**BOMBAY HIGH COURT**

Kaikhushru Jehangir

Vs.

Bai Bachubai Jehangir

O.C.J. Suit No. 237 of 1948

(Bhagwati, J.)

23.03.1948

**JUDGMENT**

**Bhagwati, J.**

1. This is an originating summons taken out for the purpose of determining the effect of the revocation of a codicil by the testatrix on 27-3-1947. The testatrix made and published her first will on 22-3-1934. Thereafter on 1-5-1939, she made and published her second will (hereinafter referred to as "the second will") wherein she stated at the outset that she thereby revoked all wills, codicils and other testamentary dispositions theretofore made by her and declared that to be her last will and testament. On 4-1-1944, she made and published a first codicil to the second will and she made and published her second codicil to the second will on 28-2-1946, (hereinafter referred to as "the second codicil"). On 6-5-1946, she made and published her third will and on the very same day she cancelled by an endorsement written at the foot of the various documents, the first will, the first codicil to the second will and the second codicil. In the third will which she made and published on 6-5-1946, she again stated at the outset that she thereby revoked all wills, codicils and other testamentary dispositions made by her and declared that to be her last will and testament. The effect of this third will therefore was to revoke all the earlier wills and codicils which she had made and published theretofore and the third will was the only testamentary disposition which survived on 6-5-1946. Even though no endorsement of cancellation was made on the second will as in the case of the first will and the first and the second codicils to the second will, the effect of the provision hereinbefore mentioned in the beginning of the third will was that the second will also was revoked and the third will remained the only testamentary disposition on 6- 5-1946.

2. On 31-1-1947, the testatrix made and published a document which she described as the third codicil to her "will dated 1-5-1939". She declared that document to be the third codicil to the second will. She revoked the bequest made by clause (3) of the second will to Bachubai and in all other respects she thereby confirmed her said will and the second codicil thereto. All the parties appearing before me are agreed that the effect of this third codicil to the second will (hereinafter referred to as "the third codicil") made and published on 31-1-1947, was that the second will and the second codicil thereto were revived and republished with the modification

thereby effected, viz. the revocation of the bequest made by clause (3) of the second will to Bachubai.

3. On 27-3-1947, the testatrix made an endorsement at the foot of the third codicil:- "I revoke this codicil" and the question that has arisen before me is what is the effect of this revocation made on 27-3-1947. The pltf. is one of the sons of the testatrix and the Defendant are the daughter and two other sons of the testatrix. The pltf. has contended that by the revocation of the third codicil the testatrix not only revoked that codicil but also revoked the second will and the second codicil thereto which had been revived and republished by that codicil and that there was therefore an intestacy. Deft. 1, on the other hand, has contended that the revocation of the third codicil was effective only in so far as it revoked the codicil and nothing further. It had not the effect of revoking the second will and the second codicil thereto which had been revived and republished by the third codicil. She also contended that if the Ct. came to the conclusion that the revocation of the third codicil in the manner above mentioned had the effect of revoking the second will and the second codicil thereto, the intention of the testatrix was certainly not to die intestate, but the revocation of the third codicil had been made by her with an intention to revive the third will. If per chance the Ct. came to the conclusion that the third will could not be revived under the circumstances attendant upon the revocation of the third codicil, she invoked the doctrine of dependent relative revocation, and contended that in so far as the intention of the textatrix to revive the third will could not be effectuated, the revocation of the third codicil should be treated as of no effect and that by reason thereof the second will and the second codicil thereto should be treated as operative and should govern the disposition of the estate and effects left by the deceased. A further contention was also taken up by deft. 1 and it was that in the event of it being held that the second will and the second codicil thereto were revoked by the revocation of the third codicil, the third will was not revoked by such revocation made by the endorsement written across the same and that the third will stood and was effective and operative as the last testamentary writing of the testatrix. Deft. 2 appeared in person and submitted to the orders of the Ct. Deft. 3 appeared by counsel and supported the pltf. in his contention that there was an intestacy.

