Friday, November 21.

FIRST DIVISION.

(Before Seven Judges.)

[Sheriff Court at Aberdeen.

GRANT AND ANOTHER (TAYLOR'S EXECUTRICES) *v.* THOM AND OTHERS.

Succession—Testament—Writ—Holograph Writing—Subscription.

An unsubscribed document in the form of a will, holograph of the deceased, was found in her repositories inside an unsealed envelope, on the back of which were written the words "My will." The document, which was headed "Sunnybank Alford My last will Jessie Taylor," disposed of her whole estate.

Held (*diss.* Lords Salvesen, Mackenzie, and Guthrie) that it could not receive effect as a testamentary writing.

Authorities reviewed.

Mrs Elsie Grant, widow, 107 Warrender Park Road, Edinburgh, and another, executrices-dative of the late Miss Jessie Taylor, Sunnybank, Alford, *pursuers*, brought an action against Robert Taylor Thom, boilermaker, Inverurie, and others, *defenders*, in which they sought declarator that the document after mentioned was the valid will of Miss Taylor.

The document in question was as follows:—

"Sunnybank Alford
My last Will Jessie Taylor

"I leave my fourth share of this house to Jessie Taylor Gellie (Dora) my cottage at Kemnay Lilliesleaf to Robert Grant 43 Lauderdale Street Edinburgh Sell out my shares in the N. of S. and T. & County Bank. also N. of S. & Steme Coy and Scotish Union & N. Insurance Coy also what money may be in the Bank after my funeral divide it equally between Mrs Grant 107 Warrender Park Road Mrs Gellie 110 Desswood Place Aberdeen Dr Grant George Alford Grant Vancouver Cara Grant Robina Thomson Glassgreen & Isbe Thomson Jane Joiner and Freida Joiner let all share alike also Eleanor Thomson King Williams Town S. Africa to Nellie Grant £5 because of her usage to me when living in her Father's house last. my clothes divided among those also my bedding linnen and the furniture to Robert Grant my eight day or Grandfather clock what furniture is not wanted sell out and let the money go with what is in the Bank Mrs Thomson Glassgreen all my dishes or however many she want divide the books I would not like the Bibles sold"

The defenders pleaded, *inter alia*—"(2) The alleged testamentary writing founded on not having been subscribed by the said Jessie Taylor is inoperative as her will, and decree of absolvitor should be granted accordingly with expenses."

On 12th July 1913 the Sheriff-Substitute (YOUNG), after a proof, pronounced this interlocutor—"Finds in fact (1) that the late Miss Jessie Taylor, whose ordinary residence was at Sunnybank, Alford, Aberdeenshire, died in a nursing home at Aberdeen on 26th February 1913; (2) that shortly after her death an examination was made of her repositories in her house at Alford, and in particular attention was directed to a locked drawer as the place in which she was accustomed to keep papers of value and importance; (3) that in that drawer, part of a chest of drawers which stood in the kitchen, there was found, along with share certificates, deposit-receipts, and titles to property, an unclosed envelope, No. 5 of process, on the back of which was written the words 'My will,' and inside which was the document No. 5a of process; (4) that this document does not expressly bear to be written by the deceased, but it, as well as the words on the envelope, has been proved to be in her handwriting; (5) that at the beginning of the document and slightly separated from the body of it there is this heading, 'Sunnybank Alford My last will Jessie Taylor,' and what follows contains words of bequest, and appears to deal with every item of the deceased's estate excepting a small sum of cash in the house and a proportion of rents current at her death; (5) that the said document is not dated, but there is evidence to the effect that in all probability it was written after September 1912; and (7) that it is not subscribed: Finds in law that the said document, not being subscribed, is not a valid and effectual testamentary writing: Therefore refuses decree of declarator as concluded for."

The pursuers appealed.

On 17th October 1913 the First Division appointed the case to be heard before a Court of Seven Judges.

Argued for appellants—Subscription was not essential where, as here, its equivalent was present—*Russell's Trustees* v. *Henderson*, December 11, 1883, 11 R. 283, 21 S.L.R. 204; *Murray* v. *Kuffel*, 1910, 2 S.L.T. 388. The words "My last will Jessie Taylor." were equivalent to "what follows is my will, Jessie Taylor." A valid will might adopt as part of it marginal additions or informal writings, provided the intention to adopt were clear—*Gillespie* v. *Donaldson's Trustees*, December 22, 1831, 10 S. 174; *Baird* v. *Jaap*, July 15, 1856, 18 D. 1246. The question, in short, was one of adoption and identification. *Esto* that the early cases of *Titill* (1610), M. 16,959, and *Pennycuick* (1709), M. 16,970, in which testamentary effect was given to holograph writings though unsubscribed, were not now law, and that subscription was essential—Stair, iv, 42, 6; *Dunlop* v. *Dunlop*, June 11, 1839, 1 D. 912—subscription was present here, for the words "my last will" were duly signed. That was sufficient to distinguish this case from those of *Dunlop* (*cit.*); *Skinner* v. *Forbes*, November 13, 1883, 11 R. 88, 21 S.L.R. 81; *Goldie* v. *Shedden*, November 4, 1885, 13 R. 138, 23 S.L.R. 87; *Foley* v. *Costello*, February 6, 1904, 6 F. 365, 41 S.L.R. 286; and *Shiell* v. *Shiell*, 1913, 1 S.L.T. 62, in all of which it was held that an unsubscribed

holograph document could not receive effect as a testamentary writing.

