife brought to the marriage "100 steers, over 400 head of minor cattle and seven mares" and that he had delivered them and their augmentation to the children of both this and a subsequent marriage.

An old will of 1758 first makes provision for funeral expenses, including masses and shroud; then she declares her marriage, her nine children, and the fact that neither her husband nor herself had any property upon marriage. Considerable was acquired after and all equally divided among the children.

In an 1833 will, among other things, the testator declared possession of a mill and the fact that two other men had contributed to the purchase, one with seventeen sheep and the other with four. This debt was ordered paid.

In 1854 the testator acknowledges he had never been married. He possessed half of a house and four and one-half varas of land and he left it to his brother who had cared for him since his mother died.

A will of a seventy-four-year-old man states: "Being well disposed, of sound mind and memory, not acting in bad faith or through malice or fraud or influenced by any person whatever, I order my body to be buried according to my means and standing, condition of life and the circum-

stances of my estate." Among his bequests were three trees to be equally divided among nine heirs.

In most wills specific mention was made both of the body and the soul. An example of this: "I send my soul to God who created it and my body to earth from whence it was formed." He goes into much detail as to his marriages. He left a considerable estate and in one bequest of 500 ewes he states they shall not be chosen but as they come out of the pen. He divides equally among four sons, two houses of eight rooms, a fruit bearing orchard, three post corrals. Other bequests follow where the division must have been equally difficult, but the whole seems to have been appraised, then totaled, and a solution thus worked out.

I have seen but few Indian wills. There was one executed in 1873 before the governor and council members of one of the pueblos. This was in part as follows:

I declare to have been married to . . . and had one daughter . . . deceased.

"I declare to have been married a second time with A. B. and had one daughter, C. D. She is living.

"I also declare to have 6 portions of land. I leave my daughter four of these portions of land.

"I also declare to leave my son E. F. 1 portion of land.

"I also declare to leave my little brother another portion of land.

"I also declare to have plum trees, 1 apricot tree, 3 apple trees, 1 peach tree. I leave these to my daughter.

"I declare to have 4 rooms and 5 metates; I leave these to my daughter.

"I also declare to have a bull, a donkey, an iron spade, a white bed spread, 1 axe, 3 hoes, 1 pick axe; I leave all to my daughter.

"I declare to have a carbine which I leave for my funeral expenses, if God calls me.

"I also declare to leave my daughter in guardianship of my uncle H. F.; also all her inheritance as expressed in this will.

"I also declare to name my uncle as my administrator to comply with the disposal of this my Last Will and Testament.

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"In testimony thereof I signed in the presence of the Governor of this Pueblo and two witnesses that were for this purpose requested."

A will of 1907 leaves two trees to a son and twenty-six trees to a daughter, together with the land that the trees occupy. The land not occupied by the trees is equally divided among all of the heirs.

A 1785 will among other things bequeaths the "long field for the good of my soul" and the balance of the land and the house is divided equally among ten heirs.

An 1818 will states: "I order my slave XY be given her liberty upon my death."

A will of 1793 signed by the nephew at the request of his aunt makes full disposition of all of her property.

A will in the Picuris section, executed in 1899, provided: "I declare it is my will and the will of my children that XY, my grandchild, will share the rights of my property equally with my children."

Another, not dated, leaves a wagon to be equally divided among the children.

A will of 1882 leaves to A. B. five fanegas and nine almudes of wheat.

A will of 1869 recites: "I declare to leave to my wife all of my property in payment of a tutelage she received from her parents and which I spent and so I leave to my wife all of my possessions, my children not to have any claim, as all is in payment of a debt that I owe my wife."

A will of 1871 recites: "I declare to have my dwelling house of six rooms with five doors, one a double door with locks and keys, and three windows." This was near Española.

A more recent will sets forth that "finding myself, by Divine Will, sick in bed and fearing death, the natural end of all human creatures, and after due thought and reflection as to how to conscientiously avoid any dispute and suit that for lack of clarity may arise after my demise, I declare, etc."

An 1887 will sets forth, in the form so frequently found, "I commend my soul to God, our Lord, who created it. I commend my body to the earth, from whence it was formed."

A will of 1852 of an old lady states: "I have been left alone on my ranch and without anybody to care for me, and meditating with good judgment the hopes of life or death and my duty toward my niece, that she left her property out in the sun and open to humanity and came to take care of me during my life, which fine sentiment in her I admire and give due and legal merit to."

A will of 1889 states: "I order my body to be buried and that my funeral be made according to the will of my wife."