4. As I have stated before the question that I have to determine is what is the effect of the revocation of the third codicil by the endorsement as it was made at the foot thereof on 27-3-1947. There is no doubt that by the execution of the third codicil the second will and the second codicil thereto were revived and republished. The dispute, however, between the parties is what is exactly the effect of this revival or republication of the second will and the second codicil thereto.

5. Counsel for the pltf. drew my attention to several authorities in connection with the revival or republication of an earlier will by a subsequently executed codicil. In *Rogers and Browning v. Pittis*[1], Sir John Nicholl observed (p. 37):

> "...I apprehend it to be clearly settled, that making a codicil to a will, republishes that will.... that the republication of a former will supersedes one of a later date and re establishes the first."

6. Then further (p. 38):

[1](1822) 1 Add. 30

> "Secondly, the republication of a will is tantamount to the making of that will de novo; it brings down the will to its own date, and makes it speak, as it were at that time. In short, the will so republished, is, to all intents and purposes, a new will."

To the same effect are the observations of their Lordships of the P. C. in *Chhatra Kumari Devi v. Mohan Bikram Shah*[2], where their Lordships say that the effect of the execution of the third will in that case was the revocation of the second will and the revival of the first will. A case more analogous to the present one before me was the case of Baker, *In re: Baker v. Baker*[3], In that case a will and a codicil had been made by the testatrix in 1893. This will and codicil were revoked by a will made in 1907. In 1911 the testatrix made a codicil to the will of 1907 and in 1921 she executed a third codicil which referred only to the will and codicil of 1893, altered some of the provisions of the will and otherwise confirmed the same, much in the same terms as we find here in the third codicil executed by the testatrix on 31-1-1947. The further codicil which was executed by the testatrix on 11-10-1921, was in the following terms:

> "I .... make a second codicil to my will dated 21-2-1893, to which I made a first codicil on 21-2-1893 ..." and after making some change in the provisions of the will she declared :
>
> "In all other respects I confirm my said will and, codicil."

On an appreciation of the true position as it obtained the Ct. held that the effect of the codicil of 1921 was to revoke both the will of 1907 and the codicil of 1911 and to revive the will and codicil of 1893. The result of that was to displace the second will and to restore the first. It became both the first and the last. I need not multiply the authorities. Another decision which was cited before me, Chilcott, In the Goods of (1897) P. 223 : (66 l. J. p. 108) is also to the same effect. The whole position is summarized in Mortimer on Probate Law and Practice at p. 202 as under:

> "The republication of a will is tantamount to the making of that will de novo; it brings the will to the date of the republication, and makes it speak, as it were, at that time. I short, the will so republished is, to all intents and purposes, a new will. Consequently, upon the ordinary and universal principle that of any number of wills the last and newest is that in force, it may revoke any will of a date prior to that of the republication.

The republication of a will which itself contains a clause revoking former testamentary instruments must, therefore, it would seem, revoke any intermediate wills executed between the dates of its original execution and its republication."

7. This, however, does not solve the problem. Even though there is the revival or the republication of the second will and the second codicil thereto, one has to visualize the position as it obtained on 27-3-1947, the date of the revocation of the third codicil. Was the effect of what had been done by the testatrix so far the revival of the second will and the second codicil thereto in the sense that the cancellation of those documents which had been effected by the publication of the third will was set at naught or revoked and the