Argued for respondents—It was not clear that the words "My last will" meant what follows is My last will. They might equally well mean "this is going to be my last will." If that were so, the document was *prima facie* incomplete, for it might still be added to. Nor was it conclusive that the writer's estate had all been disposed of, for until the document was finally signed it might be altered. To hold that this document was a valid will would be going further than any of the cases since that of *Titill* (*cit.*), which had not been followed, and would be inconsistent with sound policy. It was not enough that the writer's signature appeared *in gremio*. The writing must be subscribed—M'Laren on Wills, vol. i, p. 280. The case of *Gillespie* (*cit.*) was distinguishable, for the document there given effect to was referred to in a formal settlement. The words "My last will Jessie Taylor" were equivalent to "I, Jessie Taylor, make my last will as follows," and an unsigned document in these terms, where the grantor's name appeared merely in the narrative, could not receive testamentary effect—*Skinner* (*cit.*). The case of *Speirs* v. *Speirs*, July 19, 1879, 6 R. 1359, 16 S.L.R. 784, was not in point, for there the last of the series of documents, all of which were clearly meant to be read together, was initialled. The case of *Russell's Trustees* (*cit.*) did not conflict with the respondents' contention, for in that case the presumption of incompleteness was displaced by the facts. In so far as it did conflict with the rule that an unsigned holograph writing would not receive effect as a will, it was wrongly decided—*Skinner* (*cit.*), *Goldie* (*cit.*), *Foley* (*cit.*), *Petticrew's Trustees* v. *Pettigrew*, December 6, 1884, 12 R. 249, 22 S.L.R. 171. *Esto* that the Court was entitled to look at any extrinsic evidence of finality—*Hamilton* v. *Whyte*, June 15, 1882, 9 R. (H.L.) 53, 19 S.L.R. 688; *Lamont* v. *Magistrates of Glasgow*, March 10, 1887, 14 R. 603, 24 S.L.R. 426—such evidence as existed here was inconclusive, and that being so the question depended solely on the terms of the document itself.

LORD PRESIDENT—This Division of the Court has more than once expressed the opinion (first) that "they would not in the future sustain any document as a will which did not bear the subscription of the testator; and (second) that the recital of the testator's name at the commencement of a holograph writing would not be sustained as a subscription or its equivalent." I am quoting from the words of Lord M'Laren in the case of *Goldie* v. *Shedden*, (1885) 13 R. 138, and the law was laid down in substantially similar terms in the other Division of the Court. I quote now from the opinion of Lord Trayner in *Foley* v. *Costello*, (1904) 5 F. 365—"I think the law of Scotland requires subscription as the essential and only admissible evidence of a concluded expression of will on the part of a testator. . . . In my opinion the rule is inflexible—no subscription, no will—and to admit the consideration of facts and circumstances to modify that rule would be very inexpedient and dangerous." Lord Moncreiff says—"Subscription is the test of a holograph will," and "the want of subscription cannot be supplied by parole proof."

Now the question before us to-day is not whether these opinions express truly the law of Scotland, upon which (as I understand) all your Lordships are agreed, but whether or no the doctrines there laid down are applicable to the present case. It is what Lord Fullarton calls, in the case of *Dunlop* v. *Dunlop*, (1839) 1 D. 913, a "pure" case. There are no facts and circumstances here. If there were, I presume your Lordships would agree with what was said by Lord President Inglis in the case of *Skinner* v. *Forbes*, (1883) 11 R. 88, that "there are cases which give a certain countenance to sustaining unsubscribed holograph testamentary writings upon considerations of facts and circumstances indicating a purpose of the writer to treat the unsigned document as a completed act." I desire, for my own part, to add that in my judgment the cases there referred to can no longer be regarded as sound law.

