wills, in both of which was contained a clause revoking all former wills Upon the death of the testatrix the will of January was produced by the plaintiff Mundy, in whose custody it had been placed, but neither of the two subsequent wills could be found. The will of January was propounded by the executors in a common condidit. A defensive allegation **[433]** on the part of the next of kin of the testatrix pleaded the due execution of the two latter wills, that each of such wills contained a clause revoking all former wills; and that the will of January had never been revived in manner required by the 22nd section of the Wills Act The personal answers of the executors admitted the facts to be as stated on behalf of the next of kin; but the executors in a responsive allegation pleaded, "That the testatrix had, previously to her decease, repeatedly stated to a female attendant that she had destroyed the two latter wills, that her will was in the hands of Mr. Mundy, who, with Mr. Major, were her executors."

The cause came on for hearing.

Addams in support of the first will. The 20th section of the Wills Act enacts that no will shall be revoked save by another will, or by some writing duly executed, declaring an attention to revoke the same; and the 22nd section provides that a will, once revoked, shall not be revived otherwise than by a due re-execution thereof. It must be admitted that the strict letter of the statute is against the validity of the will now propounded; but the expressions of the act are general, and may be controlled by the clear intention of the framers: the Court has already held that a literal construction of this act may be dispensed with. *Hobbs* v. *Knight* (1 Curt. 768), *Brooke* v. *Kent* (Privy Council, unreported). The leading object of the act was to exclude oral testimony in all cases. The 20th section evidently **[434]** means that the will or other writing, which is to revoke a prior will, shall be in existence at the death of the testator; in the second alternative mode of revocation the intention to revoke a prior will must be shewn, clearly, then, that intention requires to be evidenced, not by parol evidence of the contents of the revoking instrument, but by the language of a produced writing. Swinburne, and all the text writers, state that a will, once valid, but revoked by a subsequent will, revived on the destruction or cancellation of the revoking instrument; such cancellation might be shewn by parol evidence, the present act intended that there should be neither revocation nor revival, save by some writing, by which the intention to revive or to revoke could be safely arrived at. Look to the consequences of admitting parol evidence in this case; a door is at once opened to fraud and perjury; and that, too, with but little risk of detection, a disappointed heir-at-law or next of kin has only to procure two persons to swear that an instrument in writing, revoking a valid and forthcoming will, was executed in their presence: the most solemn will is liable to be destroyed.

Jenner and White contrà, stopped by the Court.

Judgment—Sir Herbert Jenner Fust I feel that I have no discretion to exercise in this case. There have undoubtedly been cases, decided over and over again under the Statute of Frauds, holding that parol evidence was admissible to prove the revival of a once revoked **[435]** instrument It was this that led to the introduction of the 20th and 22nd sections into the present Wills Act. It is admitted in this case that the testatrix did, subsequently to the execution of the will of January, make two other wills; that both of these were duly executed, and both contained a clause expressly revoking all former wills, then the first will was revoked to all intents and purposes, and to have a re-operation it must have been revived. Then was it revived? The only mode by which it could be revived is that pointed out by the 22nd section That section is most express, there must be a re-execution, there are no other means of shewing an intention to revive, destruction of the revoking instrument is not sufficient, it is not a re-execution of the revoked will, according to the present act I pronounce against this paper as a will

I think, however, that this question has been very properly brought under the consideration of the Court, and I give costs out of the estate

CRAIGIE AND CRAIGIE *against* LEWIN AND OTHERS Prerogative Court, July 12th, 1842, February 28th, 1843.—The executor named in a holograph will of a Scotchman by birth, but holding a commission in the military service of the East India Company, was cited in the Prerogative Court to prove the will, or shew cause why administration should not be granted of the effects of the deceased as dead

intestate; protest to appearing to such citation, by reason that confirmation had been granted of such will by a Court in Scotland, a competent forum, overruled. —The domicil of origin does not revive until an acquired domicil is finally abandoned —A native Scotchman having, by employment in the military service of the East India Company, acquired a domicil in India, held, that by his return to Scotland animo manendi his original domicil did not revive, the party still holding his commission and being liable to be called upon to return to India; and intending to return if called upon to do so.

[S. C. 2 Notes of Cases, 185, 7 Jur. 519 See, as to marginal note, *Attorney-General* v. *Pottinger*, 1862, 6 H. & N 741.]