[2]33 Bom. l. R. 1390 : AIR 1931 PC 196

[3](1929) 1 Ch. 668: (98 l. J. Ch. 174)
documents as they had been executed on 1-5-1939, and 28-2-1946, were made operative with only this difference that both these documents were brought up to date, i.e., 31-1-1947, and spoke with effect from that date, or was it a notional re-writing of those very documents, viz., the second will and the second codicil thereto in the body of the third codicil executed by the testatrix on 31-1-1947? If it is the former, then on 31-1-1947, there were three documents in existence which would have to be taken into consideration by the Ct. in its testamentary and intestate jurisdiction if nothing further had happened after 31-1-1947, except the death of the testatrix. Then there would be three documents, the one being the second will, the second being the second codicil thereto and the third being the third codicil, and the Ct., in its testamentary and intestate jurisdiction would admit to probate all the three documents. If, on the other hand, the latter position obtained, viz., that the effect of the execution of the third codicil was to notion ally re-write therein the two earlier documents, viz., the second will and the second codicil thereto, so that the two earlier documents were incorporated in the third codicil by reference therein, the Ct. would have to consider only this document, viz., the third codicil, admit the same to probate, annexing thereto merely for the purpose of reference the two earlier documents, viz., the second will and the second codicil thereto. It would be only one document of which probate would be granted though there might be an annexture thereto in the shape of those two earlier documents.

8. The contention of the pltf. has been that the effect of the execution of the third codicil was to bring into existence only the document and nothing else though by reason of the incorporation by reference therein of the two earlier documents, viz., the second will and the second codicil thereto the testamentary provisions which the testatrix had made in those two earlier documents were made part and parcel of the testamentary disposition made in the third codicil. It is, therefore, contended by counsel for the pltf. that when this codicil, viz., the third codicil, was revoked, not only was that codicil revoked but also were revoked therewith the second will and the second codicil thereto, and the result of it according to his submission was that there was an intestacy. The third will had been already revoked by the execution of the third codicil and there was no question of its being revived in any manner whatever. That being the position, not only was the third will inoperative having been revoked earlier but the second will and the second codicil thereto also became inoperative, there was no testamentary disposition of the testatrix which survived and there was an intestacy.

9. Counsel for deft. 1 has seriously contended that the effect of the revocation of "this codicil" cannot be that the second will and the second codicil thereto were also revoked thereby. He has urged that whatever might have been the position in England prior to the enactment of the Wills Act and here prior to the enactment of the Indian Succession Act (XXXIX [39] of 1925), the position is now governed by the explicit terms of Section 70, Succession Act which says:

> "No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, of by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same."

By way of comparison and in order to sustain his position he has also drawn my attention to

Section 73, Succession Act, subs, (1) of which says:

> "(1) No unprivileged will or codicil, nor any part thereof, which has been revoked in any manner hereinbefore required, and showing an intention to revive the same."

It is conceded that there is no question of any implied revocation of a will or a codicil after the enactment of Section 70, Succession Act. No authorities are needed for this proposition, but a similar situation had arisen in England under the provisions of the Wills Act and had been considered by the learned Judges of the Probate Ct. A reference may be made in this behalf to the observations of Lord Penzance in *Black v. Jobling*[4], and In the Goods of Suvage, (1870) L. R. 2 P and D 78 where his Lordship categorically stated that after the enactment of the Wills Act the only thing which the Ct. need look to is whether the words of the statute which are imperative have been complied with. Under the statute it is necessary to establish an intention to destroy. There cannot be any revocation by necessary implication. The revocation can only be by one or the other of the modes which are specified in the statute, and so far as we are here concerned, these modes are specified in Section 70, Succession Act. The only way in which an unprivileged will or codicil can be revoked have been specified there to be (1) marriage, (2) another will or codicil, (3) some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is required to be executed, or (4) the burning, tearing or otherwise destroying the same by the testator, etc. If the mode adopted by the testatrix is not one of the four modes which are prescribed in Section 70, Succession Act, the revocation of the unprivileged will or codicil cannot be brought about.