The concrete case before us is one in which we are asked to sustain the validity of a writing which is holograph, which is testamentary in form, which was found in excellent company at the deceased's death, and which purports to dispose of the whole of her estate. It lacks a date, which is immaterial; it lacks the nomination of executors, which is also immaterial; and it lacks, as I read it, a subscription; and that is fatal, in my judgment, to its validity. For I read the paper on which the writing is found as one continuous writing, thus—"My last will, Jessie Taylor, I leave"—and so on. That, it appears to me, is the natural way in which to read the writing; for I think it would be dangerous to judge of the validity or invalidity of a testamentary writing by minute consideration of the spaces between words and lines. It is now trite law that if the signature of the writer is found anywhere in the body of the writing or at its very commencement it cannot supply the place of a subscription; and if this writing is read, as I think it should be read, as it seems to me natural to read it, as one continuous writing, it is obviously invalid as a testamentary document, in respect that it lacks a subscription. The cases of *Skinner* and *Goldie* and *Foley* are directly in point. This writing may, however, be read as if the words "My last will" simply signified a title, followed by the signature of the writer. The signature would then be regarded as a superscription and exactly the same result would follow, for it is well-established law that superscription on the part of a subject cannot authenticate the writing.

The writing may, however, be regarded as really two separate and distinct writings, the first a declaration of authentication or identification of the writing which follows, as thus, "What follows is my last will, Jessie Taylor," and then you turn to the writing which follows to find out whether it

has been identified by the duly subscribed declaration which precedes. The writing which follows is deliberately described by the testator as her "will." A will is a final and complete act, and the writing which follows is not a final and complete act, because it lacks a subscription. The omission to subscribe admits, in my judgment, of one interpretation, and one only, and it would be dangerous to give it any other, to wit, that the writer had not finally made up her mind and desired to have a little more time to consider in regard to the disposal of her means and estate. That I take to be the just meaning to attach to the two writings if you regard them as separate and distinct, and it appears to me that this in no way militates against the familiar doctrine of authentication or identification by reference to informal testamentary writings. That doctrine I recognise but deem it to be inapplicable to the present case. It might have been applicable to the present case if the writer had said, "The unsigned writing which follows is my last will," but she has not done so. She has, on the supposition I am now making, said it is her last will. When looked at, it obviously is not, for it is not subscribed. If she had said, "My will is to be found in an unclosed envelope," or "My will is to be found in a certain receptacle," or "My will is to be found on this paper," and if, when you turn to the envelope, the receptacle, or the paper, you find it is not subscribed, it would not be identified, because it would not be a will, in respect that it lacks subscription.

Now I hold that it is now the settled law of Scotland that the lack of a subscription indicates an intention on the part of the testator not to regard the writing as a final and complete act. As Lord Fullerton observed in the case of *Dunlop* v. *Dunlop*, 1 D. at p. 921, the necessity of subscription to a will is a matter which depends on no technical rule . . . but is familiar to all the lieges without exception. Every man knows the difference between a deed that is signed and one that is unsigned. It appears to me, therefore, that the deceased must have believed and understood that the writing was not effectual so long as he withheld his subscription from it, and that if we now sustained it as a valid instrument we should be making a will which the party died believing to be ineffectual." That being so, it seems to me plain, to use the language of Lord Deas in the case of *Skinner* v. *Forbes*, 11 R. at p. 91, that "there are no doubt advantages in holding that subscription in such cases as this is essential. That rule puts matters of this kind beyond all question, as every man then knows that so long as he does not subscribe the testamentary deed it is not completed, and that he has power to recall whenever he likes, or not to complete it all."

I decline for my part to weigh probabilities. I think it is dangerous for this Court to weigh probabilities in a question of this kind, and that there is one way of putting probabilities out of the question, and that is by the testator signing the deed. In short, I adhere to the doctrine expressed in the familiar passage by Lord Stair—"If we unfasten our moorings from that doctrine, there is no saying to what length we may drift."

The law of Scotland gives what I may call a latitudinarian discretion to testators in the expression of their intentions to dispose of their property. But the least thing we can demand now, I think, is a subscription as the one and only reliable index of final and complete intention.

LORD DUNDAS—I have come to the same conclusion. The general law applicable to cases of this kind appears to me to be correctly summarised in the opinion of Lord Trayner in *Foley* v. *Costello*, 6 F. 365, part of which has already been quoted by your Lordship in the chair. Lord Trayner said—and I respectfully adopt his words—"I think the law of Scotland requires subscription as the essential and only admissible evidence of a concluded expression of will on the part of a testator. It has been so decided more than once. The cases of *Skinner*, 11 R. 88, and of *Goldie*, 13 R. 185, referred to at the debate, are, I think, conclusive upon this matter. In my opinion the rule is inflexible—no subscription, no will—and to admit the consideration of facts and circumstances to modify that rule would be very inexpedient and very dangerous. The case of *Russell*, 11 R. 283, relied on by the pursuer, was a very special case indeed, while the case of *Burnie's Trustee*, 21 R. 1015, was not so special. In so far as these cases conflict with the cases of *Skinner* and *Goldie* I am not prepared to follow them." I may add, quoting the words of my brother Lord Skerrington in an Outer House case to which we were referred, that "there are no equivalents which obviate the necessity for subscription"—*Shiell* v. *Shiell*, 1913, 1 S.L.T. 62.

