

1970 Present : H. N. G. Fernando, C.J. and Thamotheram, J.

S. W. GOONEWARDENE, Appellant, and
A. BEDDAWELA, Respondent

S. C. 252/68 (Inty.)—D. C. Colombo, 23242/T

Will—Revocation by destruction—Quantum of evidence.

A Will cannot be said to have been revoked by destruction merely because certain strokes in ink and other notes were made on it by the testator after the Will was executed, indicating an intention to revoke. Revocation of a Will by destruction must be proved not only by evidence of an intention to revoke but also by an actual destruction in an appropriate manner.

APPEAL from an order of the District Court, Colombo.

H. Rodrigo, with Asoka Abeyasinghe, for the petitioner-appellant.

H. W. Jayewardene, Q.C., with D. S. Wijewardane and G. M. S. Sumaraweera, for the 5th respondent respondent.

June 24, 1970. H. N. G. FERNANDO, C.J.—

This is an appeal against an order of the learned District Judge refusing to enter probate of a last Will. The first issue framed at the inquiry was whether the Will was the act and deed of the testator; this issue was answered in the affirmative. Another issue was whether the document was a *draft* of a last Will. This was answered in the negative. The only issue answered by the learned Judge against the propounder was that the Will had been revoked.

The grounds upon which it was held that the Will had been revoked may be explained as follows :—

The document itself is a typed document purporting to have been signed and attested on 12th January, 1963.

Many of the clauses of the document have ink strokes across them; and in a few instances there are names or initials written against some clauses indicative of an intention that the properties referred to in this clause should go to the persons whose names or initial or initials have been entered.

The finding of the learned District Judge on issue No. 3 makes it quite clear that in his opinion these strokes in ink and other notes were made after the Will was executed. In fact his further finding that the Will was revoked is also reached on the basis that the testator had placed these marks and writings on the Will after it was executed. We are unable therefore to accept at this stage the submission for the respondent that these marks and writings should raise any suspicion about the due execution of the Will.

So far as the finding of revocation is concerned it is clear from the authorities cited by counsel for the appellant that there must both be an intention to revoke, and an actual destruction in an appropriate manner. In the present case there was no doubt an intention to revoke because the marks and writings made by the testator make it apparent that he desired to change some of the bequests which were contained in his Will. But his desire remained an intention to change his Will, and he was apparently unable to carry out his purpose of executing a new Will in accordance with his changed intentions. In the result there was not even an attempt to destroy the Will and the finding that it was revoked by destruction has to be set aside.

The appeal is allowed and the record is returned to the District Court for probate of this Will to be granted. The appellant will be entitled to the costs of the appeal.

THAMOTHERAM, J.—I agree.

Appeal allowed.