John Craigie, a lieutenant-colonel in the East India Company's military service, died suddenly at **[436]** Hatchett's Hotel, Piccadilly, on the 23d of November, 1840, having made a paper-writing of a testamentary nature, all in his own handwriting, dated the 14th of October, 1840, but not attested by witnesses, of this paper he appointed Richard Lewin, John Larkins, and William Bell, executors The deceased left a widow and four children, minors, him surviving.

On the 2nd of August, 1841, a decree, with intimation, issued from this Court, at the instance of E. Mackintosh, the curator or guardian of the eldest son of the deceased, alleging that it was pretended that the deceased was at the time of his death a domiciled Scotchman, and that, by reason thereof, his will, although not witnessed, was valid in law, and citing the parties named as executors to prove the same, or to shew cause why administration of the effects of the deceased, as dying intestate, should not be granted according to law.

The widow intervened in the cause The parties cited, having been duly served, appeared under protest.

In support of the protest it was stated that the will of the deceased, who, by birth at least, was a Scotchman, being a holograph will, is valid and effectual as a Scotch will, although unattested. That the deceased had his legal domicil in Scotland at the time of his death, although actually deceased in London That the parties cited, named as executors, had duly proved such will in the proper Court of Scotland, according to the form prescribed by Act of Parliament for the proof of wills and registration of probative wills in Scotland; that they had obtained the usual probate or confirmation **[437]** of will, had acted as executors, thereby becoming amenable to the Courts of Scotland, and otherwise incurring heavy responsibilities, wherefrom they cannot be released by the sentence of this Court, or by any means, other than a reduction of the probate granted by the Scotch Courts; and submitting that, under the circumstances, this Court is not the proper forum in which the domicil of the deceased ought to be tried, but that the said question ought to be raised, and tried in the Scotch Court, being a Court of equally competent jurisdiction, and from the sentence of which an appeal may be prosecuted to the House of Lords in England

In answer to the protest, it was stated that the deceased was born in Glasgow, of Scotch parents, and at an early age went to India as a cadet in the military service of the Company, and continued in such service up to the time of his death That in 1822 the deceased came to England on public duty, and in January, 1823, was married in England, and returned to India in 1824. That in 1837 the deceased, then become a lieutenant-colonel in the Company's service, left India, and proceeded to England, on a three years' furlough, and arrived in England in August, 1837. That in October, 1839, he obtained an extension of leave of absence for six months, and in June, 1840, a further extension for six additional months, by which his leave of absence from India would not expire before March, 1841

That after arriving in England in 1837 the deceased and his family resided in London until the 16th of October, when he proceeded to Scotland, that he resided in Edinburgh, in ready-furnished houses, until the 9th of August, 1839, when **[438]** he returned to London with his family, and resided in London for four months, and about ten months previous to his decease went to reside at Plymouth, in the county of Devon, at which place his family continued to reside up to the time of the death of the deceased.

The matter of protest came on for argument

Addams and Robertson in support of the protest.

The Queen's advocate and Jenner contra

Judgment—Sir Herbert Jenner Fust I am clearly of opinion that I am bound to

overrule this protest, and to require the executors to contest the validity of their asserted will in this Court. It is admitted that the deceased was a Scotchman by birth, that is not disputed, and I take the fact of his having, at an early age, gone to India, in the service of the East India Company, not to be disputed What effect this latter circumstance had on the domicil of the deceased is a question hereafter to be determined, the question must eventually come back to this—what was the domicil of the deceased at the time of his death? for on the law of the country of domicil must depend the validity of the will. I am rather at a loss to understand how it happened, that whilst this question was undecided, and it must be obvious to all parties that sooner or later it would be agitated, the executors took probate of this paper in the Court at Scotland The parties whose interest is affected by this being upheld as a valid will call on the **[439]** executors to propound the paper in solemn form in this Court, surely they have a right to do so, I cannot see how the fact of the Court of Scotland having granted probate of the paper can conclude the Court on the question of domicil. I do not understand that the question of domicil was raised in the Scotch Court; the application to that Court was to grant probate in common form. Neither do I understand the principle on which the jurisdiction of this Court is objected to, and if the Court feels that it has jurisdiction, assuredly it cannot stay its hand Suppose a mandamus to issue from the Court of Queen's Bench to this Court, requiring it to proceed in this matter, and this Court were to make a return—that the matter had been decided by the grant of probate in common form in the Court of Scotland. Would the Court of Queen's Bench accept of such a return?