10. I have, therefore, got to consider in the light of the above what is the effect of the revocation of "this codicil" as it was made by the testatrix on 27-3-1947. Without anything more, having regard to the strict terms of Section 70, Succession Act, I would come to the conclusion that it was "this codicil", viz., the third codicil which was revoked by the endorsement made by the testatrix on 27-3-1947. Even though by the terms of the third codicil the second will and the second codicil thereto were revived or republished as of 31-1-1947, those two documents were not in terms revoked by the testatrix when she made the endorsement on 27-3 1947. If the terms of Section 70, Succession Act, have got to be strictly complied with, "the same" meant not only the third codicil but also the second will and the second codicil thereto, if all these three documents were intended to be revoked and were revoked. The only way in which one can gather the intention of the testatrix is by looking at the terms of the revocation as appearing in the endorsement made by her on 27-3-1947. If it was her intention also to give a go-by to and to revoke the earlier documents which had been revived and republished by the third codicil, it was open to her to say so in so many terms. As there is no implied revocation after the enactment of Section 70, Succession Act, whatever the testatrix did had not the effect of revoking these two earlier documents, viz., the second will and the second codicil thereto.

11. There is, however, a further aspect of this question which may be considered here by me and it is this. If, as I have stated before the effect of the revival or the republication of the two earlier documents, viz., the second will and the second codicil thereto, was to

[4](1869) L. R. 1 P and D 685

bring into existence on 31-1-1947, those two documents along with the third codicil there would come into existence three separate documents, each one of which would have to be taken into

account and taken into consideration by the Ct. in its testamentary and intestate jurisdiction while admitting the same to probate. If this were the true position, then certainly the endorsement made by the testatrix on 27-3-1947, was not effective to revoke anything more than the third codicil. The two earlier documents have not been referred to by her in this endorsement of cancellation and would certainly continue to be effective and operative, not having been revoked in accordance with the strict provisions of Section 70, Succession Act. The effect as contended for by the pltf. could only be achieved if the result of the execution of the third codicil was, as it has been otherwise contended, to, as it were, re-write in the body of the codicil the two earlier documents, viz. the second will and the second codicil thereto, so as to speak from the date of the execution of the third codicil, viz. 31-1-1947. If the Ct. in those circumstances would have to admit to probate only the third codicil, annexing thereto because of their being incorporated therein by reference the two earlier documents, viz. the second will and the second codicil thereto, the effect of the endorsement on 27-3-1947, in the terms which have been adopted by the testatrix would have the effect of revoking all the three documents which were incorporated in this one document, viz. the third codicil. In my opinion, however, this position as it has been contended for by counsel for the pltf. is not the true position. There is no doubt a revival of the second will and the second codicil thereto. There is also, as it has been otherwise stated, a republication of the second will and the second codicil thereto by reason of the confirmation of the terms thereof in the third codicil. Nonetheless, they are independent documents which once having been revoked have had life put into them once again and have been revived or resuscitated or as it is said republished as of 31-1-1947. Nonetheless they are the very same documents though speaking as of a later date. It is not a mere question of economy of expression which might be used by the testatrix when she was executing the third codicil. What she was in effect doing by making those provisions in the third codicil was to, as it were, re-write those documents with only this change that the provisions therein were brought to date and the date of the re writing of those earlier documents was 31-1-1947. Those were the two documents, viz. the second will and the second codicil thereto, which were by virtue of the provisions of the third codicil re-written by her on this date 31-1-1947, with only the effect of making the testamentary dispositions contained in those documents to speak from the date 31-1-1947, and not the earlier dates on which the same had been executed. If that is the position, then certainly three independent documents were brought into existence on 31-1-1947 : (1) the second will dated 1-5-1939, but with the re-writing thereof and the bringing down of the provisions thereof to the date 31-1-1947, (2) the second codicil to the second will dated 28-2-1946, again with the above effect of bringing the same to 31-1-1947, and (3) the third codicil to the second will which spoke from and with effect from this very date 31-1-1947, but with the alteration which had been introduced therein by reason of the deletion of the legacy in favor of Bachubai contained in clause (3) thereof. All these three documents came into existence on 31-1-1947, and they were independent documents so far as the execution of those documents and the testamentary effect thereof be concerned though they were part and parcel of the testamentary dispositions of the testatrix, they being her testamentary dispositions which would come into effect after her death as regards whatever properties moveable and immoveable were left by her at the time of her death.

