WILLS - EFFECT OF CODICIL TO HOLOGRAPHIC WILL WHICH HAD PREVIOUSLY BEEN REVOKED BY AN ATTESTED INSTRUMENT

Charles G. Schwartz

University of Michigan Law School
WILLS — EFFECT OF CODICIL TO HOLOGRAPHIC WILL WHICH HAD PREVIOUSLY BEEN REVOKED BY AN ATTESTED INSTRUMENT — In June, 1927, testator executed a holographic will leaving his estate to the defendant, a second cousin. The following year he executed a duly attested will giving his estate, consisting of an undivided interest in realty, to his wife, and containing an express clause revoking all former wills. His final testamentary act was to add an annotation to the holographic will, set off by a rough bracket, bequeathing one dollar each to his wife and his niece. The codicil to the holographic will was dated, signed, and in his own handwriting. Held, the holographic will, together with the codicil, should be admitted to probate to the exclusion of the attested instrument. By his final act the testator intended to adopt the original will as subsequently modified as his last testament.1

In re Cazawang’s Estate, 42 Cal. App. (2d) 796, 110 P. (2d) 138 (1941).

1 The court applied § 25 of the Probate Code, which provides that execution of
The general doctrine is well settled that a codicil executed with the formalities required by statute for the execution of wills operates as a republication of the will, as modified by the codicil. This rule applies, even though, as in the instant case, the effect of such republication is to revoke an intermediate will which had expressly revoked the first instrument. Clearly the statute followed by the court in the principal case can be cited in support of these propositions, and to that extent it is merely declaratory of existing law. But granting the correctness of the court's conclusions regarding republication and the intention of the testator, a further dilemma would seem to arise from the variance in dignity of the several wills involved. Whether or not the court might have analyzed the situation herein presented along different lines offers an interesting problem. Since the execution of a codicil, in republishing the original will, must necessarily thereby revoke the intermediate will, the net effect is that a duly attested will is revoked by a subsequent informal writing. There are authoritative statements to the effect that an attested will can be revoked by a holographic instrument: The cases involving this problem, however, are concerned chiefly with other issues, and no case has been found directly discussing this point. It is clear that the policy of probate statutes is to regard a will, especially one devising realty as in the instant case, as one of the most solemn instruments known to the law, and to allow its execution and revocation only if strict formalities are observed. Most of the American states, including California,

a codicil referring to a previous will has the effect of republishing the will, as modified by codicil. Cal. Prob. Code (Deering, 1941), § 25.


3 In re Engle's Estate, 129 Ore. 77, 276 P. 270 (1929); In re Campbell's Will, 170 N. Y. 84, 62 N. E. 1070 (1902). See also 1 JARMAN, WILLS, 7th ed., 176 et seq. (1930), and 68 C. J. 867 (1934).

4 This result follows because of the entirely inconsistent provisions of the two wills. Johnson v. Helmer, 100 Ore. 142, 196 P. 385, 1115 (1921).

5 1 PAGE, WILLS, 2d ed., § 431 (1928). See also ATKINSON, WILLS 380 (1937).

6 In re Kelleher's Estate, 202 Cal. 124, 259 P. 437 (1927); Rickard v. Rickard, 134 Va. 485, 115 S. E. 369 (1923); and In re Iburg's Estate, 196 Cal. 333, 238 P. 74 (1925).


9 Cal. Prob. Code (Deering, 1941), § 74. This section provides for the revocation of wills "by a written will, or other writing of the testator, declaring such revocation
have provided by statute that the revocation of a will by a later instrument is possible only if such later instrument is executed in accordance with the formalities required for the execution of wills. The sections in the California code dealing with the requirements for the execution of wills expressly allow a holographic instrument. ¹⁰ It is equally true that the intention of the testator should be given effect whenever possible. ¹¹ However, it would seem that to permit holographic revocation of an attested will is in effect to dispense with the formalities and safeguards established by attestation. Unless the intent of the testator is to govern absolutely, there is good reason in maintaining the relative dignity of an attested will. In light of these considerations it might well be argued that the California legislature, in allowing revocation by a subsequent instrument only if it is executed with the same formalities required for the execution of a will, meant to require an instrument of equal dignity with the revoked will, and hence that a holographic instrument is powerless to revoke a duly attested will.

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