I do not consider that I am ousting the Scotch Courts of any jurisdiction to decide on the question of domicil: I do not consider that they are in possession of the question, or that it is even intended to raise the question in the Scotch Courts; neither do I think that I ought to yield up the decision of such question to those Courts.

It is obviously for the benefit of all parties that the domicil of Colonel Craigie should be determined; I therefore overrule the protest, assign the parties to appear absolutely, and reserve the question of costs.

February 28th, 1843.—The executors having appeared, an act on petition was entered into; the facts therein set forth were similar to those already stated in the protest: they are fully stated in the judgment.

[440] The matter of the petition then came on to be heard

Addams and Robertson for the executors. We admit that up to the year 1837 the deceased must be considered a domiciled Anglo-Indian, by reason of his commission in the military employment of the East India Company, *Munroe* v. *Douglas* (5 Madd 404), *Bruce* v. *Bruce* (2 Bos. & P. 229, n.); but on his return from India the deceased proceeded to Scotland with a fixed intention of reviving the domicil of origin: the domicil of origin is easily revived, *Somerville* v. *Somerville* (5 Ves. 750), *The Virginie* (5 Rob. 99) This is a case of testacy which is subject to different considerations from intestacy, *Curling* v *Thornton* (2 Add. 7).

The Queen's advocate and Jenner contrà. The deceased contemplated the possibility of a return to India; if so the legal requisites to complete a change of domicil are incomplete; we might even concede the factum of residence in Scotland, and rely on the contemplated return to India, if the animus manendi be wanting, the fact of residence cannot work a change, or a revival of domicil, but in this case the fact of residence in Scotland cannot be insisted on, for the deceased was quite as much domiciled in England as in Scotland. The distinction between testacy and intestacy is exploded, *Stanley* v. *Bernes* (3 Hagg. Ecc 373), *De Bonneval* v. *De Bonneval* (1 Curt. 858)

Judgment—Sir Herbert Jenner Fust. The facts of this case lie in a narrow compass, and **[441]** the law applicable to them is not difficult to determine

The question relates to the domicil which is to determine on the validity of a paper purporting to be the will of Colonel J. Craigie, who died on the 23rd of November, 1840, at Hatchett's Hotel, Piccadilly The will is dated in the month of October preceding, it is in the shape and form of a Scotch deed, a holograph, subscribed by the deceased, but not attested by any witnesses; and consequently, as it was made since 1840, if the deceased is to be considered as a domiciled British subject, the will is invalid for want of a due attestation, if, on the other hand, he is to be considered as a domiciled Scotchman, then the law of Scotland must determine on the validity or invalidity of this paper as a will.