The pursuers, however, argue that, assuming the law to be as above stated, the document under consideration is a subscribed will. It is proved to be holograph of Miss Taylor, and is all written on the same side of a sheet of paper. There is no signature at the end of the writing, but it begins with the words, "Sunnybank Alford My last will Jessie Taylor." The pursuers say that Miss Taylor has in effect written, "What follows is my last will," adding her signature, and that she thereby authenticated or adopted or recognised, by way (so to speak) of a schedule, the remainder of the writing, as containing the final expression of her testamentary intentions. The case seems to me a narrow one, and near the line, but I have come to the conclusion that the document is not a subscribed will, and cannot receive effect. It is in the pursuer's favour that the document is all on one sheet of paper, and (so far as appears) may all have been written at the same time, and also that it bears to deal, as the Sheriff-Substitute has found, with every item of Miss Taylor's estate, excepting a small sum of cash in the house and a proportion of rents current at her death. Nor do I attach importance to the absence of date, or of the nomination of an executor. It may be that,

if one were entitled to proceed upon conjecture, one might suppose that Miss Taylor intended the document to be her last will, and imagined it to be valid and effectual, or again, one might suppose that she did not so intend or imagine. But the writing is not subscribed in the ordinary and proper way, and I am unable to hold that it is subscribed at all. It is not, to my mind, certain what is meant by the bare words "My last will," or that "Jessie Taylor" is truly meant to be a signature. The language of the document is entirely consistent with the theory that Miss Taylor had written what she proposed or intended in the way of testamentary provision, but deliberately refrained from affixing her subscription—"the essential and only admissible evidence of a concluded expression of will" on her part to test. I do not think we are entitled to proceed upon the conjecture that Miss Taylor may have intended the document to be her valid and effectual testament. In construing wills we sometimes meet with cases where, if conjecture might be resorted to, the Court would incline to such or such a conclusion, but in these cases the Court holds itself bound to give effect to the testator's intention as it can be ascertained from what he has said, and not from what it might readily be inferred that he may have meant to express. This case, like others that occur now and again, may be a hard one, though I am not convinced that it is so, but it is our duty to maintain the established rules of law, and not to admit variations on or exceptions to them in view of hardship or supposed hardship in any particular case. I do not think the law imposes an undue or excessive burden upon the public in general, or intending testators in particular, in demanding that a will must be properly subscribed. For these reasons I am for refusing the appeal and affirming the interlocutor of the learned Sheriff-Substitute.

LORD JOHNSTON—I think that the learned Sheriff-Substitute has come to a sound conclusion in this case. The law of the subject has, I think, been gradually settled by a series of cases during the last seventy years, and settled in the direction of increasing strictness in application in the case of the execution of wills—and this I think for sound reasons. Because wills in the matter of their execution stand in a different position from other documents. In regard to wills there can be no such thing as delivery, *rei interventus*, homologation, to validate an unsigned document. On the other hand a will is required "not only to be the true writing of the deceased, but also the completed act of his will"—Lord Mackenzie in *Dunlop's* case, 1 D. 919. There are, no doubt, in the cases to which I shall advert, expressions of individual Judges which would leave the law on the subject much more loose, but I think that it has now hardened into the following:—(1) To validate a will there must be signature; (2) that signature must be directly or indirectly by subscription; (3) external facts and circumstances cannot be admitted to supply the want of subscription.

The case of *Gillespie*, 10 S. 174, in its second branch, would be an authority against the first two of these propositions. But it cannot stand in view of subsequent decisions, and Lord Balgray's idea that a document not signed could be considered "to be legally signed to all intents and purposes" is one which cannot be entertained.

The pure question arose shortly after in *Dunlop's* case, and it was emphatically decided that an unsubscribed will was invalid though holograph, though containing the testator's name *in initialibus*, and a declaration that he thereby made his last will and testament, and though purporting to be a universal settlement with residue clause. The Court felt themselves clear of all other considerations, "because the writing in dispute stands alone." But Lord Cockburn (Lord Ordinary) says—"Where the Court has arrived at seemingly opposite results, it has never been by merely looking at the unsubscribed writing by itself, but always by incorporating it with other matter with which it has a necessary connection. This matter has generally consisted of two circumstances, one or other or both of which have been invariably required to warrant any relaxation of the strict rule. These are that the defects in the instrument have been supplied (1st) by other unobjectionable writings connected therewith by the testator, or (2nd) by evidence of facts extrinsic of the disputed instrument but linked to it. So that, in truth, it has never been the unsubscribed writing alone that has been sustained." I am not aware of the cases to which his Lordship refers, in which the Court are supposed to have arrived at seemingly opposite results. The only prior cases referred to at the hearing were *Titell*, (1610) M. 16,959, and *Gillespie*. Lord Fullarton also said in agreeing in the judgment—"I do not wish to be understood as saying that there are no circumstances in which an unsubscribed deed should receive effect. There may be cases where facts and circumstances occur, sufficient to instruct that an unsubscribed holograph deed was nevertheless the last will of the deceased. But there are no such circumstances here."

