

time and place. On appeal the judgment was opened, the higher Court wisely observing that "as there is nothing to shew that the note was signed at any other time than on its date, and as the only evidence of the plaintiffs is that that was the date of its execution, it is difficult to see how one could conclude from the evidence that it was signed at some other time. Of course it was unfortunate for the plaintiff, if his witnesses were not truthful, but (as in every other case) he was bound to prove the execution, and if unable to do so by trustworthy evidence, the execution was not proven, and his case fell.

Such a rule would seem to apply with even more force where a will was in question, because statutes practically always require the execution of wills to be proven by *the evidence of two or more witnesses*, who must separately testify, either to the actual execution thereof by the testator, or to their properly founded belief in such execution; the party who is to pass on such proof—whether it be register, Judge, Court or jury—is without power to accept or to adopt other than such evidence as establishing other than such evidence as establishing the will; one or all may feel perfectly satisfied, from a personal examination of the writing, that the will was signed by the party in question, yet they are powerless to substitute their such belief for the statutory requirements as to proof.

Yet the Supreme Court of Pennsylvania, in a recent remarkable decision, laid the foundation for plenty of future trouble by ignoring the foregoing distinctions. A will purporting to be written and signed by the testator on a date named therein, and attested by two subscribing witnesses, was contested on the ground of forgery. Proponents' statutory proof consisted of the evidence of the subscribing witnesses, to the effect that the testator executed said will in their presence at or about the date, and at the place, mentioned therein; this was corroborated by the usual proof as to handwriting. Contestants met this testimony by conclusive evidence of an alibi for the testator as to both time and place claimed for the execution, and this was corroborated by evidence as to the handwriting not being that of the testator, but that of one of the subscribing witnesses. An issue being awarded, a jury trial