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FARROW V. WILSON.

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act appear to have been done at a time when it was not done;" and if an instrument purports to have been made at a time when it would have one effect, and has in reality been made at a time when it would have another effect, that I think would make the deed a false deed, and be forgery. The date of a deed is frequently quite immaterial, but here that is not so. The date is shown by extrinsic evidence to be false, and the deed is therefore a false deed within all the definitions. Even without any authority upon the question, I think that common sense would lead to this conclusion. But all the authorities are at one upon this point. Lord Coke refers to the Year Books to show that forgery includes this very case; the case in Moore as far back as the time of Queen Elizabeth, is to the same effect. In the case of Ann Lewis, Foster's Crown Cases, 116, the same view was taken by eleven judges in consultation. No authority can be cited on the other side, and the only argument against this view is that there is no recent authority in support of it.

LUSH, J.—I am of the same opinion. If the parties had originally made a deed bearing a true date, and had then fraudulently altered the date, no question could have been raised; it seems to me that it would be an absurdity that the alteration of a true date to a false should be a forgery, and yet that the making of a deed with a date originally false should not be. I think that this deed was "a false deed" within all the definitions, as purporting to be what it in fact was not.

BRETT, J., concurred.

*Conviction affirmed.*

### COMMON PLEAS.

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*Master and servant—Determination of contract of service by the death of the master.*

A. engaged B. to serve him as farm bailiff at certain wages, the service to be determined by six months' notice by either party, or on payment by A. to B. of six months' wages. On A.'s death the defendants, A.'s administrators, dismissed B. without notice or payment of the six months' wages.

Held, on demurrer, that the contract of service was determined by the death of the master, and that the general rule, that the death of either party puts an end to contracts of personal service, unless the contrary be stipulated for, applied to the present case.

[C. P. 13 W. R. 43.]

This was an action brought against the defendants as administrators of Pugh, deceased.

The declaration stated that heretofore in the lifetime of Pugh, in consideration that plaintiff would enter into the service of Pugh, and serve him as farm bailiff, at the wages of 15s. per week, and of a certain residence in a farmhouse, until the service should be determined. Pugh promised the plaintiff to retain him in his service until the expiration of six months after notice given by Pugh or the plaintiff to the other of them to put an end to such service, or that in case Pugh should put an end to such service without such notice he should pay to the plaintiff such wages at the same rate for the said six months from the time of the end of such notice;

and the plaintiff accordingly entered into the said service of Pugh, and continued therein until the death of Pugh, and has always been ready and willing to continue in the service of his administrators in the capacity and on the terms aforesaid, of which the defendants always had notice, yet the defendants wrongfully dismissed the plaintiff from the said service without such notice as aforesaid, and without paying the plaintiff such six months' wages as aforesaid, whereby the plaintiff was deprived of the wages, &c., which he would have derived from the said service, and has remained for a long time unemployed.

Demurrer and joinder in demurrer.

*Bridge*, in support of the demurrer.—The declaration is bad. There has been no breach of the contract alleged in the declaration. A contract of personal service expires on the death of either party. In *Williams on Executors*, 6th ed. p. 765, the correct rule is laid down: "By the death of a master his servant is discharged; and therefore the executors or administrators of the former can bring no action to enforce the contract of service after his death." (*Wentw. Off. Ex.* 141, 14th edit). If it had been intended that the executors should be bound by the contract they would have been named in it. In *Tusker v. Shepherd*, 9 W. R. 476, 6 H. & N. 575, it was held that where a person had been appointed as the agent of a partnership given for the period of a certain number of years for the sale on commission of certain stone, that the contract was subject to the condition that all the parties should so long live, and that it did not contemplate the continuance of the agency by the executor after the death of the agent, or by the surviving partner after the death of the other member. In *Boast v. Firth*, 17 W. R. 29, L. R. 4 C. P. 1, a covenant in an apprenticeship deed that the apprentice will honestly remain with and serve his master for a certain term, is subject to an implied condition that the apprentice shall continue in a state of ability to perform his contract. To an action therefore by the master for breach of the covenant. A plea that the apprentice was prevented by the act of God—to wit, permanent illness—which arose after the making of the deed and before breach, was held good. *Montague Smith, J.*, says in his judgment in that case:—*Taylor v. Caldwell*, 11 W. R. 726, seems to be decided on the principle that where parties are contracting about a certain thing or person there is an implied condition that the thing or person shall continue to exist in a state fit for the performance of the contract, and that if that state ceases to exist, then the obligation ceases. This contract could not have been intended to continue after the master's death, for one term of the contract is that the plaintiff shall occupy the farmhouse.

*Bush Cooper, contra.*—The services of farm bailiff would not be determined by the death of the master. The nature of the contract must be looked at for the purpose of placing the right construction upon it. He cited *The King v. The Inhabitants of Ladoek*, Burr. Sett. Cas. 179; *The King v. Peck*, 1 Selk. 66.

July 5.—The judgment of the Court (WILLES, J., and MONTAGUE SMITH, J.), was delivered by