

same by the testator or by his direction, in manner aforesaid, unless the same be altered by some other will or codicil in writing or other writing of the deviser signed as hereinbefore said in the presence of two or more witnesses declaring the same.

Revocation by operation of law.

Will may be revoked only as provided in this section. Whether tearing will amounts to revocation depends upon testator's intention. Act must be free and voluntary and mental capacity same as required for execution of will. Refusal to probate will improper. *Laches. Limitations. Hunter v. Baker*, 154 Md. 315.

Apparent revocation of part of will by tearing out a particular clause; reinsertion. *Fraud. Measley v. Housman*, 144 Md. 350.

Evidence that testator had declared that he had executed later will revoking earlier will and that later will was subsequently destroyed by him or by another with his knowledge and in his presence, was insufficient to carry case to jury, in absence of evidence that later will was properly executed and attested. *Bird v. Bird*, 165 Md. 351.

Cited but not construed in *Garner v. Garner*, 167 Md. 423.

Cited in construing Sec. 350. *Rabe v. McAllister*, Daily Record, Nov. 3, 1939.

See notes to sec. 336.

In addition to modes of revocation enumerated in this section, there may be an implied revocation resulting from an alteration of the estate of testator between time when will is executed and when it goes into effect. Where a testatrix by a deed of trust transfers legal title of property, a revocation is thereby worked of will which she had previously executed devising such property. A will speaks as of date of testator's death and operates upon his property as then situated unless a contrary intention plainly appears. *King v. McComas*, 126 Md. 382.

When a testator, after having disposed of whole of estate owned by him at the time his will was made, remarries and has children by his second wife, his will is revoked by operation of law. The marriage of a man, however, does not revoke his will, nor does subsequent death of his wife. *Redwood v. Howison*, 129 Md. 589.

Generally.

A testator may under this section revoke a clause of his will without invalidating remaining clauses, provided he does not thereby enlarge the estate of any one who takes under will or change character of remaining provisions. When a will is found among private papers of testator cancelled or obliterated, it is presumed to have been so cancelled or obliterated *animo revocandi*. What amounts to a cancellation or obliteration. When a testator is arrested in his purpose and changes his determination to revoke will before act of obliteration is completed, the will is unrevoked. Cases reviewed. *Safe Deposit & Trust Co. v. Thom*, 117 Md. 161.

The only methods of revoking a will in this state are those prescribed by this section. A will found "in the old back room which was full of different papers, letters and a lot of rubbish," upheld. *Woodstock College v. Hankey*, 129 Md. 683.

Attempted alterations of a will held to be without legal effect; there was no republication or re-execution of will. *Pacholder v. Rosenheim*, 129 Md. 457.

A later will held to revoke a prior one although it did not in terms do so. *Gardner v. McNeal*, 117 Md. 31.

The orphans' court has jurisdiction over matters concerning *factum* of the will, such as whether certain erasures were intentionally made, and whether testator at time he made them was of sound mind; *contra*, as to matters-affecting construction of will. (See also notes to sec. 243.) *Home for Aged v. Bantz*, 106 Md. 149.

A will cannot be revoked or altered by a parol declaration, but only as set out in this section. *Byers v. Hoppe*, 61 Md. 211; *Sewell v. Slingluff*, 57 Md. 548; *Wittman v. Goodhand*, 26 Md. 106.

Parol testimony, although not excepted to as required by art. 5, sec. 40, will not be given effect so as to revoke a will contrary to this section. *Lowe v. Whitridge*, 105 Md. 189.

The destruction of a will in the presence of a testator, or even by him, will not amount to a revocation unless he understands nature and effect of the act, and performs it voluntarily with an intent to revoke. *Rhodes v. Vinson*, 9 Gill, 169; *Semmes v. Semmes*, 7 H. & J. 388.

The word "clause" as used in this section, construed. What amounts to "revocation"? Distinction between revocation and transmutation. History of this section. Erasures and obliterations. *Eshbach v. Collins*, 61 Md. 498.

As to the express and implied revocation of a will by a subsequent will, a revival of first will by cancellation of second will, and effect of the second will being inoperative, see *Colvin v. Warford*, 20 Md. 358.

For a case involving revocation of a will when made both before and after a deed conveying land in trust for such uses as will declares, see *Baltimore v. Williams*, 6 Md. 235.