the paper closing with these words—'This is to be handed to Mr Reid to add to my settlement.' Mr Reid was the professional gentleman by whom the settlement had been prepared, and was her confidential man of business. She did not write this codicil on the deed, although it was in her own custody, and although it was admitted in the argument it had blank space enough for additions. She merely declares her intention to place in Mr Reid's hands this enumeration of sums and names with the view of their being added to her settlement. This declaration makes it unnecessary to consider whether the heading 'a codicil,' without any other testamentary words, would have supported this writing as a bequest of legacies. For it is impossible to view it as a concluded declaration of her intention so far to alter the settlement. I hold it clear, under the authority of the case of Monro *v.* Coutts, and the principle laid down by Lord Eldon in disposing of that case, that although a writing may contain words indicative of testamentary intention, that is not enough for its validity, unless the testatrix can be held to have intended the writing to take effect as her final will in that matter, although her man of business shall not have acted on her instruction by adding the bequests to her settlement. This certainly cannot be predicated of this writing.

"The second paper again has prefixed to the enumeration of sums and names. It contains these remarkable words—'To be handed to Mr Reid, a codicil to my deed. Should I be taken away suddenly, my trustees would act upon it the same as if it were written as a codicil to my settlement.' On the first part of these words the same observations occur as upon those annexed to the first writing. It was plainly the intention of the testatrix that this codicil was to be written on her settlement by Mr Reid; but there is an essential difference between the two writings, arising from the subsequent words, for the testatrix evidently contemplated that this writing in itself should in certain circumstances receive effect as testamentary. Her declared will is that the writing was to be acted on precisely as if written as a codicil to her settlement should she be taken away suddenly. There is thus a testamentary character stamped upon the writing by the testatrix herself, and in that situation, what the Court have to consider is the effect of the terms by which this testamentary character is apparently limited in its operation to a certain emergency. 'Taken away suddenly.' These words are capable of several meanings. They may mean 'soon,' before the testatrix had time to see Mr Reid, or they may mean taken away without much warning, even years afterwards; and I am not disposed, upon a stringent interpretation of words of this kind to destroy the effect of a writing which the testatrix undoubtedly held to be in itself testamentary at the time she subscribed it. No subsequent act of her will was necessary to give the writing validity as an expression of her intention. And this writing differs from the other in having embodied in it express words of gift, which the prior writing has not. I think, therefore, that this second paper is testamentary; and I arrive at this conclusion the more readily, because it plainly embodies, with a view to their receiving effect, bequests to those institutions and charities intended to be benefited by the first writing, which it may be fairly held to have been intended entirely to supersede.

"The third of the writings, dated in February 1862, contains no words of bequest, but consists of a mere enumeration of sums of money, amounting to between £5000 and £6000, to which certain names are attached. It is a mere list of names and sums, with but one exception, the words, namely, 'Margaret to get my clothes, a bed and bedding.' And the fourth writing again is precisely of the same character, containing an enumeration of eight names, with £100 attached to each. No doubt these papers are subscribed by the testatrix, and the names and figures therein are admitted to be holograph. But it seems to me impossible to hold them of a testamentary character, and entitled to effect as such. I know of no instance in the whole range of cases of this class where a mere enumeration of names and figures, without any words indicative that the names were intended to be those of parties intended to be benefited by the testator, and the figures to be indicative of bequests or legacies which these parties were intended to receive. And when it is remembered that what the exigency of the case in principle demands is a writing under the hand of the testatrix, clearly indicative of intention to revoke, alter, or innovate a formal deed of settlement, it would seem to me to be as contrary to the sound principle of construction applicable to such a case, as it would be unprecedented, to hold detached scraps of paper like those in question entitled to effect as valid testamentary documents.

"No doubt these writings were found along with the trust deed amongst the deceased's papers, and it may be fairly held, having regard to the evidence which I shall immediately notice, that the testatrix had in contemplation an alteration on her deed of settlement, and may have prepared these lists with a view to that intended alteration. Conjecture of that kind, however, will not make the writings testamentary if they are not so in themselves, and they fall to be treated as mere memoranda of what the testatrix may have intended subsequently to effect, but which she has not done.

"The evidence to which I allude is to be found in a holograph letter addressed by the testatrix to Mr Thomson, writer, Dundee, dated eleven days after the date of the last of these two writings. Her brother Samuel had died in 1860, leaving a considerable succession, to which the testatrix was entitled, but the realisation of which, from its being principally in England, had been much delayed. It seems probable that the intended alteration on her will, by which effect might be given to the memoranda in question, was dependent upon her obtaining possession of the estate to which she had thus succeeded, or at least upon her being assured of the extent to which her own succession might be thereby increased. This letter of 31st March 1862 accordingly states to Mr Thomson, who had the management of her brother's affairs, that the testatrix would be much disappointed if her brother's succession were not completely settled by the term of Whitsunday, 'as she intends to make some alterations in her deed, and cannot do it until she knows what part of her brother's property falls to her share.' Now, by the proof recently led, it is established that she did not get a settlement of her brother's succession, nor even any information as to the extent of her interest in it during her lifetime. The depositions of Mr Thomson and Mr Lowson are conclusive as to this matter. No alteration was in consequence made upon her deed of settlement by the testatrix, and the writings in question were left in the condition of mere memoranda in which they were found. But this view of their purpose—viz., that they might be available to the testatrix when she carried her intention of altering her settlement into effect, had she ever done so, quite accounts for the writings being kept by her in her repositories. Probable it is that had she got the desired information? her confidential agent, Mr Reid, might then have been applied to to make the necessary alteration on her settlement; but however this may be, it was never done.

