

43 Phil. 413

[G. R. No. 17714. May 31, 1922]

**IN THE MATTER OF THE ESTATE OF JESUS DE LEON. IGNACIA DIAZ,
PETITIONER AND APPELLANT, VS. ANA DE LEON, OPPONENT AND APPELLEE.**

D E C I S I O N

ROMUALDEZ, J.:

The only question raised in this case is whether or not the will executed by Jesus de Leon, now deceased, was revoked by him.

The petitioner denies such revocation, while the contestant affirms the same by alleging that the testator revoked his will by destroying it, and by executing another will expressly revoking the former.

We find, that the second will Exhibit 1 executed by the deceased is not clothed with all the necessary requisites to constitute a sufficient revocation.

But according to the statute governing the subject in this jurisdiction, the destruction of a will with *animo revocandi* constitutes, in itself, a sufficient revocation. (Sec. 623, Code of Civil Procedure.)

From the evidence submitted in this case, it appears that the testator, shortly after the execution of the first will in question, asked that the same be returned to him. The instrument was returned to the testator who ordered his servant to tear the document. This was done in his presence and before a nurse who testified to this effect. After some time, the testator, being asked by Dr. Cornelio Mapa about the will, said that it had been destroyed.

The intention of revoking the will is manifest from the established fact that the testator was anxious to withdraw or change the provisions he had made in his first will. This fact is disclosed by the testator's own statements to the witnesses Canto and the Mother Superior

of the Hospital where he was confined.

The original will herein presented for probate having been destroyed with *animo revocandi*, cannot now be probated as the will and last testament of Jesus de Leon. Judgment is affirmed with costs against the petitioner. So ordered.

Araullo, C. J., Malcolm, Avancena, Ostrand, and Johns, JJ., concur.

Villamor, J., did not take part.

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