The question in the present case is not whether the domicil of this person was Indian or English, for the law of England and India are now the same as regards the validity of wills, whether it was so at the time when the act of the 1 Vict c. 26 passed does not matter in this case, because an act was shortly after, January, 1838, passed by the legislature in India, assimilating the law of India in respect to wills to that of England; there is no necessity, therefore, to consider whether the domicil was English or Indian, provided it was not Scotch. This leads the Court to inquire into the history of this gentleman He was born in the year 1786, in Scotland, his parents were Scotch, and they also were of Scotch descent, he remained in Scotland, indeed was never out of that country until 1804, when he went to India in the East India Company's military service, in which he had ob-**[442]**-tained a commission as a lieutenant of a regiment of native infantry By birth, descent, and genealogy, therefore, his domicil was clearly and decidedly Scotch, and he did not abandon that domicil until he became of age, when he acquired an Indian, or as one counsel has called it, an Anglo-Indian, domicil. Having entered into the service of the East India Company, and having attained his age of twenty-one whilst in that service, his domicil became Indian or Anglo-Indian; for it is the same thing. In India he remained until 1837, with two exceptions, he was in England in 1819 until 1820, and he was also at the Cape of Good Hope from February, 1824, until October in the same year, on the first of these occasions, when absent from India, he did not visit Scotland, it is said in explanation that he came to England on a special mission from the Marquis of Hastings, the duties of which fully occupied his time On the second occasion, when at the Cape of Good Hope, his domicil was clearly Indian During the visit of the deceased to England in 1822 he married an English lady—I do not think this fact of any importance, it merely amounts to this—that being a domiciled Indian, he married whilst being on a visit to England, he carried his wife back with him to India, he had children by her, and he lived in India from that time until the year 1837, when he came over to England on the customary leave of absence, but still retaining his commission in the East India Company's service. he came on a three years' leave of absence, though, it is stated, that such leave is renewable for two years more; so that he had every prospect of remaining in this country for five years, **[443]** he applied for renewal of leave of absence on two occasions, and obtained it, this would have carried his leave of absence down to March, 1841—he died in November, 1840. Now it is said this leave of absence being granted as a matter of course, the deceased had every expectation that before its expiration he should have succeeded to a commission of full colonel in the service, which would have precluded the necessity of his returning to India, to which it is admitted he had a decided aversion If he did not return to India on the expiration of his leave of absence, or previously attain his full rank, he must have quitted the service of the East India Company [33rd Geo 3, c 55] Now it appears that the deceased had no intention of abandoning his commission unless he became a full colonel; he must, therefore, at this time, 1837, have contemplated the possibility, if not the probability, of being obliged to return to India, if only for a short period. It appears that on his arrival in this country in 1837, after remaining in England a short time, the deceased proceeded direct to Scotland, and arrived there in the October of that year, and he continued in Scotland until August, 1839, living, whilst there, in furnished houses, it further appears that, during the time of his residence, he contemplated the purchase of a house in Edinburgh; he wished to take a lease of a house for seven years, and offered to take such a lease of a particular house; but it had been purchased by another party to whom he offered 100l. to give up the bargain, and not being able to succeed in effecting his wishes, in August, 1839, he quitted Scotland, and by the advice of his medical attendant came to London, from thence he went **[444]** to Plymouth, and lived there, or in that neighbourhood, in furnished houses, until the death of his father, in 1840, when he left Plymouth, and again went to Scotland to attend his father's funeral, he remained in Scotland until October in that year, when he returned to London, and died at Hatchett's Hotel in November, 1840, being at the time about to join his wife and children at Plymouth This is the statement on behalf of those who desire to support the Scotch domicil, on the other side there is very little difference in the statement of the facts, the affidavits scarcely vary the case at all, they all coincide in the fact that the deceased did express an intention of taking up his abode in Scotland, in his wish to take a particular house in Edinburgh, that he offered 100l. to the purchaser of the lease to give up the bargain;

that as late as 1840 he again expressed a wish for the same house, or of purchasing some other house in the neighbourhood of Edinburgh, and that he was desirous of sending his son to study with some civil engineer in that neighbourhood. These circumstances are undoubted—from them I think the Court can come to the conclusion that if every thing had turned out according to the deceased's own wishes, he would have taken up his residence in Scotland; no one can look to his letters without seeing that he had a decided preference for the country of his birth; unfortunately his wife had a different opinion; she preferred residing in England, and she at last persuaded the deceased that such residence would be better for themselves and children It appears to me that, having left Scotland in 1839, he did not go back until 1840, **[445]** and then only to attend his father's funeral, and when that ceremony was over he returned to England.

These are the facts of the case, so far as is important to the present question; but the Court will have to refer more particularly to the exhibits before coming to a conclusion on the case. Now I do think that, if all circumstances had combined to favour the deceased's wishes, he would have taken up his residence in Scotland, but still the question remains whether there was an abandonment of the Indian domicil, and if there was the animus and factum of a domicil in Scotland It was properly asked by the counsel for Mr. Craigie—when was it that the Indian domicil was abandoned and the Scotch acquired? The answer, or the tenor of the answer, to the question was, at the time when the deceased went to Scotland in 1837; that he then went there for the purpose of remaining—in short, that he did it animo manendi, with the intention to preclude all question as to his domicil; that he took up his residence there animo et facto. The question then remains for the Court to determine—it being an admitted fact that the deceased went to Scotland in 1837, and remained there until 1839—whether he went there animo manendi; the solution of that question depends very much on his peculiar situation at the time, whether he was in a condition to abandon his acquired domicil in India, for if he was not in a condition to abandon his Indian domicil, the intention, even if to a certain extent complete by the fact of his having come to this country animo manendi, if he could possibly remain, would not be sufficient to change the **[446]** domicil; if the deceased was not in a condition to carry his intention into effect, that is, if his remaining in this country was dependent on circumstances which might be such as to render it incumbent on him to return to India, that is, if certain events did not give him an opportunity of finally quitting the service. In 1837, when the deceased arrived in this country, he retained his commission in the East India Company's service, he not only came on leave of absence for a distinct period—it signifies not whether there was a greater or less probability, or whether as a mere matter of course his time of absence would be extended for two years more—he was still absent on leave; he retained his commission in the Indian army, his regiment was in India, and his military establishment there; he had quitted India only for a temporary purpose, not with a fixed determination to abandon it altogether, but with the intention to return, unless on the happening of a particular event, namely, his attaining the rank of full colonel before his leave of absence expired

