

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, Pult. 46 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. 66, 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 act appear to have been done at a time when it was not done;" and if an instrument purports to have been made at a time when it would have one effect, and has in reality been made at a time when it would have another effect, that I think would make the deed a false deed, and be forgery. The date of a deed is frequently quite immaterial, but here that is not so. The date is shown by extrinsic evidence to be false, and the deed is therefore a false deed within all the definitions. Even without any authority upon the question, I think that common sense would lead to this conclusion. But all the authorities are at one upon this point. Lord Coke refers to the Year Books to show that forgery includes this very case; the case in Moore as far back as the time of Queen Elizabeth, is to the same effect. In the case of Ann Lewis, Foster's Crown Cases, 116, the same view was taken by eleven judges in consultation. No authority can be cited on the other side, and the only argument against this view is that there is no recent authority in support of it.

LUSH, J.—I am of the same opinion. If the parties had originally made a deed bearing a true date, and had then fraudulently altered the date, no question could have been raised; it seems to me that it would be an absurdity that the alteration of a true date to a false should be a forgery, and yet that the making of a deed with a date originally false should not be. I think that this deed was "a false deed" within all the definitions, as purporting to be what it in fact was not.

BRETT, J., concurred.

---

## CORRESPONDENCE.

---

### *Division Courts—Duty of Clerks in Court.*

TO THE EDITOR OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—I have read the communication of your correspondent "Lex," in your December number, and join issue with him as to the alleged general custom in the Ontario Division Courts as to the minuting memoranda of orders and judgments declared in court, for to my knowledge, in an experience of more than twenty years, I can confidently assert, that the custom has only been exceptional and not general; more than this, it was never pre-