I think that it must now be accepted that Lord Cockburn's second proposition, apparently concurred in by Lord Fullarton, will not hold. And I further think that his first proposition requires consideration, limitation, and definition. It is this point only, I think, which makes the present case of importance, and justifies its being discussed by a Court of Seven Judges. Had I thought it depended on special circumstances, as I gather some of your Lordships do, I could hardly have consented to that course being taken. My own conclusion, after carefully considering the authorities, is that Lord Cockburn's statement, that the defect of subscription can be supplied "by other unobjectionable writings connected therewith by the testator" can mean no more than that there must be subscription, but that that subscription may be *indirect*, as I have put it in the above propositions, that is, by the sub-

scription of some other document connected by the testator with the unsubscribed will. Such other document must be unobjectionable in itself, and therefore, whether holograph or tested, must be subscribed. It must be connected by the testator with the incomplete will. But what precisely is to be understood by "connected therewith" is most difficult to determine, and there is risk of derogating from the rule by the exception. I think that it must be a document so linked with the unsubscribed will as by its own subscription unequivocally to supply the want of a subscription to the will.

In *Skinner's* case, 11 R. 88, the law of *Dunlop's* case was unconditionally endorsed, though the document in question bore even a greater semblance of being a completed deed than that in *Dunlop's* case. Lord Deas in fact suppressed his own inclination to dissent, saying—"It is most important that on this branch of the law when a rule has once been decided it should not be opened up again except for some very strong reason, and I look in vain for any sufficient reason why we should reconsider the case of *Dunlop*. . . . There are, no doubt, advantages in holding that subscription in such cases as this is essential. That rule puts matters of this kind beyond all question, as everyone then knows that so long as he does not subscribe a testamentary deed it is not completed, and that he has power to recall it whenever he likes, or not to complete it at all. I think, therefore, that on the authority of the case of *Dunlop* we must find that this deed is invalid."

Then *Foley's* case, 6 F. 365, and *Goldie* v. *Shedden*, 13 R. 138, conclusively disposed of the suggestion adumbrated in *Dunlop's* case that facts and circumstances might supply the want of subscription, and determined that "the law of Scotland requires subscription as the essential and only admissible evidence of a concluded expression of will on the part of a testator."

None of these cases, however, touch the first point put by Lord Cockburn in *Dunlop's* case, viz., that defect of subscription can be cured "by other unobjectionable writings connected therewith by the testator."

In this relation it is necessary to examine the case of *Russell's Trustees*, 11 R. 283, where a lady left a holograph writing commencing—"I, Margaret Russell, do hereby make my last will and testament revoking all other wills." She dated but did not subscribe it. It was found contained in a sealed packet, bearing on the outside her signature and the words "James Henderson," this Mr Henderson being Miss Russell's nephew and the executor nominated in the above writing. Attached to the packet by a string was an envelope addressed "to James Henderson from Margaret Russell," containing a letter with a date of the same month and year as the above writing, holograph of Miss Russell, stating that she had rewritten her will "for this year," and giving directions about her funeral. It was signed with her Christian name only, and there was no proof that she was in use so to sign. The whole were stated to have been delivered by Miss Russell to Mr Henderson, with the statement that her will was therein contained, and that they were not to be opened until her death. The Court held that the circumstances supplied the defect of subscription, and the writing was sustained as a valid will. As this question has been sent to Seven Judges, I conceive that I am entitled, if not bound, to examine this judgment, which I should not otherwise do, and I venture to take exception to much which was stated in support of it, and even to entertain grave doubt of the result arrived at. Lord Craighill pronounced the leading judgment, and he proceeds on a view of the virtue and competency of a proof of facts and circumstances which is not consistent with the cases to which I have just referred, and in particular gives weight to the admission—for the question was raised in a Special Case—of what Miss Russell said in delivering the sealed packet to Mr Henderson, evidence of which, I think, would have been entirely inadmissible. But his Lordship also finds sufficient token of authentication under the hand of the lady in the envelope and its contents which was attached by a string to the sealed packet containing the alleged will, and which he held to be an appendage to the will. I should myself have thought that there was neither an intelligible subscription nor an unequivocable connection of the document bearing that subscription by the testator with the unsigned document. Lord Young on the other hand gives an interpretation of Stair, iv, 42, 6, which would leave the validity of all such unsubscribed holograph writings to a question of circumstances. The sound interpretation of the passage from Stair is that given by Lord Shand in *Skinner's* and *Goldie's* cases.

