

of the same month; in fact, that the deed is a forgery; and it is alleged as a suspicious circumstance, that the deed purports to be executed with the mark of the grantor, whereas *Edward McMichael* was a good penman. The deed is attested by no less than four witnesses. The deed from *William McMichael* to *McKay* is impeached on the ground that it was obtained from the grantor, without consideration, while in a state of intoxication brought about by *McKay*.

1857.

Fick
v.
McMichael.

As to the first conveyance and the fact whether *Edward McMichael* was dead or living at its date, the only evidence in support of the plaintiff's allegation is that of *William Backhouse*, who says that *Edward McMichael* received a severe injury on the third of the month, from the effects of which he died, as *William Backhouse* thinks, between the 15th and 20th, but "he would not be certain," his words are "I should think not later than the 20th, but would not be positive." In another place, "I have nothing but my memory to assist me in these dates;" again, "I would not swear positively to the day of his death, but am pretty confident it was after the 15th, but as near as I can recollect it was between the 15th and 20th." We are asked, upon the evidence of a man who states himself to be seventy-seven years old, and who speaks from his unassisted recollection after an interval of more than 50 years, to pronounce that a man did not survive an injury which caused his death, nineteen days, because the witness thinks he did not survive it more than seventeen days, and whose memory ranges with extreme uncertainty over five days, between the 15th and 20th. The witness was not present when *Edward McMichael* died, but saw him on the previous evening, and on the morning, as he supposes, and as seems probable, of the day of his death, and he states that on that morning the wife of *Edward McMichael*, after some conversation with her husband, requested him, the witness, to go for *Alexander Hutchinson*, the witness's father, or *Captain*

Judgment.