

inquiry. The Courts do not question the necessity and expediency of that piece of legislation; they merely hold that it applies only to land which, under the Constitution, Congress could appropriate for resale to individuals. Furthermore, a law that attempts to deprive a landowner of his private property without his consent, does not merely raise a political question beyond the jurisdiction of the Courts. The individual has a right to seek protection of the Judiciary whenever his rights of ownership are invaded without constitutional authority, even when such invasion is committed by the agents of government.

*Paulino Carreon*

**WILLS AND SUCCESSION—REVOCATION OF WILL—SECOND WILL MUST BE VALID TO REVOKE A PRIOR WILL**—Appeal from an order of the CFI of Rizal admitting to probate the last will and testament of the deceased Mariano Molo y Legaspi executed on August 17, 1918.

Mariano Molo y Legaspi died on January 24, 1941, without leaving any forced heir either in the descending or ascending line. He was survived, however, by his wife, the herein petitioner Juana Juan Vda. de Molo, and by his nieces and nephew, oppositors-appellants, children of Candido Molo y Legaspi, deceased brother of the testator. Mariano Molo y Legaspi left two wills, one executed on August 17, 1918, and another executed on June 20, 1939. The latter will contains a clause which expressly revokes the will executed in 1918.

On February 7, 1941, Juana Juan Vda. de Molo filed in the CFI of Rizal a petition, seeking the probate of the will executed by the deceased on June 20, 1939. After hearing, the court rendered decision denying the probate of said will on the ground that the petitioner failed to prove that the same was executed in accordance with law.

In view of the disallowance of the will executed on June 20, 1939, the widow on February 24, 1944, filed another petition for the probate of the will executed by the deceased on August 17, 1918. The same oppositors filed an opposition to the petition based on the ground that the will has been subsequently revoked. After trial, the court on May 28, 1948, issued an order admitting the will to probate. From this order the oppositors appealed assigning six errors, most important of which is that the lower court erred in not holding that Molo's will of 1918 was subsequently revoked by the decedent will of 1939.

*Held:* A subsequent will in order to revoke a prior valid will must in itself be a valid will. If the subsequent revoking will is defective, even if the earlier will was destroyed by the testator in the honest belief that it was no longer necessary, it is our opinion that the earlier will can still be admitted to probate under the principle of "dependent relative revocation".

The doctrine of dependent relative revocation simply means that "where the act of destruction is connected with the making of another will so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force." (*Gardner*, pp. 232-233; *Juana Juan Vda. de Molo vs. Molo*, G.R. No. L-2538, Sept. 21, 1951.)

This case reiterates the doctrine laid down in an earlier case which held that "a subsequent will, containing a clause revoking a previous will, having been disallowed, for the reason that it was not executed in conformity with the provisions of section 618 of the Code of Civil Procedure (now Art. 805, Civil Code) as to the making of wills cannot produce the effect of annulling the previous will, inasmuch as said revocatory clause is void." (*Samson vs. Naval*, 41 Phil. 838.)

*Filemon Flores*

## BOOK REVIEWS

**THE KING'S GOOD SERVANT.** Papers Read to the Thomas More Society of London. Richard O'Sullivan, K.C. Basil Blackwell, Oxford, 1948. Pp. 112.

"Thomas More, saint and lawyer." It is to be expected that the ordinary man would read such phrase with wonderment, in the light of the present day opinion of lawyers as men whose profession prevents, if not forbids, them to lead the saintly life. But the Thomas More was no ordinary man; and so were countless lawyers after him. That "saint and lawyer" could be read together, Sir Thomas More proved to the world, and for this he suffered the supreme sacrifice. And with the passing of the years, great men have come to recognize and embrace all that Thomas More, saint and genius, stood for. Some have written on his life; others have written on the basis of his philosophy. Of the latter type, comes the "King's Good Servant". The title

is derived from a statement by St. Thomas More, uttered when he summed up his own resistance to the first totalitarian government in Europe by pleading that he was the "king's good servant but God's first."

