

and the judge found the agreement proved. The father made a subsequent will in 1922, which was duly proved by the executors and the plaintiff asked for specific performance of the agreement not to revoke the will of 1919. The learned judge pointed out that the Court had no power to revoke the will of 1922 and substitute for it the will of 1919, a will being by its very nature revocable. If a will is revoked by a subsequent will in breach of a covenant not to revoke it, the new will, if otherwise valid, necessarily stands as the last will of the testator: *Stone v. Hoskins*, [1905] P. 194; *In the Estate of Heys*, [1914] P. 192, 197.

The proper remedy for the breach of the agreement not to revoke is to declare that the executors of the last will are trustees for the plaintiff of the property which would have passed to him under the revoked will, and also to order those who as volunteers have derived title to property from the testator to restore it. The defendants pleaded the Statute of Frauds and contended that the plaintiff could not enforce the parol agreement so far as the realty was concerned. But the learned Judge said that in this case there was no agreement to devise land or an interest in land such as was in question in *Maddison v. Alderson* (1883), 8 App. Cas. 467. The plaintiff entered into the agreement on the express condition that the father would not revoke or alter his will. There was nothing in the stipulation at variance with the written contract of purchase. The promise not to revoke was a contract collateral to the agreement to purchase which might be proved by extrinsic evidence: *Morgan v. Griffith* (1871), L. R. 6 Ex. 70; *Erskine v. Adeane* (1873), L. R. 8 Ch. 756, and *Long v. Smith* (1911), 23 O. L. R. 121. Judgment was given for the plaintiff declaring that except as to the combined amount of the pecuniary legacies in the 1919 will the defendant executors held the whole of the father's estate in trust for the plaintiff subject to the debts and funeral and testamentary expenses. The learned judge said that the executors must distribute what was left in their hands, so far as it would extend, among the beneficiaries named in the will of 1922, which of course revoked the pecuniary legacies given by the earlier will. He also pointed out that the plaintiff, asserting his right, as he was dehors the 1922 will, was excluded from any share in the amount left to the executors to distribute.

THE TALE OF THE TEA-HOUSE CAT.¹

(*Clinton v. J. Lyons & Co.*, 81 L. J. K. B. D., 923.)

I.

A London lady of some charms,
 Encompassing within her arms
 A dog of pedigree and grace—
 Of ancient Pomeranian race—
 Intending to indulge her bent,
 Into defendants' tea shop went
 Accompanied by her husband true
 To indulge in that delicious brew.

¹ Reprinted from 48 *Can. Law Jour.*, p. 668.

II.

Now all unknown to lady fair,
No dog had leave or license there;
And the poor canine could not read
The prohibition of his breed,
Well posted up before his face,
Denying dogs in there a place.
So recklessly about he ran
In blissful ignorance of the ban.

III.

Within a store-room off the shop
A pussy cat had raised a crop
Of kittens, fluffy, soft and fair,
And she was lurking in her lair,
When Pomeranian got the scent
And, though upon no mischief bent,
The dog soon felt the teeth and claws
Of outraged pussy's mouth and paws.

IV.

From feline rage, by action brave,
Her doggy dear from harm to save,
Into her husband's arms she shoved
The Pomeranian pup she loved;
When fierce upon her shoulder sprang
The cat with still unsated fang,
And smelling there its ancient foe
Bit the plump arm in furbelow.

V.

These are the facts the lady pled—
That she and her poor doggy bled;
And unto Judge and Jury came,
Substantial damages to claim.
And having heard the lady's cause,
So full of fur and teeth and claws,
One hundred pounds she was assessed,
And she the Judge and Jury blessed.

VI.

Alas! for lady fair and pup,
The case was taken higher up,
The masters of the vicious cat
Sought K.B.D. to change all that.
And learned lawyers argued long,
That this was right and that was wrong;
Some nineteen precedents were cited—
And finally the cat was righted.