12. In connection with this argument of his, counsel for the pltf. drew my attention to a passage from Halsbury's Laws of England, vol. XXXIV, p. 98, para. 136, where the confirmation of will by codicil and the effect thereof are referred to:

> "The effect of a confirmation of the will by a codicil is for many purposes to bring the dispositions of the will down to the date of the codicil and to effect the same disposition

> of the testator's estate as if the testator had at that date made a new will containing the same dispositions as the original will."

There is no quarrel whatever with this proposition as it has been enunciated in this passage from Halsbury. The effect of the confirmation is no doubt that the testamentary dispositions contained in the document which has been thus confirmed are brought up to the date of the execution of the subsequent codicil. It is as if a new will containing the same dispositions as the original will has been made on the subsequent date, but this effect which is laid down of the confirmation of the earlier will by the later codicil is not that the earlier document when confirmed does not exist as an independent document. It is not as if it is to be treated as naught or as having not existed at all, and as being incorporated and written within the terms of the new codicil which has been executed. Counsel for the pltf. further relied upon the observations of their Lordships of the P.C. in *M. Goonewardene v. E.M. Goonewardene*[5], where their Lordships had to consider the effect of the confirmation of a will by a codicil and they observed (p. 888) :

> "...the effect of confirming a will by codicil is to bring the will down to the date of the codicil and to effect the same disposition of the testator's property as would have been affected if the testator had at the date of the codicil made a new will containing the same dispositions as in the original will but with the alterations introduced by the codicil."

They further quoted with approval the language used by North J. in In re Champion: *Dudley v. Champion*[6], where the learned Judge observed that the effect was to make a devise in the will "operate in the same way in which it would have operated if the words of the will had been contained in the codicil of later date." On the strength of these observations of North J. quoted with approval by their Lordships of the P. C. it was argued by counsel for the pltf. that the effect of the execution of the third codicil on 31-1-1947, was that the words of the original second will and the second codicil thereto should be deemed to have been contained in the third codicil executed on 31-1-1947, and therefore with the revocation of that third codicil those words contained in the second will and the second codicil thereto should also be deemed to be revoked. I cannot accept this contention of counsel for the pltf. What their Lordships of the P. C. had to consider in the case before them was what was the effect in regard to the property left by the deceased testator of the confirmation of the will by a codicil. There were certain monies which had been invested by the testator on mtge. bond or promissory notes and the question that their Lordships had to consider before them was whether the settled legacy included the monies which stood invested by the testator on mtge. bond or promissory notes on 9-8-1927, which was the date of the execution of the subsequent codicil. The only thing which they decided, and with great respect lightly, was that the effect of the confirmation

[5] AIR 1931 PC 307 : (134 I. C. 1074)

[6](1893) 1 ch. 101 : (62 L. J. Ch, 372)

of the will by the codicil was to make the earlier will speak as of the date of the codicil, viz. 9-8-1927, and the observations of North J. which their Lordships quoted with approval in the course of the judgment have also to bo read in the same light. What has got to be considered in those cases where there is the confirmation of an earlier will try a subsequent codicil is what is the effect of such confirmation or revival or republication of the earlier will qua the properties left by the deceased testator or testatrix, and the only thing which has been decided by their Lordships of the P. C. is that the property left by the deceased has got to be taken in considering what are the

testamentary dispositions thereof as of the date of the publication of the later codicil. That is the only scope of the decision and no more. The question of the type which has arisen before me, viz., whether the effect of the revival or the republication of the earlier documents was to put life into them and to bring them into existence independently though as of a later date together with the later codicil which has been executed and which has had the effect of such revival or republication or was merely to bring into existence only one document, viz. the later codicil which has been executed incorporating therein by reference the earlier documents which may be considered to be revived or republished thereby, was not before their Lordships, and I do not read these observations of their Lordships as in any manner militating against the position which I have enunciated in the earlier part of my judgment.

