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case for the first time the Wills Act was cited, and the way the learned judge referred to it was as follows:—"Under the old law the effect of destroying a will was by presumption to defeat the operation of the codicil to that will, but by the present law there must be an intention to destroy. Here, however, the deceased did not mean to destroy the codicils, but on the contrary he expected at the time and declared afterwards that the parties mentioned in the codicils would have the benefit of the legacies he had given them. I am of opinion that the Court is bound to pronounce for the solidity of the two codicils and I decree probate of them to the brother who is executor according to the tenor on the first codicil." Since this last was established a case occurred, *Grimwood v. Cozens*, 2 Sw. & T. s. 64, which was heard in 1860, and in that case Sir C. Cresswell said, "I think it has been established by the cases cited at the bar that previous to the passing of 1 Vict. c. 26, a codicil was *prima facie* dependent on the will, and that the destruction of the latter was an implied revocation of the former, and moreover that Sir H. J. Fust was of opinion that no alteration of this principle was made by the passing of the statute. The question there is entirely one of the intention of the deceased. When a will and codicil have been in existence and the will is afterwards revoked it must be shown by the party applying for probate of the codicil alone that it was intended by the deceased that it should operate separately from the will, otherwise it will be presumed that, as the will is destroyed, the codicil also is revoked." In that case the learned judge seems to have taken it for granted that there was no alteration in the principle, and to have decided the case as if it was under the old law.

Now in reviewing these decisions I cannot perceive that the effect of the statute has been fully considered by the Court. Sir C. Cresswell seems to have thought that it had been decided that the statute made no difference, and passed it by as being so. And Sir H. J. Fust discussed the point without any meaning whatever, merely approving that the statute had made it necessary that there should be an affirmative intention to revoke; but the statute says nothing of the kind, and unless it makes an actual revocation necessary it does not interfere with the existing law at all. In this unsatisfactory state of things I think I shall do best in such a case as the present by adhering to the statute, and by holding that as this codicil has never been revoked in any of the modes indicated by the statute as the only modes by which a codicil is to be revoked, it remains in full force and effect and is entitled to probate.

GIBBS V. HARDING.

Husband and wife—Separation deed—Agreement for specific performance.

An agreement in writing between a husband of the one part and the wife's father on behalf of the wife of the other part, that the husband and wife should live apart, and that the husband should execute a proper deed for that purpose, and for securing an annuity to the wife, was signed by both parties and also by the wife, and was acted upon by the separation of the husband and wife, and by payment of the annuity.

Held, that this was a valid agreement, and that having been acted upon, the plaintiff was entitled to a decree specific performance.

This was a suit for the specific performance, under the following circumstances, of an agreement for separation between husband and wife.

Alice the daughter of Joseph Gibbs, was married to Thomas Harding on the 1st of March, 1857. There was no settlement executed upon their marriage, and in consequence of differences which arose between them, they agreed to live apart on the terms mentioned in the following agreement, which was signed by Alice Harding, Joseph Gibbs, and Thomas Harding:—

"Memorandum of agreement made this 5th day of July, 1865, between Thomas Archer Harding of the one part and Joseph Gibbs of the other part. Whereas differences having arisen between the said Thomas Archer Harding and Alice his wife, the daughter of the said Joseph Gibbs and it hath been agreed between the said Thomas Archer Harding and the said Joseph Gibbs, on behalf of his said daughter, that the said Thomas Archer Harding and his said wife should live apart, and the said Thomas Archer Harding doth hereby agree with the said Joseph Gibbs, when thereunto required, to execute and sign a deed of separation to be prepared by Messrs. Bradford & Foote, to contain all usual and proper clauses, and also to secure the sum of £40 a-year to commence from this date, and to be paid by equal quarterly payments by the said Thomas Archer Harding, for the maintenance of his wife and child, but if the said wife should now be in the family way and have another child within eight months from this time, then the sum of £40 shall be increased to £50 to be paid in like manner as the £40 provided for, so long as such child shall live, and the cost of the deed of separation and of this agreement shall be paid in equal portions by the parties hereto."

Alice Harding was not in the family way at the date of the agreement, and had no child born subsequently.

There were four children of the marriage, three of whom died before the separation of Alice and James Harding, and the fourth, Victoria Harding, who was one of the defendant's, was an infant of seven years of age, and resided with her grandfather, Joseph Gibbs.

In pursuance of the agreement above mentioned Thomas and Alice Harding lived separately, and the annuity was regularly paid up to October, 1867, to Joseph Gibbs, who brought up the child, and maintained his daughter Alice Harding until she went into service, where she had since remained. In October, 1867, Joseph Gibbs applied to the defendant to execute a deed of separation which had been prepared by Messrs Bradford & Foote, in pursuance, as the bill alleged, of the memorandum of agreement, and which charged the annuity of £40 upon certain real estates to which the defendant was entitled in fee simple, but the defendant declined to execute it.

The bill prayed that the defendant, Thomas Harding, might be decreed specifically to perform the said agreement of the 5th day of July, 1865, and to execute the said separation deed so prepared as aforesaid, or some proper separation deed to be approved by the Court, and to pay the said annuity, and to do all other acts pursuant to the said agreement, the plaintiffs offering specifically to perform the said agreement on