WILLS.—REVOCATION BY OTHER WRITING.—The right to dispose of property by will is a creation of the positive law. *In re Tyner's Estate,* 97 Minn. 181. It is not a natural right and hence is effective only when exercised in strict accord with the provisions of the law. *Crain* v. *Crain,* 17 Tex. 80. So accustomed are we to disposal of property by will that we may not be surprised to find some courts even regarding this right as one of the "inherent incidents of human existence," as a "right absolute," which legislatures cannot "unreasonably regulate to destroy," nor "courts deal with in any spirit of mere discretion." *Ball* v. *Boston,* 153 Wis. 27. Whether or no, as recent writers have concluded, wills as we employ them were first developed in Rome, certain it is that the right to dispose of property by will has been of very gradual development at the common law, and has been and is almost wholly regulated by statute. Until STAT. 32 HENRY VIII, c. 1, there could be no real will of realty, though by means of uses equity had opened a way to accomplish much the same result. This first great statute of wills merely gave the power, but did not prescribe the form of the writing. It was not until the Statute of Frauds in 1660 that any special form of execution was required, and then only in the case of the disposition of real property. In this statute, too, we find for the first time fixed requirements for the revocation of a will, viz., by some other will, or by some other writing, or by designated acts upon the will the testator desires to revoke. As to these requirements, and their curious extension by the courts, even contrary to the statute, see 17 MICH. L. REV. 331. The third great wills act in England, 1 VICT. c. 26, 1837, made no changes in the provisions for executing or revoking wills that need be specially noted till later. Both statutes make specific requirements; under each no will or revocation can be effective which does not comply with the statute. A man may always change his mind, but he cannot make that change effective upon the legal disposition he has made of his property at death except he follow some one or more of the ways prescribed in the statute. As I VICT. c. 26 dates from 1837, it is not strange that the statutes of the states in the United States are quite as likely to follow the earlier statute of 1660 as this one of 1837.

The New York Statute as to revocation of wills follows the English Statute of 1660 as to the designated acts of change or destruction to the will, but it follows the Statute of 1 VICT. in requiring the "other writing" declaring such revocation to be executed with the same formalities with which a will must be executed. The Statute of Frauds made no requirements as to how the "other writing declaring the same" should be executed. Under each statute the sufficiency of a writing expressing an intent to revoke a will has often come before the court.

In the recent New York case of *In re McGill's Will* (Court of Appeals, July 7, 1920), 128 N. E. 194, the court of last resort affirmed the intermediate courts (see 177 N. Y. Suppl. 86, 181 N. Y. Suppl. 48) admitting to probate a will which the testatrix evidently desired to revoke. Indeed she died happy because she thought she had done so. "But to revoke or cancel a written will, compliance must be had with the statute." The court found that the following note did not comply. "Dr. O'Kennedy—Dear Friend: Please

destroy the will I made in favor of Thomas Hart." The note was signed by the testatrix, and on the back were the signatures of two witnesses. They testified that they signed at the request of testatrix, signing on the back because there was not room on the front. The note was handed to Dr. O'Kennedy when he was in hospital, and he was not discharged from the hospital and did not go to his safe where the will was until after the death of the testatrix, and then he did not destroy it.

Revocation is not purely a question of intent. There must also be an effective act. *Hoitt* v. *Hoitt,* 63 N. H. 475. This note showed a clear intent to revoke the will. Was it a sufficient "other paper" to comply with the statute? The court held not. It merely showed an intent that Dr. O'Kennedy should destroy the will, and no doubt such a destruction following such an intent of the testatrix would have been a revocation within the statute. There are few American cases that may be regarded as on all fours with the principal case. *Tynan* v. *Paschal, 27* Tex. 296, is clear to the point that a letter by the decedent to his attorney directing him to destroy the will does not *ipso facto* work a revocation of it. It does not show an intent by this letter to effect an immediate revocation of the will, but instead an intent that it be revoked by destruction by the attorney under direction of the testator. This doctrine the New York case approves.