13. In support of his contention counsel for the pltf. further relied upon the observations of Sir J. Hannen in *James v. Shrimpton*[7], In that case the testator executed a will on 12-10-1871, and subsequently married on 3-7-1872. On the occasion of his marriage he executed a codicil to his will whereby he made a provision for his wife and in all other respects revived, ratified and confirmed his will. The wife died on 28-12-1874. In may 1875 the testator produced before his house-keeper a sealed packet which contained the will, but which was subsequently discovered not to contain the codicil. He had made declarations throughout the latter part of his life that he adhered to the will. On his death the codicil could not be found and it was presumed to have been destroyed. The question that arose for the consideration of the Ct. was whether the destruction of the codicil upon which the revival of the will depended had left the will in-operative. The learned Judge came to the conclusion on the facts proved before him that it was not the intention of the testator to leave the will inoperative but his idea was that the will having been brought into existence can remain valid notwithstanding the destruction of the codicil. While considering whether he should grant probate of the will and codicil on the presumption that what the testator had done had not been done animo revocandi, the learned Judge made the following further observations (p. 432):

> "Where there has been a physical destruction of a testamentary paper the Ct. has often been called upon to form an opinion as to the intention of a deceased at the time he did the act. In this case I have come to the conclusion that the testator destroyed the codicil with no intention of revoking the will, and that the Court should give no more effect to the act than it would do if the testator had destroyed the paper under a mistake as to the instrument he was destroying. It was done under a misconception of the effect of the act; it was not done animo revocandi...."

It was argued from these observations of the learned Judge that if proof of the testator's intention was not forthcoming as it was forthcoming in that case the Ct. would have come

[7](1876) 1 P. D. 431 at p. 432 : (45 L. J. P. 85)

to the conclusion that the destruction of the codicil was done with the intention of revoking the will, and therefore in the case before me also I should come to the conclusion that revocation of the third codicil was done by the testatrix with the intention of revoking the second will and the second codicil thereto. There are two answers to this argument of counsel for the pltf. The one is the terms of the endorsement at the foot of the third codicil. In terms the testatrix has stated "I revoke this codicil." Her intention is as clear as clear can be. She had not the intention of revoking any other testamentary disposition which she had made either originally or by way of

revival or republication thereof. The second answer is to be found in the foot-note in Mortimer on Probate Law and Practice, p. 201. At p. 201 the position has been stated based on the decision of Sir J. Hannen in *James v. Shrimpton*[8], in terms which I have mentioned above. The foot-note, however, adds (p. 201):

> "This case does not expressly decide that a revoked will, which has been revived by a codicil, can be rendered in operative by subsequent destruction of the codicil by the testator with the intention not only of revoking the codicil, but also of revoking the will. This question must therefore be regarded as unsettled, but since the statute was designed to abolish not only revival by implication, but also revocation by implication, would perhaps be decided in the negative."

And again the passage from Mortimer on Probate Law and Practice at p. 156 reads thus :

> "Section 20, Wills Act, expressly provides that no will or codicil or any part thereof shall be revoked otherwise than in manner there prescribed. and it has been held that, having regard to the provisions of this section, it is no longer competent for the Ct. to hold that a properly executed testamentary paper, whether will or codicil, can be revoked in any other manner than by the methods stated therein."

I need not repeat the various considerations which I have urged before in relation to Section 70, Succession Act and am of the opinion that this affords a complete answer to this contention of counsel for the pltf.

14. Under the circumstances which I have stated above, I have come to the conclusion that the revocation of the third codicil by the endorsement made at the foot thereof by the testatrix on 27-3-1947, had the effect of revoking that codicil and that codicil only and not the second will and the second codicil thereto which were revived and republished by the execution of that codicil on 31-1-1947, and brought down to that date 31-1-1947. On this conclusion of mine, there would be no intestacy but the second will and the second codicil thereto would be the testamentary dispositions of the testatrix entitled to probate.