In the present case we have an unsigned holograph writing testamentary in its nature. I think that it is irrelevant to the question of its validity that, if valid, it would have disposed of all that the writer is known to have possessed, or written at any particular date, or that it was found in any particular repository. It depends for its validity, if it is valid, entirely upon its heading—

"Sunnybank Alford
My Last Will Jessie Taylor"

I cannot regard this as an unexceptionable document connected with the alleged testamentary writing by the testator, and therefore as supplying the want of subscription of the document itself.

It is at best a superscription, for presumably it preceded the making of the document which was to follow. Indeed, whether it preceded or followed the making of the document to which it is prefixed, it was in effect superscription. And superscription cannot be regarded as any but a royal prerogative.

Moreover, such a preliminary announcement is no unequivocal proof of the finality of what follows.

But the equally fatal objection is that its

meaning is inconclusive. No one can say, except as an assertion of probability, what the writer meant. It is possible that she meant "This which the reader will find below I mean to be received as my last will." If what has been referred to as the docquet—though I never heard of a docquet preceding the document assumed to be docqueted—had followed the writing, the above interpretation would have been a reasonable and natural implication. But being found where it is, it is also possible that it meant "What I am about to write I intend to be my last will"—a statement which if written *in extenso* would not have established the finality of what was to follow. With all respect I adopt the view of Lord Shand in *Skinner's* case—"There is one way of putting probabilities out of the question, and that is by the testator's signing the deed, and I think the view expressed by Lord Stair is the safe and proper view of the law on the point."

LORD SALVESEN—In this case we had a very full citation of authorities on both sides of the Bar; but in the view I take it is unnecessary to consider whether the judgments pronounced in several of these cases which have been since commented on would now be repeated. One proposition is clear, that an unsubscribed holograph will is not a valid and effectual testamentary writing even although the name of the granter is embodied in the document. The tersest and most lucid exposition of the law on this point is contained in the passage from the opinion of Lord Trayner in the case of *Foley* v. *Costello*, 6 F. 365, already quoted by your Lordship in the chair. As at present advised, I do not see any ground for modifying this absolute statement of the law; but the question remains whether it is applicable to the circumstances of the present case.

The writing founded upon begins with the following words—"Sunnybank Alford My last will Jessie Taylor." There follows a holograph statement of her testamentary wishes, which, as the Sheriff-Substitute has found, "appear to deal with every item of the testator's estate excepting a small sum of cash in the house and a proportion of rents current at her death." The document is not dated, but there is a finding to the effect that in all probability it was written after September 1912, while Miss Taylor's death occurred on 25th February 1913.

I apprehend that if the words "My last will" and the signature had followed the testamentary directions no question could have been raised. The words would then have been construed as meaning "the above is my last will," and I would have attached no importance to the fact pointed out by the respondents' counsel that the signature is in the same line with the words "My last will" and is not below it. Nor do I think would it have made any difference in such a case that the writing bore no date, and that there was no appointment of an executor. The date may be of importance when it is doubtful whether the deed was signed before or after marriage, but not generally where the will of an unmarried person is concerned. Even if it were otherwise, the fact that the property left was precisely what was disposed of by the settlement shows, apart from the parole evidence to which the Sheriff-Substitute refers in the finding from which I have partially quoted, that the document cannot have been executed very long before the testator's death. As regards an executor, the law will appoint one if the testator has not done so; and it is probable enough that this lady who wrote her own will should be ignorant that the distribution of her estate could not be effected except through the medium of an executor. Such an omission does not tend to throw any doubt on the document as a complete expression of her testamentary wishes.

Does it, then, make any difference that the words "My last will Jessie Taylor" precede and do not follow her testamentary directions? In my opinion in the circumstances of this case it does not. I construe the words in the position which they occupy on a single sheet of paper as being equivalent to a statement that the directions as to the distribution of her estate which immediately follow constitute her last will. This settlement is duly subscribed, and as there can be no question as to the identification of her testamentary wishes, constitutes a disposal of the whole estate of which she knew herself to be possessed. I have therefore come to the conclusion, differing from the Sheriff-Substitute, that the document, taken as a whole, validly disposes of her estate. In so holding I conceive myself to be simply applying to the circumstances of this case the well-known rule stated in M'Laren on Wills, sec. 531. There is not the same difficulty in applying this rule in the present case as there would have been if the testamentary writings had been on different sheets of paper, as in some of the decided cases quoted in the footnote. The present case is extremely special, and can scarcely be an authority unless on circumstances which are substantially identical.

LORD MACKENZIE—I am of opinion that this is a good will.

The question is a short one, depending upon (1) the construction put upon the declaration "My last will," and (2) the identification of the will therein referred to.

