in England and nowhere else." So in the present case, so far as he had a residence of a permanent and not for an occasional and temporary purpose, that residence must be found in France and nowhere else. We apprehend, looking at the state of facts, *primâ facie* the domicil in England would be abandoned, and there would be enough to constitute a French domicil; though if this was properly speaking *to be called the domicil of origin*, it is necessary to have very strong facts to change such domicil. Looking at this state of things, what are the facts and what are the arguments which have been adduced in opposition to the conclusion which such a residence under such circumstances induces their lordships to come to? The facts were short, and the argument was this: it was contended that the testator intended only to remain during Madame Laneuville's lifetime. Assuming that to be the fact, assuming that he intended to quit when Madame Laneuville died, it does not at all follow that that will tend to establish the conclusion that he had not acquired a domicil in France, because what is it that takes off the acquisition of a domicil by long residence in a country? It is being there for a temporary purpose. It never can be said that, residing in a country till the death of a party, was a temporary purpose. Residence in India in the East India Company's service has long since been established to constitute domicil; yet there is in civil cases always the *animus revertendi* at some period though very remote: if the residence be merely of a nature temporary and not likely to last long, then it would not constitute domicil in itself. It has also been contended that all the property of the deceased was in this country. No doubt it was; the property was situated in this country; but that argument has been long disposed of. The learned judge who gave judgment in the court below has particularly adverted to the authorities, therefore it is not necessary to turn to them. With regard to any declaration made by the deceased, the court is not desirous of following these declarations in detail, because they are not entitled to great weight. In the case of *Stanley v. Bernes*, 3 Hag. Ec. 447, there was an ample number of declarations of the intention of the testator to return to this country. The delegates were clearly of opinion in that case that the declarations of the testator could not prevail against his domicil in a foreign land. We do not propose to enter further into a consideration of the evidence, though there are many parts of it tending strongly to the conclusion to which their lordships have come; we do not allude to it, because we are of opinion that the learned judge of the court below has stated the law with perfect accuracy. Their lordships are perfectly satisfied that all his conclusions were justly founded upon the facts and circumstances of the case. Approving, as we do, of the judgment *in toto*, we think it unnecessary to go further. The appeal must be dismissed with costs.

*Decree affirmed.*

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PREROGATIVE COURT—*Shaw* v. *Neville*. Jan. 15. *Will—Due execution.*

*The attesting witnesses to a will deposed that the testator did not sign the will in their presence, nor did they see any signature when they subscribed their names:*

*Held, that the will was not duly executed.*

The deceased had left a testamentary paper, dated 18th Feb. 1854, which he clearly intended should operate as his will; it was all in his own handwriting, and signed by him at the foot or end. It contained a full testimonium, and also attestation, and also attestation clause, stating that the document was "signed, sealed, published and declared by the said C. J. T. (the testator) as and for his last will and testament, in the presence of us present at the same time, who, in his presence, at his request, and in the presence of each other, have hereunto signed our names as witnesses."

Then followed the names of two persons, servants of the deceased.

The deceased also left a will of previous date, Oct. 1836, wherein he had named his widow sole executrix and universal legatee. In the latter will of 1851 he had appointed his widow executrix and residuary legatee for life, and had substituted in the event of her death F. N.

*F. N., in whose* possession the last will was, was monished to bring it in and propound it, which was done in a formal allegation; whereupon the evidence of the attesting witnesses was taken. One of them, who was the butler of the deceased, deposed that "in the month of April last he entered the deceased's study in answer to the bell; that he saw the deceased sitting in his chair by the study table; a paper was lying upon a piece of blotting-paper on a writing-desk; it appeared to be folded in half or nearly so. That when he entered, the deceased's gardener, L. S., was there, standing at the further end of the room. As he entered the room, the deceased said, 'I want you both to sign your names to this paper.' That he then gave both to him and his fellow-witness a pen, and pointed out to them where to sign their names; that the paper was so folded crossways that he could not see if anything was written on the upper half; that there was no signature, nor any writing to be seen on the lower half whereon he and his fellow witness wrote their names; and that he was quite sure the deceased did not make any signature, or write in any way upon the paper whilst he was in the room." The other witness deposed to a similar effect.

*Waddilove*, in support of the will, submitted that there being a full testimonium and attestation clause, and the deceased being well aware what was necessary towards the due execution of the will, the presumption was that the signature of the deceased had been affixed before the witnesses were called, and that what was said and done by him in their presence amounted to an acknowledgment under the 9th section of the Wills Act. If the witnesses had been dead or not forthcoming, the will, being on the face of it duly executed, would have passed the seal of the court as a matter of course.

*Twiss* appeared in opposition to probate being granted. He was stopped by the court.

Sir JOHN DODSON.—I am anxious to put as liberal a construction on the terms of the Act of Parliament as I can; but there being no proof that the signature was affixed before the witnesses were called in, I cannot assume it as a fact; and if it was not, there could be no acknowledgment of it. I must pronounce against the will.

*Waddilove* asked for the costs out of the estate.

Sir JOHN DODSON.—Yes, you are, I think, entitled to your costs.

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## MONTHLY REPERTORY.

Notes of English Cases.

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### COMMON LAW.

C.P. COLEMAN *v.* RICHES. *May 2.*

*Principal and agent—Scope of agent's authority—Fraudulent act of agent.*

The plaintiff buys corn of L., which he employs the defendant, (a carrier by sea), to carry from B. to C. The defendant had been before employed in the same way by the plaintiff, and according to the usual course of business the corn would be delivered by the vendor at the defendant's wharf at B., where it would be put on board. The defendant's agent at B. would then sign a receipt for the corn, which the vendor would present to the plaintiff, and the plaintiff would then pay the price. On this occasion, the defendant's agent