

Eng. Rep.]

Reg. v. RITSON AND RITSON.

[Eng Rep.]

ance, and so endeavouring to deprive the prosecutor of his estate under the said conveyance, and of a considerable part of the property for a long term, and leaving only a valueless reversion in him in such part of the property.

The counsel for the prisoners contended that the deed could not be a forgery, as it was really executed by the parties between whom it purported to be made, and that there was no modern authority in support of the doctrine contended for by the prosecution. He also contended that the prosecutor had obtained his conveyance by fraud, and that it was void against the prisoners, and if so, the lease would be rightfully made.

The jury found that there was no ground for imputing any fraud to the prosecutor with regard to his security and conveyance; and the learned judge having expressed an opinion in conformity with the authorities cited, on the part of the prosecution, informed the jury that if the alleged lease was executed after the prosecutor's conveyance, and ante-dated, with the purpose of defrauding him, it would be a forgery. The jury found both the prisoners guilty, and in pursuance of the request of the prisoners' counsel, the question whether the prisoners were properly convicted of forgery under the circumstances was reserved for the opinion of the Court for the consideration of Crown Cases reserved.

*Torr* for the prisoners.—There is no authority for holding this to be forgery, except the case of *Salway v. Wale*, Moore, 655, cited by Coke, 3rd Inst. p. 169. Coke there says:—The statute of 1 Hen. 5 hath these words [forge of new any false deed] and yet if A. make a feoffment by deed to B. of certain lands, and after A. maketh a feoffment by deed to C. of the same land, with an ante-date before the feoffment to B, this was adjudged to be a forgery within that statute, and by like reason, within this statute also" (5 Eiz. c. 14); "and the rather in respect of the words subsequent [or make, &c.]" But there are no such words in 24 & 25 Vict. c. 98, s. 20, upon which this indictment is framed. The section only applies, to "forging or altering," and what was done here did not amount to forgery, and came within no definition of that offence. [MARTIN, B.—It is defined in 2 East, P. C. 852, as "a false making of any written instrument for the purpose of fraud and deceit]. There is a distinction between a mere false statement and an instrument false in itself, and this was a mere falsehood. Suppose a man who had no property were to make a purely imaginary conveyance, that would clearly be no forgery: how does the case differ because he once had property with which he has parted, and then purports to convey it again? [BLACKBURN, J.—Is there any case which conflicts with the passage in 3 Inst. and the case in Moore?] No: but that case is not referred to in Comyn's Digest, tit. Forgery, and he defines forgery to be the fraudulent writing or publication of a "false deed." [BLACKBURN, J.—A deed is false if it purports to be what it is not; is not that the case where it purports to be of a day on which it was not in fact made—the date being material, and being inserted for the purpose of fraud?] I should submit that the deed is not false, but contains a falsehood, and might be ground for

an indictment for conspiracy, or for obtaining money by a false pretence, but not for forgery.

Addison, for the prosecution.—According to all the authorities, this was a forgery, for it was the making of a false deed with intent to defraud. In addition to the definitions already quoted, it is said, in Bacon's Ab: Forgery, p. 745: "The notion of forgery doth not consist so much in the counterfeiting of a man's hand and seal, which may often be done innocently; but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is in no way privy to; or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an appearance which in truth and justice it ought not to have. Hence, it is holden to be forgery for a man to make a feoffment of certain lands to J. S.; and afterwards make a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S., for herein he falsifies the date in order to defraud his own feoffee, by making a second conveyance which at the time he had no power to make: 3 Inst. 169, Plut. 6 b. 27 H. 6; 3 Hawk. P. C. c. 70, s. 2."

KELLY, C.B.—I have entertained some doubt upon this question, because all the authorities upon the subject are comparatively ancient, and long anterior to the statute 24 & 25 Vict. c. 98, or to 11 Geo. 4, c. 68, which was in operation before that statute was passed. But, on referring to all the ancient authors, and to all writers upon criminal law, Coke, Foster, Comyns, and others, we find that they are uniform to the effect, not that every instrument which contains a false statement is forged, but that every instrument which purports to be what it is not, as by purporting to be executed on a day on which it is not in fact executed, is a forgery if the date is material and is inserted with intent to defraud.

I think that it is impossible to distinguish this case from the old authorities and text writers, and that it comes within the definition of forgery given by them.

MARTIN, B.—I am of the same opinion. I agree with Mr. Torr that this is not an ordinary instance of forgery; but all the books, ancient and modern, concur in their definition of that offence, and this case is clearly within those definitions. In Tomlin's Law Dictionary, Forgery, 7, I find it said that "when a person knowingly falsifies the date of a second conveyance, which he had no power to make, in order to deceive a purchaser, &c., he is said to be guilty of forgery: 3 Inst. 169; 1 Hawk. P. C. c. 70."

BLACKBURN, J.—I am of the same opinion. The statute 24 & 25 Vict. c. 98, s. 20, makes it a felony to "forge" a deed with intent to defraud; it does not define forgery, and the question is what is included in that word. The correct definition, as I understand it, is that given by Baron Comyns: "Forgery is where a man fraudulently writes or publishes a false deed to the prejudice of the rights of another." Not "a deed containing a falsehood," but "a false deed." Then, according to the passage cited from Bacon's Ab. by Mr. Addison: "The notion of forgery may consist in making a man's own