

was had and resulted in a verdict in favor of the will. Upon a new trial being granted, a verdict was reached against the will. Proponents stuck to their dates and place of execution every time, and were always met by the alibi. On appeal the Supreme Court held that, even if the jury found that the subscribing witnesses to the alleged will lied, or were mistaken, as to time and place, yet that would not necessarily be fatal; if, notwithstanding, the jury was satisfied *from its own examination of the writing*, that the writing was genuine, the will would nevertheless be valid.

The Court, in this case, entirely overlooked the fact that, with the formal proof of execution negatived, proponents' *prima facie* case was gone, and there would be no writing legally before the jury—much less any testimony as to such writing—for the jury to pass upon. How can such a decision be reconciled with the Pennsylvania statute that requires every will to be established by the independent *testimony of two living witnesses* who must give their evidence under oath before the proper tribunal? Nobody, and nothing, else—not even a jury and some writings—can take the place of such witnesses; and when such witnesses are absent, or absolutely discredited, that is logically and properly the end of the matter, just as was held in the other analogous Pennsylvania case before referred to, which states the correct rule.

Soon after the *Husband* case the Supreme Court of Pennsylvania made the broad remark, in the *Baum* case, before referred to, that “the date is not a matter affecting the validity of a will”—which was true, when limited to the facts of that case, because there it only concerned a question of *distribution*, and not one of *execution*, as to which latter point there was no controversy; but as a broad general statement, it was not true, and could only be considered as a dictum.

This *Baum* case, and the *Dubosky* case, represent one side of the line of cleavage in the rule, and were both decided in 1918; the earlier *Varzaly*, *Cassidy*, *Bierly* and *Somerset Telephone* cases are typical of the other side; the *Husband* case, decided in 1917, belonged with the latter class, but seems to have been lost in the shuffle—at any rate it can scarcely be depended upon (with safety) as an authority.