In a will of 1898 the testator sets forth that she took twenty varas, one iron skillet, one metate and a crucifix when she married and that her husband brought twenty-three varas of land, twenty ewes and five steers.

A will of 1810 acknowledges that his wife brought into the marriage community one cow, one yearling calf, one bull, one horse.

A 1768 will declares that XY of El Paso owes testator a *cholula* cloth coat of the best quality and woolen trousers with their trimmings and a piece of linen which he orders collected.

In an 1828 will it is stated that he had received an inheritance of his wife of a dry cow, spurs, a bridle, two ox-hides, a mattress, five sheep and a cornfield. He directs that these be made up to her. He further orders that 139 hard dollars be paid his wife because after they were married, from the work of both, they paid \$278 of debts incurred before he was married.

A will of 1862 states: "I direct that all the men servants whom I have in my employ, be the amount which they owe me at the time of my death what it may, shall be released."

An 1812 will provides: "I direct that the slave XY, whom I hold by written title be emancipated."

The testator in a will of 1820 acknowledges that his age is 112 years, 10 months, 26 days.

HIJUELAS

One authority defines an *hijuela* to be:

(a) An inventory, a catalogue of the articles which belong to the estate of a deceased person.

(b) Schedule or inventory delivered to parties entitled to distribution of the estate of a person deceased, containing an exact amount of their distributive share.

(c) A small drain for drawing of water from an estate.

Many more and varied definitions were given to this word, so only by examples can its full use be shown. I have seen it take the form of a schedule signed by the administrators of an estate. Again it was a receipt given to these officials for a distributive share. Again it was a writing signed by all the heirs and providing a definite method of distribution. However, whatever form it took, it was called an *hijuela*. The wide latitude given in its original meaning has been expanded with time in its colloquial use until it has come to cover many forms. A good example of the *hijuela* follows:

We, the undersigned, administrators of the estate of . . . deceased, certify that we have delivered to A. B. the following donative as per order in testament as follows:

One half of the sala from center of double door eastward;

One half of porch, beginning division in center of door southward;

The room of the board, El Cuarto de la Tabla;

Two more rooms formerly pertaining to L. M. bounded: north, placita of Los Lujanes; south, ingress and egress; east, land known as La Tapia, the wall; west, donative of YZ.

Signed H. L.

B. J. administrators."

Under the same estate and by the same administrators there was given to another heir the following:

“The little room and one-half of sala from center of double door westward.

One half of porch from right side of door of the sala southward. Together with all improvements, rights and privileges to the same corresponding, as much in law as in equity, to him, his heirs and assigns forever.”

Out in Pojoaque in 1881 an *hijuela* was given for four and three-quarters varas and four fingers of land in La Cerca; nine varas and four and one-half fingers of the land of the six *álamos*; one and three-quarters varas and four fingers of the land of the house; four vigas of the house and free ingress and egress as to the rest of the heirs. This had been received from certain executors named. The *hijuela* closes with the statement: “all this I received to my entire satisfaction and contentment and for the validity of this *hijuela* I give this present on July 11, 1881.”

Another *hijuela* some years later recites that signer had received from an estate mentioned eleven vigas of a house and the corresponding walls; *chorreras* as far as the road on north, south and west parts, same as the *chorreras* of the house and also pertaining to the rest of the heirs, including road leading to the corrals.

Six vigas in La Sombra with five yards of *chorreras* on north and south side; personal property, one mare, one cow, some furniture.

Some fifty years ago another *hijuela* recites how the signer's mother had left her and she received fifty varas of land in the place called Las Joyas, which was bounded as given in detail.

Another acknowledges fifteen yards for pathways, eighty-two logs, and one-half of a mattress.

Another, five apple trees and the ground where each is planted; also a cow.

Another, three vigas in sala of a house; two vigas in porch; one viga in store room; two detached vigas; free in-

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Another, three vigas in sala of a house; two vigas in porch; one viga in store room; two detached vigas; free in-

gress; one apple tree; fifty-three posts; \$2.70 in cash; twenty-three varas in El Rancho; twenty yards in El Barrial.

In 1837 seven heirs agreed to stand by the following, in court and out:

The large room of the house was divided among three; three received each one viga of the porch; one received eight vigas of house; another received two vigas of house; another received six vigas in kitchen; another received six vigas in porch. All divided the 245 varas of land equally.