The New York Statute requires "some other writing of the testator declaring such revocation." The English Statute of Frauds reads "other writing declaring the same," and STATUTE 1 VICT. "some writing declaring an intention to revoke the same." It is not probable there was any legislative intent that these words should announce a different rule as to the intent that must appear in the writing. New York adheres to the letter of the statute and distinguishes between "declaring such revocation" of the New York Statute, and "declaring the same," and "declaring an intention to revoke the same" of the English statutes. Under the English Statute of Frauds it was held that a letter directing the destruction of the will amounted to "a present intention absolutely to revoke," "an absolute direction to revoke reduced into writing in the deceased's lifetime." "She died in the intention to revoke the will, and in the belief that it was revoked." *Walcott* v. *Ochterlony,* 1 Curt. 580 (1837). The English courts agree with the New York court that the words of the statute are imperative. *In the Goods of Turner,* L. R. 2 P. and D. 403, per Lord Penzance, with which compare *In re Evans' Will,* 98 N. Y. S. 1042. The statute specifies the acts which may work a revocation. There is no other way. If the statute requires a revocation an intent to revoke and a belief that the will is inoperative will not suffice. *Runkle* v. *Gates,* 11 Ind. 95. The courts cannot substitute for the plain requirement of the statute the desire or intention of the testator, even though he may suppose his desire accomplished, *Tice* v. *Shipton,* 113 Ky. 102, a case in which the testator supposed his will destroyed, but by fraud of a beneficiary the destruction was prevented. This is true even in cases where the beneficiary tells the testator the destruction is complete and he believes it. *In re Silva's Estate,* 169 Cal. 116. But in *Bailey* v. *Bailey,* 5 Cush. 245, Shaw, C. J., held that another paper expressing a wish that the will be destroyed, and executed as

wills are required to be executed, though it made no devise or bequest, was nevertheless testamentary in character, might be admitted to probate, and so did work a revocation of the will. The only difference between this case and *In re McGill's Will,* if difference there be, is found in the addition in the Massachusetts case of the words, "it is my wish that my estate be settled according to law." The language of Margaret McGill's note at least suggests the possibility that she intended a revocation only so far as her will was "made in favor of Thomas Hart." There were other provisions in her will, and why is the note then not testamentary? Compare *In the Goods of Durance,* L. R. 2, P. and D. 406; *In the Goods of Hay,* L. R. 1 P. and D. 53, and *In the Goods of Hicks,* 1 *ib.* 683. On the whole subject see the annotation in 3 A. L. R. 836, to the case of *Dowling* v. *Gilliland,* 286 Ill. 530. No doubt the courts do well to insist rigidly upon written wills and revocations. Parol evidence in the case of wills is dangerous, for the opportunity and temptation to perjury and fraud are great. As said by Ld. Ch. Talbot in *Brown v. Selwin,* Cas. temp. Talbot 240, and by many another judge in dealing with wills, "It is better to suffer a particular mischief than a general inconvenience." But one may well question whether the narrow interpretation of instruments executed with all the formalities required by the statute does not needlessly inflict a particular mischief where there could be no general inconvenience and make a statute intended to prevent fraud into an instrument of fraud. It would be no great strain to construe the note of Margaret McGill, executed as the law requires for a will, as indicating an intention to revoke the will at once without waiting for the destruction of the will by Dr. O'Kennedy. How can parol evidence that she so intended it, and was happy in the thought that she had accomplished her purpose, in any way defeat the purpose of the statutory requirement as to revocation of wills?

E. C. G.

NEBULOUS INJUNCTIONS.—Injunctive relief is sought against alleged wrongdoing which is merely incidental to the conduct of a legitimate business. The wrong is established and the court is satisfied that an injunction should issue. Yet some nice questions remain as to the scope and terms of the decree.

The restraint should not go farther than is necessary to protect the complainant's rights. The business should not be needlessly destroyed or embarassed. If the defendant has asserted that it is impossible to conduct the business without the incidents complained of, (as he is likely to do in nuisance cases, with a view to securing a holding that there is no nuisance or that, though there be a legal nuisance, the balance of convenience forbids an injunction) strict logic might require that this be taken as a conclusive admission when it comes to settling the terms of the decree. In view, however, of the fact that "impossibility" is, in these cases, relative, and in view of the public interest involved, it is good sense, if not good logic, to give the defendant an opportunity to do what he has asserted is impossible, if there appears to be the slightest chance of success, and such seems to be the