presence of the testator, but no form of attestation shall be necessary." Parsons, on Wills, says: "The signature to a will must be made or acknowledged in the presence of two or more witnesses present at the same time, and such witnesses shall attest and subscribe the will in the presence of the testator."

Again, he says: "The witnesses must subscribe their names in the presence of the testator and in each others' presence and by the direction of the testator, which direction it is presumed may be considered complied with if the will is strictly otherwise executed according to the statute."

It is advisable, however, in all cases, for the testator to expressly request the witnesses to subscribe their names as witnesses. The paper writing purporting to be the will must be duly executed as the will of such person. Thus when verbal instructions for a will were obtained from F. T., who was dying, by the personal suggestion and importunity of M. T. who directly afterwards wrote out the will and procured its execution, F. T. never spoke after the execution, but the evidence proved a certain degree of capacity at the time of execution, M. T. and her near relatives took a large benefit under the will, and it was attested in the same room in which the deceased was. M. T. deposed that the deceased could see the witnesses sign their names; the witnesses deposed that she could not. It was held that the paper for which instructions had been obtained was not entitled to probate, and that the balance of evidence showed that it was not duly executed as a will. In Stephen's commentary, we find the rule laid down, that the will must be subscribed by witnesses in the presence of the testator. It was adjudged also that though the witnesses must all see the testator sign, or, at least, acknowledge the signing, yet they might see him do so at different times, though they must all subscribe their names in his presence, *lest by any possibility they should mistake the instrument.* Our law is now plain, so plain that those who run may read, and it should be a part of every liberal education to teach so much at least of the provisions of law as would enable even those who are not supposed to be learned in the law to know what course to adopt under circumstances like these under which the so-called will was made. It is unfortunate that what were undoubtedly the last wishes of the deceased as to the disposition of her property cannot be carried out, owing to the want of formalities attending the execution of the same and which are prescribed by positive law. It would never do to allow the attestation of execution of wills by persons who perhaps, years after, might come up and say that they saw the signature or mark set to a document alleged to be a last will and testament subscribed by the testator, but were not requested by the testator to sign the same as attesting witnesses and were not legal attesting witnesses.

I cannot, under the circumstances, grant probate of this will.

## CIRCUIT COURT.

AYLMER (dist. of Ottawa), March 6, 1887.

(In Chambers.)

*Before* WÜRTELE, J.

McCLELLAND v. FOOKS, & MAJOR *et vir*, Opposants.

*Venditioni Exponas—Opposition—C. C. P.* 664 *—Third party.*

HELD:—*An opposition to withdraw, to a writ of Venditioni Exponas founded on a right of ownership, may be made by a third party, notwithstanding the previous opposition of another third party.*

A seizure of moveables in the possession of the defendant was made on the 19th June, 1886, and on the 28th day of the same month, his wife, Amelia Locke, stopped the execution by an opposition to withdraw, by which she claimed all the property seized. The opposition was discontinued on the 24th February, 1887, and a writ of *Venditioni Exponas* was issued the next day.

Maria Major made an opposition to withdraw on the 4th March, 1887, claiming all the moveables seized as her property, and gave notice for the 6th of an application to the judge for an order to stay proceedings on the writ of *Venditioni Exponas*. On the presentation of the application, the plaintiff contended that the cause or ground of opposition was anterior to the date of the filing of the