

From this brief review of the law in relation to wills, it is evident, that none of those cases relied on, which shew, that the Court of Chancery has undertaken to have the original will itself taken from the custody of the register and delivered out to a party, or brought before the court for the purpose of investigation and proof, can have any material bearing upon the matter now under consideration.

It may not, however, be amiss to observe, that, in relation to the probate and custody of wills, our law appears to stand as much in need of amendment as that of England. 'I have often thought it a very great absurdity,' says *Chancellor HARDWICKE*, 'that a will which consists both of real and personal estate, notwithstanding it has been set aside at law for the insanity of the testator, shall still be litigated upon paper depositions only in the Ecclesiastical Court, because they have a jurisdiction on account of the personal estate disposed of by it. I wish gentlemen of abilities would take this inconvenience and absurdity into their consideration, and find out a proper remedy by the assistance of the Legislature. But, as the law stands at present, it is not in the power of this court to interpose, so as to stop the proceedings in the Ecclesiastical Court.' (*m*) The original will itself should in all cases, be committed entirely to the safe custody of the Register of Wills, as a part of the documents of his office, for which he should be expressly held responsible; since as an original it can only have authenticity from its being found in its proper place; (*n*) it should be required to be recorded; and if its validity should be drawn in question, either as to real or personal estate, an issue should be made up, to which all who claim under it, and the heirs, should be made parties, to be tried in the county court of the county where the original was kept; and it should be the duty of the Register of Wills to attend and have it with him at the trial. The original will should only be allowed to be taken from the office on its being shewn to be necessary to exhibit it to a witness who could not be made to attend at the trial; and, in such case, the court before which the trial was to

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them to establish their title, as such, to lands in Ireland, of which he had died seised in fee simple.—1807, ch. 12. By a similar act the Register of Wills of Worcester, was authorized to deliver the original will of Joseph Delastatus, deceased, for the purpose of having it recorded in Accomack county, Virginia.—1808, ch. 69. And by a special act the Register of Wills of Charles county was directed to transmit the original will of Daniel of St. Thomas Jenifer, to the Court of Appeals, to be there used in a case then depending, and then to be returned.—1822, ch. 117.

(*m*) *Montgomery v. Clark*, 2 Atk. 378.—(*n*) 1 Stark. Evid. 170.