

1857. *Hutchinson*, to do some writing, and he says that his father left home to go; and after narrating the account given to him of what passed by his father and *Alexander Hutchinson* he says "if a deed was executed by him (*Edward McMichael*) it must have been on that day."

*Pick v. McMichael.*

We think the evidence that he did not survive to the 22nd very slight indeed. There is no reason to suppose the deed a forgery—certainly no evidence upon which to pronounce it so. Every one of the four witnesses is spoken of in the evidence as highly respectable, and incapable of any base or fraudulent act; the unusual number may be accounted for from the circumstance of the conveyance being executed by the mark, instead of the ordinary signature of the grantor, occasioned by extreme weakness, to afford proof, and to silence cavil in the event of the deed being questioned upon that ground. I doubt if a forgery was ever attempted otherwise than by counterfeiting the *ordinary* signature of the party whose name is forged, and it would be extraordinary indeed, in a case of forgery, to date the deed after (as this is alleged to be) the death of the party, it being just as easy to put in an earlier date. Further, as negating the idea of a forgery, is the circumstance that *Edward McMichael*, feeling probably that his end was approaching, himself, and so far as appears, spontaneously expressed his intention of making the conveyance to *McKay*; and the further circumstance, that *McKay* does not appear to have been present, or to have taken any part in procuring the execution of the deed.

*Judgment.*

Possession seems to have followed the conveyance, and the land was thenceforth called the *McKay* lot.

The second deed may probably have been desired by *McKay*, for the same reason that I have supposed induced the unusual mode of attesting the execution of the first: viz., the unusual mode of signature, which would remain