

ROCKHAMPTON

IN THE MATTER of the "Succession Act 1981"

-and-

IN THE ESTATE of FLORENCE EVA SMITH Deceased.

JUDGMENT - DEMACK J.

DELIVERED this 20th day of March 1986.

Florence Eva Smith died on 31st May, 1985. On 2nd June, 1984 she executed a hand written document in the following terms:-

"The last will and Testament of Florence Eva Smith 4 Wambool St. R'ton I appoint Margaret Lilian Muller and Graham Roy Muller my executors - My share in the house also the contents I own to go to Margaret The Melbourne money goes to Margaret. I have paid all death duties on this. I advise her to keep it as it is it will bring her in an income each ½ year - My other investments, Bank Accounts and 2 life assurance policy's to be divided equally between my three grandchildren -

Dated 2nd June 1984.

Signed F E. Smith.

Witnesses:

(All papers are in wardrobe and middle draw of dressing table.)"

The document was signed by her in the presence of two witnesses who each witnessed her signature in her presence and in the presence of each other.

She had previously executed a will on 16th December, 1980.

The essential question is whether the document of 31st May, 1985 revokes the will of 16th December, 1980.

The document of 31st May, 1985 is said to be the last will and testament of Florence Eva Smith. It does not refer to any previous wills, but that is not necessary if there is a clear intention expressed in the later document that the earlier will is revoked. The description "last will and testament" expresses such an intention.

The document then appoints executors and disposes of the deceased's property. It is on its face, a valid and effective disposition. It does not seem to me to be capable of being viewed in any other way than as an effective revocation of the will of 16th December, 1980.

The questions in the motion should be answered:-

1. Whether the will executed on the 26th day of June, - 1984 revoked the will executed on the 16th day of Yes December, 1980?
2. Whether the will executed on the 26th day of June, - 1984 can be read together with the will executed on 16th Yes December, 1980.

I order that the executor's costs be taxed as between solicitor and own client and paid out of the estate.