It is introduced by Richard O'Sullivan, who opens with the statement that the death of Sir Thomas More marked a turning point in English law and history. The events that followed the separation of England from the Pope, the establishment of the Church of England and the omnipotence of Parliament—the abandonment of the philosophical basis of the Common law—are all too well known to merit detailed consideration. O'Sullivan writes on the "changing tides of English law and history"; that the marks that blotted the glorious history of England was being slowly washed away by the returning tide of Christian philosophy and theology that goes with the names of Pope Leo XIII and Cardinal Mercier, Gilson and Maritain, and a host of others. This tide has begun to flow into the decisions of courts of justice, statutes, treatises and in the very Preamble of the Charter of the United Nations.

The essays contained in this book trace their origin as far back as 1928 when, in response to this 'changing tide', a number of the members of the Bench and Bar organized themselves into the Thomas More Society, the object of which was to study and discuss the intellectual and moral problems touching law and legislation. These essays were papers read before the Thomas More Society, London.

It is but appropriate that these essays should be introduced by a study of the "Utopia" by one of the editors of the English works of More, W.E. Campbell. Campbell, in analyzing the Utopia of More, has effectively refuted the claim by some that More was both a communist and inconsistent. This essay is followed by a paper in the original French on "La Philologie du Droit" by Jacques Maritain, exposition, on the Christian Philosophy of law, which is the philosophy of St. Thomas Aquinas and is in substance also that of Sir Thomas More.

The succeeding essay might well be read by our legislators, for it treats on the relation between the law and conscience. Within its pages, our legislators might glimpse and discern the ever growing tendency of present legislation to "follow the caprice of any intellectual wind" without the rudder of conscience. The next essay, on "The Limits of Law and Legislation" comes as a welcome relief to those trained in the tradition of the old Common Law of England and should come as a needed relief to those who still believe in the materialist dogma of the omnipotence of Parliament.

Two papers by Father Andrew Beck deal with the classical conception of "The Common Good in Law and Legislation" which was overlooked by the advocates of *laissez-faire* and with the eternal problems of "Law and Liberty", the solution of which "eludes the mind and the logic of Socialism". It might be surprising for a priest to explore the field belonging to lawyers but the good

Father takes refuge from this "trespass" in the thought that St. Thomas More would have approved of it.

In order to take a just view of punishment, it is necessary to have in mind that a person has an ultimate responsibility for his actions and that if he acts wrongly, he deserves punishment; this is the theme of the next essay written by D.J.B. Hawkins. The last essay would prove to be an interesting, if not valuable, exposition on the moral duties of a judge who comes across situations where he finds himself torn between his legal duty and his moral duty, hence it is entitled *Conscience in Court*, written by Lewis Watt, S.J.

This is but the first set of Thomas More Papers. Books of this kind might be the much needed force which would awaken the members of the bar to the realization that theirs is a profession chosen by Thomas More, Saint and lawyer.

Ramon Buenaventura

---

UNDER GOD AND THE LAW. Papers Read to the Thomas More Society of London, Second Series. Richard O'Sullivan, K.C. Basil Blackwell, Oxford, 1949. Pp.—171.

The world's prime concern is the unity of mankind. More than ever, today, unity of the peoples of the world is indispensable to avert another global war. To attain this unity is admittedly an arduous task, perhaps a dream. For a solution to this problem, Henry of Bracton, in his *De Legibus*, wrote: "Like the King, the whole Brotherhood of Mankind is and must always be under God and the law."

Richard O'Sullivan, K.C., has endeavored to make a compilation of the various papers read to the Thomas More Society of London, in the second of a series of two.

This volume opens with a paper on *Young More*, in which the author discusses at length the life of St. Thomas More. There follows an account of *Jesus and the Lawyers* which, together with the paper on *Young More*, gives the reader a broad idea of the subject matter treated in this volume, to wit: the relations between the Church and the State, and the influences between Christian Theology and the practice of Law.

The *Controversies of St. Thomas More* is a piece that dwells on the critical situation of the world at the time—"a dissolution in which not only human society but the universe and the human soul seem to fall asunder." The *Constitution of the Church* analyzes the spiritual and constitutional structure of the Church. It centers on the precept of Aquinas that the Church is "a thing constituted by the Faith of Christ and the Sacrament of the Faith."

A philosophical discussion of the oneness of Spirit, Water and Blood is made in *Law and the Spirit*. The author claims that "Law in its deep, true, adequate meaning is an expression of the creative and redemptive purpose of God, and representative of