Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mauger v. Le Gallais and others, from Jersey; delivered 22nd June, 1867.

Present:

LORD JUSTICE TURNER.
SIR EDWARD VAUGHAN WILLIAMS.
SIR RICHARD TORIN KINDERSLEY.

THEIR Lordships do not think it necessary to call on Counsel for the Respondents.

This is an Appeal from the decision of the Royal Court of Jersey, by which it has been determined that the Will of Mr. Wright, dated the 10th of March, 1863, was duly executed and attested in the manner required by the law of Jersey to pass real estate.

The law of Jersey, as applicable to this case, is contained in an Order in Council dated 1851, and passed by the States of Jersey in June of that year. The object of this Order in Council was, as stated by the learned Procureur Général of Jersey, to introduce for the first time the testamentary power so far as relates to real estate; and it introduced it to a limited extent, and required certain specific forms and ceremonies to be observed; and if those forms and ceremonies are not duly observed, the Will, so far as relates to real estate, is invalid.

The Article of the Order in Council especially applicable to this case is Article 8. The first portion of that article relates to the manner in which the Will must be executed by the testator and attested by the witnesses. It is in these terms—"Pour que les legs d'immeubles contenus dans un testament soient valables, il faut que le testateur en présence de deux témoins ait apposé sa signature à la fin, ou ait reconnu sa signature ainsi apposée, et que les deux témoins présens en

même temps aient alors apposé leurs signatures au testament en présence du testateur."

Now, stopping there for a moment, this is one of the requisitions the non-observance of which renders the Will of realty invalid. It is clear that it requires nothing to be stated upon the attestation with respect to the observance of this formality. It only requires that the fact should be so, leaving the proof of it to extrinsic evidence. It may be usual, as it is with us, to express in the attestation that the formalities were observed; but there is no necessity according to this Order in Council, any more than there is a necessity according to our law under our recent Wills Act, that this should be stated on the face of the attestation; so that if it were questioned whether these formalities were duly observed, the fact would have to be proved by evidence in the ordinary course.

The next Article is—"Si le testament n'est pas olographe, la lecture en sera faite en présence du testateur et des deux témoins." It must have been read over. It may be usual, and no doubt expedient, to express on the face of the attestation that that was observed; but it is no more necessary in that case to express upon the face of the attestation that this formality was observed than in the other case.

Then we come to that clause which is more especially applicable to the present case—"*Pour qu'un testament olographe soit valable, l'attestation des témoins devra être datée;*" and the question is, what construction is to be put upon this clause.

It is clear that the attestation must be "dated," in the sense in which that term is to be read, or else it will be void. It may be a question what was the particular reason for making that requisition? The learned Procureur Général has stated reasons more or less satisfactory, which may be the true reasons. Assuming that the reason was, as it has been suggested, that you might know on the face of the attestation when the Will was actually executed and attested, with reference to the question of whether it was executed and attested prior to the commencement of the forty days preceding the death of the testator, it is difficult to see why a similar requisition was not made with respect to

a non-holograph Will; and it seems hardly satisfactory to say that in the case of a non-holograph Will, its being read over makes it unnecessary that the attestation should be dated, because the reading over of the non-holograph Will would not in any way show upon the face of the attestation, nor would it show upon the face of the Will necessarily, when the Will was executed and attested. A Will might contain no date, and it is not contended that a Will without a date would be invalid on that ground. A Will might have a date, but the date might have been put to it at a time antecedent to the time at which the execution and attestation took place. It might even have been previously not only dated, but signed by the testator, because all that is required is that he should acknowledge his signature in the presence of the witnesses. Therefore if the reason for requiring the dating of the attestation to a holograph Will be in order that upon the face of the attestation you may see what that date was with reference to the question of the forty days, it is difficult to see why a similar requisition was not made in the case of the non-holograph Will. It is, however, unnecessary to determine what the particular reason was for introducing this clause requiring the dating of the attestation. It is sufficient to say that it was intended that upon reading the attestation you should know what the date was; and the only question is, may you not know that just as well by the date being given by reference to the date of the Will, which is on the same paper with the attestation, as if that date were repeated in words and figures in the attestation itself?

It is contended that under the true construction of this clause requiring the dating of the attestation, it is absolutely necessary that there should be no reference to anything whatever extrinsic to the attestation; that you must not refer to anything but the attestation; and if, shutting your eyes to everything else, you do not find the date upon that attestation, it is bad. Now their Lordships are of opinion that that is an assumption which is not well founded. If the reason for the requisition be, as clearly it must be, whatever

ulterior reason there may have been, that it might be known from the attestation itself what the date of the execution and attestation actually was, it appears to their Lordships that that object is just as well attained, and the attestation is as effectually dated, by the reference to the date of the Will on the same paper as by repeating it in full, provided always that the Will itself contains only one single date. If indeed the Will contained not only the date of the Will, but also some other date with reference to another matter, then it would be ambiguous and doubtful what was meant by "*le dit jour.*" "*Le dit jour*" must refer only to one single date. But if, as in the present case, there is no date or time mentioned in the Will throughout, except that one time which is the date of the Will, it appears to their Lordships that upon the reason of the thing, and for the purpose of accomplishing the object of this clause, the attestation is as well dated by this form of reference to the date of the Will as it would be if the date were repeated in words and figures at length in the attestation itself.

Their Lordships therefore are of opinion that this Appeal cannot be maintained, and they will humbly recommend Her Majesty that it should be dismissed with costs.