The question is whether a person having a fixed domicil, and having quitted it with the proposed intention of returning, although such intention may be annulled by the happening of a particular event, can by law be said to have abandoned that domicil; this is the important part of the case, did the deceased, when in 1837 or in 1839 he went to Scotland, go there animo manendi, or did he merely go there to remain, so long as the rules of the service in India would permit, and no longer? Now all the correspondence and the affidavits tend to shew that he contemplated returning to India, he might **[447]** have continued to live in Scotland during the whole of the time of his leave of absence, but would that have been a residence animo et facto? the animus would only be whilst his absence from India permitted, for if he did return to India, his Indian domicil would revert—perhaps I should not say revert, because it would never have been divested When the deceased came to this country, he quitted India on a temporary absence, which might be converted into a permanent quitting, by a certain event happening in the interval between the time of the commencement of his absence and the time for his return, I cannot think that the fact that he was absent from India, when he was looking to a probable return, can be said to be quitting that country animo manendi in another, he was indeed in another place, but for a temporary purpose only. Now, up to 1839, when he last

quitted Scotland, his domicil was India I cannot conceive that, by having left India under the circumstances mentioned, he had divested himself of the domicil acquired by his commission in the East India Company's service; in 1839 he went to Plymouth with his wife and family, he resided there, although only in furnished lodgings. If the question was between a Scotch or an English domicil I should decide for the Scotch domicil, notwithstanding his returning to England, and living there in furnished lodgings, and although, as has been argued, he had at one time expressed a wish to purchase a house near Plymouth, and although his actual residence was so far in this country; except for a short time when he went to Scotland on his father's death, and although he died in the act of returning thence **[448]** to join his wife and family in this country The important question is, what is necessary to constitute a change of domicil? There must be both animus et factum, that is the result of all the cases. This case must depend on its own circumstances, the principles on which it is to be determined are the same in all cases, and that principle extracted from all the cases is this, "That a domicil once acquired remains until another is acquired, or that first abandoned," I admit all that has been said in this case, that length of time is not important, one day will be sufficient, provided the animus exists, if a person goes from one country to another, with the intention of remaining, that is sufficient; whatever time he may have lived there is not enough, unless there be an intention of remaining

It is now my duty to consider the effect of the exhibits, and of the particular circumstances stated in the affidavits, for the purpose of shewing the grounds on which the Court thinks that the deceased had not abandoned his Indian domicil; he retained his establishment in India; his connection with his regiment, of which he remained lieutenant-colonel, still continued; he was bound by the rules of the service to rejoin his regiment at the expiration of his leave of absence.(*a*)

Now admitting the fact of actual residence in Scotland from 1837 until 1839, and the wish for a fixed and permanent residence in Scotland, admitting that the deceased had a decided preference **[449]** for Scotland, and that, if peculiar circumstances did not interfere to prevent him carrying that inclination into effect, he would have settled in a house in that country, still he had not at the time of his death placed himself in such a situation as to enable the Court to say that he had abandoned his Indian domicil, and acquired a permanent domicil in Scotland, the deceased had not abandoned his Indian domicil, he could not do so without resigning his commission, he did not intend to do so, unless he obtained the rank of full colonel. Although the bias of his inclination was to live in Scotland, and, even if he had remained there during all the time he was absent from India on leave, I should still have held that, by retaining his commission, which might, and probably would, have compelled him to return to India, the deceased had not abandoned his Indian domicil If so, then can it be said that he had abandoned that domicil? his connection with that country, which originally gave him his Indian domicil, still remained in full force: it was indeed liable to be dissolved by his attaining his full rank

Looking to all the circumstances of the case, I think it is distinguished from all those cases which counsel have most judiciously abstained from going into, they have all been considered here often and often. I think the Indian domicil was not abandoned, but that the deceased was still domiciled in India. If he had died in Scotland that would not in the slightest degree have changed my opinion, he was domiciled in India if the question had been whether he was domiciled in England or in Scotland, if that point had been in equilibrio, the **[450]** place of birth and origin might have turned the scale

