

THE WILLS ACT, 1873.

son. This instance is an ample justification of the strong language used by the Commissioners regarding wills of personal estate.

The new Act requires that *all* wills shall be executed in the same manner, and prescribes particularly the mode of execution. The latter part of section 7 has been adopted from the English statute 15 & 16 Vict., c. 24, which was passed to provide for many cases in which wills had been held to have been imperfectly executed under 1 Vict., c. 26., sec. 9.

It will be observed that the new Act provides that the witnesses must be *present at the same time*, and in this respect it differs from the Statute of Frauds, under which it was held that the testator might acknowledge his signature to the witnesses singly, and at different times. (See *Crawford v. Curragh*, *ante*.)

Section 9 provides that a soldier in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of the Act. But for this section, the provision contained in section 7 that "no will shall be valid unless it shall be in writing," would have entirely abolished nuncupative wills. This class of wills was placed under various restrictions by the Statute of Frauds, but the provisions of that act in this respect were disapproved of by the Real Property Commissioners, and by the 9th section of 1 Vict., c. 26, to which the 7th section of our new act corresponds, nuncupative wills were abolished in England, with the exception of the wills of soldiers and mariners, who were empowered by the 11th section to dispose of their personal estate as they might have done before the making of the Act.

In this Province, by Statute 33 Geo. 3, c. 8, the making of nuncupative wills was subjected to such restrictions as must have practically abolished them; and by Con. Stat., U. C., cap. 16, s. 83, it is

provided that "no nuncupative will, made after this Act comes in force, shall be good; provided that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate in such manner as he may now do according to the laws of England." It will thus appear that the new Act effects no change in the law respecting nuncupative wills.

Appointments by will are, by the 8th section of the Act, required to be executed in the same manner as a will; and such an execution of the appointment is made sufficient, though provision may have been made by the instrument creating the power, that other forms or solemnities than those prescribed by the Act shall be used in exercising the power.

Sections 11, 12, 13 and 14, are a substantial re-enactment of the provisions of 25 Geo. 2, c. 6, which is repealed by the new Act. That statute was passed to remedy the inconvenience resulting from the construction put by the Courts upon the words "credible witnesses" contained in the 5th section of the Statute of Frauds. It was early held that any person, who derived any benefit under a will of real estate, should be considered an incompetent witness on the ground of interest; and the statute 25 Geo. 2, c. 6, by depriving a witness to a will (except in a few cases), of any provision made by the will in his favour, preserved the witness' competency.

The Act was held, however, not to extend to a case where a witness takes an interest consequentially and not directly: *Ryan v. Devereux*, 26 U. C. Q. B. 100, and cases there cited. Thus, where the will gave a small legacy to the wife of one of the witnesses, and thus created an interest which rendered the husband technically incredible, it was held that the statute did not apply, and that the husband was therefore incompetent to be a witness to the will: *Ryan v. Devereux*,