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REVOCATION OF WILLS-DEPENDENT RELATIVE REVOCATION

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REVOCATION OF WILLS—DEPENDENT RELATIVE REVOCATION—Testator, after providing in his will for the payment of debts and expenses of administration, devised and bequeathed the residue of his estate "to my wife, Alice B. Houghton, if she is living at the time of my death; and if she is not living at the time of my death, then . . . to my brother-in-law, Stephen M. Stuart, of Fort Myers, Florida," The will was duly executed in this form, but thereafter the words "my brother-in-law, Stephen M. Stuart, of Fort Myers, Florida," were lined out and the testator inserted the following: "Give to Louisa Paquin the shop and property known as 2015 South Fort St. with the business as it is, and the property at 2747 to my attorney Walter M. Nelson Lot 10 of Whiffle & Scovel Sub, and nothing to Steven M. Stuart." The will was not re-executed. The testator's wife predeceased him. *Held*, the will was revoked except as to the provision for the payment of debts and expenses of administration, and for the appointment of an executor, the doctrine of dependent relative revocation being inapplicable. *In re Houghton's Estate*, 310 Mich. 613, 621, 17 N.W. (2d) 774, 18 N.W. (2d) 254 (1945).

The court distinguished the case of *In re Bonkowski's Estate*,[1] in which it appeared that, after the execution of the will, the name of one legatee was, at the testator's direction, stricken out, and another name substituted. The doctrine of dependent relative revocation was applied and the name of the original legatee was permitted to stand. The court there recognized that in case of a substitution made by a testator in the belief that it is valid, there may be a presumption that the testator would have preferred the original language of the will to stand had he known the substituted provision was invalid. In the instant case, however, the court apparently regards the existence of substitutional provisions as significant only in determining the testator's intent to revoke, and states, quoting the *Bonkowski* case, that "the rule is generally applicable that if a testator purposely and intentionally destroys his will, the doctrine of dependent relative revocation does not apply, even though testator may have intended when he destroyed his will to execute at some future time a new will disposing of all his property." It is believed that, in accordance with the better cases[2] and the opinions of writers on this subject,[3] the doctrine of dependent relative revoca-

[1] 266 Mich. 112, 253 N.W. 235 (1934).

[2] See, for example, Ruel v. Hardy, 90 N.H. 240, 6 A. (2d) 753 (1939). For American cases on this subject see the notes in 62 A.L.R. 1401 (1929), and 115 A.L.R. 721 (1938).

[3] Warren, "Dependent Relative Revocation," 33 HARV. L. REV. 337 (1920); Evans, "Testimentary Revocation by Act to the Document and Dependent Relative Revocation," 23 KY. L.J. 559 (1935); ATKINSON, WILLS, §§ 161, 162 (1937); 1 PAGE, WILLS, 3d ed., §§ 478-486 (1941).

tion should be applied in such a case as the one before the court only if it appears that the testator would have preferred his original language to stand had he been aware that the substituted provisions could not take effect. Here the unconditional statement of the testator that the original devisee was not to take and the fact that, even if the substituted provisions had been valid, they would not have disposed of all the property covered by the revoked provision, lead strongly to the conclusion that the decision of the court is right. It is believed, however, that it might have been better to rationalize the conclusion on the basis of applying a doctrine designed to give relief for mistake rather than as a matter of *animus revocandi*.[4]

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[4] ATKINSON, WILLS 389 (1937).