I think there is quite sufficient in this case to enable the Court to determine that the Indian domicil, which the deceased had acquired, did remain at the time of his death; when I look for the animus and the factum, I do not find sufficient to enable me to say that the deceased had dissolved his connection with India, and I think, under all circumstances, that the Scotch law cannot determine on the validity or invalidity of this will

The question is whether probate is to pass, following the prayer of the one proctor, or administration, according to the prayer of the other? The distinction, adverted

(*a*) The Court then examined the letters of the deceased, exhibited in the suit, and commented on the language. The result which the Court arrived at was, that the deceased evidently contemplated a permanent residence in Scotland.

to in the course of the argument, between cases of testacy and intestacy makes no difference. It has been held in the cases of *Stanley* v *Bernes*, *Curling* v *Thornton*, and *De Bonneval* v. *De Bonneval*, that a person, in order to make a valid will, must conform to the law of the country where he is domiciled; just as where he makes no will, he must be supposed to have intended distribution according to the law of that country. It appears to me that this asserted will is null and void according to the law of India, which is the place of domicil of the party, and that administration must be granted according to the law of England. I cannot, however, at this moment pronounce against the will, it has not yet been propounded, it may be propounded as a valid English will. I assign the proctor to declare next Court day whether he propounds this paper or not.

[451] GAZE *against* GAZE. Prerogative Court, March 14th, 1843.—A testator produced a will, all in his own handwriting, and having his name signed at the end thereof, to three persons, and requested them to put their names underneath his. Held, a sufficient acknowledgment of the signature, the Court being satisfied (although there was no express evidence of the fact) that the signature was of the handwriting of the testator.

[S. C. 7 Jur. 803.]

William Wiseman died on the 25th of September, 1842; shortly after his death a testamentary paper, dated the 21st of April, 1842, was propounded, as the last will and testament of the deceased, by Charles Gaze and George Gaze, the executors named therein; its admission to probate was resisted by John Gaze and other persons entitled in distribution to the personal estate of the deceased in case he should have died intestate.

The allegation propounding the will pleaded that it was all in the handwriting of the deceased, and that on the 21st of April, 1842, he duly executed the same in the presence of three witnesses, who duly subscribed the same in his presence.

William Wood, the first witness, deposed, "That on the morning of the 21st of April, 1842, the deceased, accompanied by the two other subscribing witnesses, called on him, and asked him to accommodate him with the use of the table in his parlour, that witness having assented, the deceased placed on one of the flaps of the table a paper folded up, the deceased sat down at the table, and took from his pocket a pen and a bottle of ink, he unfolded the lower part of the paper on the table, keeping the upper part folded, so that witness could not see the writing on it, the deceased wrote 'a something' on the paper, but what witness cannot say, he then lifted up the folded part of the paper to write what he so wrote, which he did on the left hand side of **[452]** the bottom of the paper, and which only consisted of a word or so, he then took a book, and placed it over the part folded down, so as completely to cover it, and prevent the witnesses seeing what was written on the paper, the deceased then got up and sat in another chair, at the end of the table, and asked witness 'if he would sign his name underneath his own'—witness accordingly signed his name underneath the deceased's name, which he observed prefixed on the lower part of the paper, for there was no other part visible, that this was at a different part of the paper from where he had seen the deceased write on the paper, that the two other witnesses then signed their names underneath the deceased's name and his own, the deceased having asked them to sign their names, that what the deceased then wrote on the paper he wrote in the presence of all the three witnesses, who signed their names in the presence of the deceased, and of each other, the deceased did not tell them it was his will at the time, witness did not see the deceased write any part of the writing, except the trifling word or two in the corner. That witness perfectly remembers the seal on the paper, and that the names of the deceased were written on either side of the seal at the time witness signed, that he feels satisfied they were not written on the will by him (the deceased) in his presence, for what he wrote was not near the seal, but in the left hand corner, where the date appears. That to the best of his recollection the deceased, when he asked witness to sign his name, pointed to that part of the paper where it was folded, where his name was prefixed, and asked him to put his name underneath his (de-**[453]**-ceased's) name, one name on one side, and the other on the other side. That witness cannot depose precisely to the exact words he used, but his meaning was, that witness should sign one of his names on one side of the seal, and the other on the other."