## THE WILLS ACT, 1873.*

(CONTINUED.)

The statute next prescribes, by section 7, the mode in which a will shall be made. The most important feature of this section is the abolition of the distinction, which has heretofore existed, as to the ceremonies of execution between wills of real and personal estate.

The forms necessary to the due execution of wills of real estate were prescribed by the Statute of Frauds, which required that the will should be in writing and be signed by the testator, or by some one in his presence and by his express direction, and should be attested and subscribed in the presence of the devisor by three or four credible witnesses. The provisions of the Statute of Frauds which relate to the execution of wills are still in force in this Province, though they have been modified by 4 Wm. 4, c. 1, s. 51, (Con. Stat. U. C. c. 82, s. 13), which provides that "any will affecting land executed after the sixth day of March, one thousand eight hundred and thirty-four, in the presence of, and attested by, two or more witnesses, shall have the same validity and effect as if executed in the presence of, and attested by three witnesses; and it shall be sufficient if such witnesses subscribe their names in presence of each other, although their names may not be subscribed in presence of the testator." The reader can make himself fully acquainted with the effect of this section and its bearing on the old statute by a perusal of the judgment of the Court in the case of *Crawford* v. *Curragh*, 15 U. C. C. P. 55, in which the whole subject is reviewed. The provisions of the Statutes of Frauds, and of 4 Wm. 4, c. 1, which relate to wills, are repealed by the new Act.

The present state of the law of this Province, regarding wills of personal estate, may be described in the words used by the Real Property Commissioners regarding the state of the law in England, prior to the passing of the Act 1 Vict., c. 26. In their fourth report on the law of real property, at p. 15, the Commissioners observe that: "The informality of wills of personal estate has often been the subject of complaint. The question, whether a paper is or is not testamentary, has been the occasion of a large proportion of the most vexatious and expensive law suits which have arisen on wills." And again at p. 7, "Wills of personal estate in writing might be made in any form and without any solemnity. It was not necessary that even the name of the testator should appear; any scrap of paper or memorandum in ink or in pencil, mentioning an intended disposition of his property, was admitted as a will, and would be valid although written by another person, and not read over to the testator, or even seen by him, if proved to have been made in his lifetime according to his instructions. If a will was imperfect, and it appeared upon the face of it that something more was intended to be done before it was finished, yet it was valid so far as it appeared to be complete, if it was proved that the testator's intention was arrested by sickness or death."

In *Re Nelson, McLennan* v. *Wishart*, 14 Grant 200, a fair specimen occurs of the extraordinary documents which the Courts admit to probate as wills of personalty. On one scrap of paper is written, "I leave the whof (*sic*) of my property to William Brown, Townhead, Arbuthnot by Fordoun, Scotland, $2,000, William Brown, Townhead, Arbuthnot by Fordoun, Scotland." On another scrap is written, "I give Peter Crann $500 for himself." These papers were admitted to probate as constituting the will of one Alexander Nel-

* A mistake occurred in the last paragraph of this article at p. 170, owing to the transposition of a line. The words "also *Davidson* v. *Sage*, not yet reported," should follow the reference to *Wright* v. *Garden* in the line but one previous. —Eds. L. J.