15. I cannot, however, rest content with merely recording this conclusion of mine. The matter is likely to go to a higher tribunal having regard to the stake between the parties, and I therefore deem it necessary to record my opinion as regards the other argument based on the doctrine of dependent relative revocation which has been addressed to me by counsel for deft. 1. The argument is this. At the time when the testatrix revoked the third codicil by making the endorsement at the foot thereof on 27-3-1947, she had no animo revocandi so far as the second will and the second codicil thereto were concerned, and if

[8](1876 1 P. D. 431 : 45 L.J.P. 85)

that was going to be the effect, the Ct. should hold by reason of the operation of this doctrine of dependent relative revocation that the revocation of the third codicil itself was inoperative. The doctrine of dependent relative revocation has been thus enunciated in Halsbury's Laws of England, vol. XXXIV p. 89, Para. 127. The position would be more clear if I also quoted a passage from Para. 126 on the preceding page:

> "Revocation by destruction, or obliteration, or by subsequent will or codicil, may be conditional, and it the condition in question is unfulfilled the revocation fails and the will, as made before such revocation, remains operative."

Then Para. 127:

> "In particular, revocation may be relative to another disposition which has already been made or is intended to be made, and so dependent thereon that revocation is not intended unless that other disposition takes effect."

16. It has been stated in Para. 5 of the written statement of deft. 1 that when the testatrix revoked the third codicil on 27-3-1947, she did it under certain circumstances and facts therein mentioned, the intention really being as therein stated to treat as operative the third will. If the intention was to keep the second will operative, it would be to have as operative another disposition which had already been made. If the intention was to keep the third will operative, the intention would be to keep operative a testamentary disposition which was intended to be made, because the third will had by that time been revoked by the revival or republication of the second will under the terms of the third codicil. This is the manner in which the doctrine of dependent relative revocation is sought to be brought to the aid of deft. 1 in order to avoid the possible contingency of an intestacy. All this, however, would require evidence as regards the circumstances which were attendant upon the revocation of the third codicil by the testatrix on 27-3-1947. If these circumstances were per chance required to be gone into, they would entail taking evidence in Court as regards the exact intention of the testatrix when she made that endorsement at the foot of the third codicil on 27-3-1947. Counsel for the pltf. however, urged before me that even in that contingency no oral evidence of the intention could ever be allowed to be led. He relied upon a passage from Jarman on Wills, Edn. 7, p. 179:

> "If a testator makes two wills, the second of which revokes the first, and then destroys the second will for the express purpose of setting up the first, he fails in his object; for parol evidence of his intention is not admissible in order to give effect to that object."

If that was the only position, no oral evidence could certainly be led. But one has to proceed and read this passage a little further in order to show that when the doctrine of dependent relative revocation is invoked, such evidence would be admissible. The passage from Jarman on Wills reads further (p. 179):

> "...though it is admissible to prove that the destruction was effected for the sole purpose of reviving the first will; in that case the doctrine of dependent relative revocation prevents the revocation of the destroyed will."

That being the position, if the doctrine of dependent relative revocation would at any time be invoked, it would be, in my opinion, a case for leading evidence of the circumstances set out in Para. 5 of the written statement of deft. 1. In so far, however, as I have come to the conclusion noted above that the revocation of the third codicil had not the effect of revoking the second will

and the second codicil thereto, it is unnecessary for me to proceed any further in the matter of this discussion. As I have stated above, I have merely recorded this opinion, if I may presume to say so, for the benefit of the higher tribunal in the event of its coming to the conclusion adverse to the one which I have already come to.

17. Costs of all the parties in separate sets as between attorney and client out of the estate.

18. Certificate for two counsel.
Order accordingly.