Sixty years later, we find the receipt by one heir for two vigas of a house and a tree with its ground and three tracts of land varying in width from two to seven yards. To another two vigas and two spaces in sala of house, two vigas of porch and an apricot tree and the ground.

In 1877 there was executed a very detailed *hijuela*. It not only gave the areas to be distributed but also their values. To one heir two vigas of house, value \$2; sixteen varas of land, value \$7.67. To another heir, among other items, there appear four varas in La Ciénega de Jacona, value \$1; twenty-three and one-half varas in La Cerca, no value given; one and one-half varas in Abrevadero, value \$.25; three trees, value \$1. To another, four apple, two peach trees, lot and fence, all value \$2; corral lot, 8x23 varas, value \$1. This heir received a list of articles valued at \$5. It included a chisel, a catachism, a demijohn, a barrel, a spindle, a loom, a table and two chairs. She also received a part of a wagon and four cedar posts, value \$.50 and also a pair of stirrups, a whip and a rope of like value.

In another *hijuela* involving many heirs and much detail, the share of one was thirty-eight and one-half varas and four fingers of land in seven pieces; six vigas of the house; one door; \$2 of the soil; one post and five more in the corral; one forked post; one picture. The other heirs received much the same amounts, although they differed a bit in their detail. For example, to one were added a

crucifix and a forked post in the corral. To another, one window of the house; to another, one door of the house.

A subsequent *hijuela* exempted trees on land from the distribution, conveyed rights to a well; one foot in the frame room; one yard, seven inches in the wagon shed.

An *hijuela* of 1889 among other things disposes of a tract twenty-one inches wide.

An *hijuela* of 1896 signed by the heirs simply states they have received their rightful shares in the estate and that they are satisfied and content. There are no details.

An 1870 *hijuela* sets forth that the heir is entitled to \$162.25 for his paternal share; \$17.50 for improvements; \$101.27 for his maternal share; \$17.50 for improvements, and he is paid 101½ varas of land, a three-room house, court yard and corral; mares, oxen, cows and other personal property.

An 1889 *hijuela*, together with land provides for one room of six vigas and two and one-half vigas in an outside room and two vigas in the sala.

An undated *hijuela* distributed to one heir twenty-nine posts in a cow corral; twenty-five posts in a goat corral; two varas three and one-half inches of land in one place; one vara, one and one-quarter feet in another; two feet, one-half inch in another; one foot, three inches, two lines in the house; eight inches in another room.

An 1883 *hijuela* disposes of two vigas in a house and one viga in the *mielero* or molasses place, together with various pieces of land.

An 1896 *hijuela*, among other things, allots \$5.85 in cash; six ft. three inches in house; four ft. three inches in porch; two ft. eight inches in a little house, four ft. two inches in a post corral.

And so one might go on without limit, building up one more source of fascination to the student of the life of the Southwest. Much would be in the nature of repetition; all would be worth the effort put in. Because the greater the knowledge of one phase of life of these interesting times, the better the understanding of it all.

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A subsequent *hijuela* exempted trees on land from the distribution, conveyed rights to a well; one foot in the frame room; one yard, seven inches in the wagon shed.

An *hijuela* of 1889 among other things disposes of a tract twenty-one inches wide.

An *hijuela* of 1896 signed by the heirs simply states they have received their rightful shares in the estate and that they are satisfied and content. There are no details.

An 1870 *hijuela* sets forth that the heir is entitled to \$162.25 for his paternal share; \$17.50 for improvements; \$101.27 for his maternal share; \$17.50 for improvements, and he is paid 101½ varas of land, a three-room house, court yard and corral; mares, oxen, cows and other personal property.

An 1889 *hijuela*, together with land provides for one room of six vigas and two and one-half vigas in an outside room and two vigas in the sala.

An undated *hijuela* distributed to one heir twenty-nine posts in a cow corral; twenty-five posts in a goat corral; two varas three and one-half inches of land in one place; one vara, one and one-quarter feet in another; two feet, one-half inch in another; one foot, three inches, two lines in the house; eight inches in another room.

An 1883 *hijuela* disposes of two vigas in a house and one viga in the *mielero* or molasses place, together with various pieces of land.

An 1896 *hijuela*, among other things, allots \$5.85 in cash; six ft. three inches in house; four ft. three inches in porch; two ft. eight inches in a little house, four ft. two inches in a post corral.

And so one might go on without limit, building up one more source of fascination to the student of the life of the Southwest. Much would be in the nature of repetition; all would be worth the effort put in. Because the greater the knowledge of one phase of life of these interesting times, the better the understanding of it all.