Two constructions are put forward—the first that "My last will" means "this is the will I am going to make," the other that it means "this paper is my last will." I prefer the latter as the more reasonable. To the statement so made by the testatrix is appended her signature. It is subscribed. Therefore the case is not like those where the name of the testator appeared merely *in gremio* of the writing. I recognise that the later cases settle that without subscription a writing cannot *per se* be valid as a will. The law is contained in the cases of *Skinner*, *Goldie*, and *Foley*, cited by the Sheriff-Substitute, and I refer to Lord Low's and Lord Trayner's opinions in the last mentioned. There is here, in my opinion, compliance with the required formalities.

The next question is whether there is room for doubt that the document is a completed will. If it is a mere scroll from which a will was afterwards to be made, it is of course not operative. This is, as was pointed out in *Dunlop*, the question to be decided. It is not necessary to recapitulate the findings in fact relating to the circumstances under which the present writing was found. The surrounding circumstances all point to its being, what it purports on the face of it to be, the last expression of the will of the testatrix. The fact that it was found in an envelope (though unclosed) with the indorsation "My will" is entirely consistent with this view. There is to my mind no reasonable doubt as to the identity of the will referred to. It is the universal settlement of her whole estate which with her own hand she wrote upon the same page of the paper. The respondents argued that there is no nomination of executors, no date, and during the original argument it was pointed out there is no full stop at the end. These circumstances do not, to my mind, lead to the conclusion that the will is not a complete expression of the intentions of the testatrix. Nor was it necessary that there should be a residuary clause, for there does not appear to be any residue. The writing is not a memorandum of what was intended to be a will. It is a completed will. The subscription may or may not have been added before or after the writing which follows it upon the page. I am content to assume that it may have been written immediately after the words "My last will." These words, with the accompanying subscription, are, I am of opinion, a sufficient recognition by the testatrix of her will. I prefer to rest my judgment upon this rather than upon the doctrine of adoption. Suppose that the writing which follows the docquet had been on a separate sheet of paper in a sealed envelope which bore the indorsation "My last will," or "What is contained herein is my last will," with the subscription of the testatrix. In these circumstances it would have been in my view impossible to refuse to give effect to it. Yet then the docquet and subscription might have been written before the will, and the identity of the will might have been more open to doubt than is the case here.

I therefore think that, consistently with established principles, effect should be given to this will.

When the foregoing was written I was of opinion that there was no difference of opinion as regards the law, but only as regards its application. As regards some of the propositions laid down by those who take a different view, I am unable to concur. I reserve my opinion on these when they come up.

LORD GUTHRIE—I concur in the opinions of Lord Salveson and Lord Mackenzie. It was stated by Mr Lippe at the commencement of his opening that the object of this case being heard before Seven Judges was to obtain a decision on the Sheriff-Substitute's finding in law—namely, that the document in question not being subscribed is not a valid and effectual testamentary writing. But as the argument proceeded it appeared that the real question raised was not whether, being unsubscribed, it could be shown that there were what the law would hold equivalents for subscription and that the document was truly subcribed. On the whole but with difficulty I think the words, "My last will Jessie Taylor," although in the position in which they occur, amount to subscription of the document in question. At the same time I am bound to add that the question might have arisen for consideration under more favourable conditions; and I should have felt more confidence that I was giving effect to the deceased's intention if these words had been at the very commencement of the document, if what I consider the deceased's signature had been underneath instead of alongside the words, "My last will," if the end of the document had been less ragged, and if the envelope containing the document had been sealed or at least closed. I do not regret the result at which I understand the majority of your Lordships have arrived, as it does not seem unreasonable or contrary to public policy to require that in every case where there is not clear adoption or recognition testators must append their signatures at the end of their testamentary documents, if not necessarily under the last words of these writings.

LORD SKERRINGTON — This appeal does not, in my view, raise any question either of legal principle or of general interest. On the one hand it is now settled that a holograph will is invalid unless it is subscribed by the testator. On the other hand, with very great deference to the opinion expressed by your Lordship in the chair, I had thought, and I still think, that a will which is itself either holograph and subscribed or probative may incorporate by reference unsubscribed testamentary directions which are to be found outside of itself. For example, in an unauthenticated writing sufficiently described for identification, or in a model will printed on a certain page of a legal style-book or in the published life of some person, either real or imaginary. I refer to the case of *Crosbie* v. *Wilson* (1865, 3 Macph. 870), where a Court consisting of Lord Justice-Clerk Inglis, Lord Cowan, Lord Benholme, and Lord Neaves sustained a holograph but unsubscribed testamentary writing, in respect that the testatrix had directed by her formal will that any holograph writing whether signed by her or not should receive effect. I share the doubts expressed by Lord M'Laren — Wills and Succession, vol. i, pp. 289, 290—as to whether it is consistent with the attestation statutes that a person should be allowed to dispense with the solemnities required by law in regard to testamentary writings not in existence at the date of the will or prepared *unico contextu* therewith. But the authorities, including the opinions in the House of Lords case of *Inglis* v. *Harper* (1831, 5 W. & S. 785), do not in my opinion support the view that a writing cannot be adopted

as a will unless it is itself subscribed by the testator.

