

Wills.¹**330.**

See sec. 305B.

332.

Testimony of draftsman of lost will as to its due execution in presence of two attesting witnesses, held, under special circumstances, *prima facie* proof of valid will; fraudulent destruction or concealment. Revocation of will; evidence. *Preston v. Preston*, 149 Md. 507.

This section is satisfied where witnesses subscribe before testator signs, if he signs in their presence immediately after their subscription, and all acts are part of one transaction. *Sellers v. Hayden*, 154 Md. 118.

To first note to this section, page 2987, vol. 2. of Code, add *Brittingham v. Brittingham*, 147 Md. 155.

Papers in handwriting of and signed by decedent, but not attested by two witnesses, although in envelope marked "my will", not admissible to probate. *Hull's Estate*, 164 Md. 43.

Cited but not construed in *Woodruff v. Linthicum*, 158 Md. 608; *Quimby v. Greenhawk*, 166 Md. 345; *Citizens' Natl. Bank v. Parsons*, 167 Md. 636. and *Daily Record*, Jan. 2, 1935.

333.

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.

See notes to sec. 332.

335.

This section has no application where legacy is to class and members of that class are in being at death of life tenants, who were entitled to take gift to class. *Stahl v. Emery*, 147 Md. 126.

This section referred to in construing sec. 339. *Gassinger v. Thillman*, 160 Md. 196.

Orphans' Court has jurisdiction to determine whether legacy in lieu of dower to wife, by husband who survived her, was saved from lapsing and vested in her next of kin. *Longerbeam v. Iser*, 159 Md. 245.

This section as amended by ch. 37, 1910, did not apply where testatrix was continuously incompetent to execute valid deed or contract between death of legatee and death of testatrix, the testatrix dying before act of 1920, ch. 202, was enacted. *Livingston v. Safe Dep. & Tr. Co.*, 157 Md. 492.

1929, ch. 543.

335A. In all wills executed after July 1, 1929, unless a contrary intention is expressly stated in the will, the provisions of Section 335 in regard to lapse shall apply to all devises and bequests to two or more persons as a class in the same manner as though such devises or bequests had been made to such persons by their individual names.

¹ As to appointment of guardian by parent by will, see art. 72A, sec. 4.