In the present case all that we have to decide is whether the holograph writing printed in the appendix ought to be read as forming two separate documents, and if so, whether the first seven words, viz. "Sunnybank Alford My last will Jessie Taylor" ought to be construed as meaning that the writer referred to and incorporated as part of her subscribed will the holograph but unsubscribed directions written below her signature. I think that there is at least a reasonable doubt as regards both questions, and I am not prepared to answer either of them in the affirmative. I am not satisfied that the words "Jessie Taylor" were intended to authenticate the words which preceded them or were other than descriptive of the person who was beginning to write out her will. Nor am I satisfied that the writer intended the words "my last will" to have the meaning and effect attributed to them by the appellants' counsel. The presumption that testamentary directions are incomplete and deliberative until they have been subscribed militates against the construction contended for. This presumption is founded, not upon any technical rule of law, but upon the ordinary understanding and practice even of rustics in this country. I am therefore of opinion that the judgment of the Sheriff-Substitute should be affirmed.

The Court pronounced this judgment—

"Dismiss the appeal: Affirm the interlocutor of the Sheriff-Substitute dated 12th July 1913: Repeat the findings therein, except the finding as to expenses: Of new refuse decree of declarator as concluded for, and decern, reserving the question of expenses."

On 25th November 1913 the First Division found both parties entitled to expenses out of Miss Taylor's estate.

Counsel for Pursuers (Appellants)—Lippe. Agents — Dalgleish, Dobbie, & Company, S.S.C.

Counsel for Defenders (Respondents) — Chree, K.C. — Mitchell. Agent — Henry Bower, S.S.C.

Friday, November 21.

FIRST DIVISION.

(Before Seven Judges.)

[Lord Ormidale, Ordinary.

ADAM (COLVILLE'S FACTOR) *v.* NICOLL AND OTHERS.

Succession—Collation — Intestate Moveable Succession (Scotland) Act 1855 (18 *and* 19 *Vict. c.* 23), *secs.* 1 *and* 2.

The proviso in section 1 of the Intestate Moveable Succession (Scotland) Act 1855, which provides that "no representation shall be admitted among collaterals after brothers' and sisters' descendants," applies also to section 2.

A died intestate, survived by, *inter alios*, a first cousin on his father's side, who was his sole next-of-kin, and by the children of a predeceasing cousin also on the father's side. B, one of the children of the predeceasing cousin and A.'s heir-at-law, claimed, on collating the heritage, to which he was admittedly entitled, to participate along with his sisters in A's moveable estate in virtue of section 2 of the Act. *Held* that B was not entitled to share in the moveable estate.

Jamieson v. *Walker*, March 4, 1896, 23 R. 547, 33 S.L.R. 397, *overruled.*

The Intestate Moveable Succession (Scotland) Act 1855 (18 and 19 Vict. c. 23) sec. 1, enacts—"In all cases of intestate moveable succession in Scotland accruing after the passing of this Act, where any person who, had he survived the intestate, would have been among his next-of-kin, shall have predeceased such intestate, the lawful child or children of such person so predeceasing shall come in the place of such person, and the issue of any such child or children . . . who may in like manner have predeceased the intestate, shall come in the place of his or their parents predeceasing, and shall respectively have right to the share of the moveable estate of the intestate to which the parent of such child or children or of such issue, if he had survived the intestate, would have been entitled; provided always that no representation shall be admitted among collaterals after brothers' and sisters' descendants. . . ."

Section 2 enacts—"Where the person predeceasing would have been the heir in heritage of an intestate leaving heritable as well as moveable estate had he survived such intestate, his child, being the heir in heritage of such intestate, shall be entitled to collate the heritage to the effect of claiming for himself alone, if there be no other issue of the predeceaser, or for himself and the other issue of the predeceaser if there be such other issue, the share of the moveable estate of the intestate which might have been claimed by the predeceaser upon collation if he had survived the intestate . . . and where in the case aforesaid the heir shall not collate, his brothers and sisters, and their descendants in their place, shall have right to a share of the moveable estate equal in amount to the excess in value over the value of the heritage of such share of the whole estate, heritable and moveable, as their predeceasing parent, had he survived the intestate, would have taken on collation."

On 16th November 1912 A. Y. Adam, solicitor, Dundee, judicial factor on the estate of the late John Colville, bank agent, Dundee, *pursuer and real raiser*, brought an action of multiplepoinding and exoneration against Mrs Annie Bruce Adam or Nicoll, widow of Charles Nicoll, High Street, Lochee, and others, *defenders*, for the determination of certain questions relating to the distribution of Mr Colville's estate. Mr Colville, who died intestate and without issue on 13th October 1911, was an only child, and his nearest relations were de-