"On the whole, I am of opinion that effect ought to be given only to the writing dated 29th April 1856, and that the other writings are not entitled to effect as testamentary."

BAILLIE *v.* HAY.

Poor — Assessment — Ferry — Pier. Held (alt. Lord Jerviswoode) that a pier which was an adjunct of a ferry was not assessable for the support of the poor.

Counsel for Pursuer—Mr Gordon and Mr Lee. Agents—Messrs Horne, Horne, & Lyell, W.S.

Counsel for Defender—The Solicitor-General and Mr Shand. Agent—Mr Hugh Fraser, W.S.

This is an action of declarator brought by Colonel Baillie of Redcastle, Lord-Lieutenant of the county of Ross, against Mr Penrose Hay, solicitor in Inverness, as representing the commissioners under the Inverness Burgh Act for the police purposes of the Act. Colonel Baillie seeks to have it declared that Kessock Ferry and the pier on the Inverness-shire side of the ferry do not lie within the Parliamentary boundaries of the burgh of Inverness, and therefore that the pursuer is not liable to the commissioners in assessment under the Act. The assessment is sought to be imposed under the 34th section of the Inverness Burgh Act, which provides that the commissioners shall assess all the lands, tenements, houses, buildings, and other heritages of every description, and situated within the Parliamentary bounds of the burgh, valued at four pounds or upwards of yearly rent. The Lord Ordinary (Jerviswoode) found that the pier of Kessock to the extent of one-half of it was situated within the Parliamentary bounds of the burgh, and was therefore an assessable subject under the Act. The case then came before the Court on the 15th of June last, and it being thought necessary to ascertain the exact state of the facts on which the action is founded, a proof was allowed. To-day the case came up for advising on the reported proof. The facts brought out by the proof appear from the annexed opinion of the Lord Justice-Clerk. His Lordship said—This action of declarator raises a question of some nicety, and requires a good deal of consideration. Colonel Baillie's estate is entirely on the north side of the county of Ross, and under the same title he holds the Ferry of Kessock, which is an incorporeal right. For the purpose of enabling him or his tacksmen to exercise their right, piers were erected on both sides, the Inverness one costing nearly £5000. It appears that this pier is built entirely below high-water mark, and for some part of its length below low-water mark. The soil upon which the pier is built is not the property of Colonel Baillie. I suppose that the Crown might have interfered with the erection. The Admiralty or the Department of the Woods and Forests might have done so if it had obstructed the navigation. But they have not done so, and it may be fairly enough presumed that their reason for not doing so was that the pier was for the convenience of the lieges who were using the ferry. The effect of their acquiescence is not to create in Colonel Baillie any right of property, and as the *solum* does not belong to him, neither does the structure. But he is proprietor of the ferry, and it may be said that the pier may be owned as an adjunct of the ferry. But if the pier were dissociated from the ferry, there is no sense in which it could be said to belong to him—every stone of it would be the property of the Crown. That being so, the question is, Is Colonel Baillie liable to be assessed for the pier? and that question requires us to consider Colonel Baillie's title to the ferry, and the nature of the subjects. After reading the 34th and 35th sections of the Act founded on, his Lordship said—I should have the greatest doubt whether these terms comprehend an incorporeal right such as a right of ferry. But that is not a question which we are called upon to solve, because it is not proposed to assess Colonel Baillie for the ferry. Still I do not think that the description comprehends any incorporeal right. The pier, then, being an adjunct to the ferry, the question is whether it can be made the subject of assessment—that is to say, that part of it which lies between high and low water, for that is the only portion of it which is situated within the Parliamentary bounds. It is difficult to answer that question affirmatively. What is a ferry? Just a highway; as much so as a road; and a right of road is an incorporeal right. In a case of right of ferry it is difficult to see, apart from special legislative enactment, why a highway across the sea should be made assessable more than a turnpike road, which is a highway across the land. His Lordship proceeded to say that if the water across the ferry were bridged over that would make a road which could not be assessable, and there could be no difference in the principle of assessment by a mere alteration in the mode of transit. The Court accordingly altered the interlocutor of the Lord Ordinary, and held the pier and ferry not liable to assessment.

BOTH DIVISIONS.

NORTH BRITISH RAILWAY COMPANY *v.* GREIG.

Poor — Assessment — Railway. Held (1) by both Divisions (aff. Lord Kinloch) that the book-stalls and cab-stands at a railway station are assessable as part of the general undertaking of the railway; and (2) by a majority of both Divisions (alt. Lord Kinloch) that refreshment-rooms at a railway station are not, but fall to be separately assessed.

Counsel for the Inspector of Poor—Mr Gordon and Mr Scott. Agent—Mr Alex. Greig, S.S.C.

Counsel for the Railway Company—The Solicitor-General and Mr Shand. Agents—Messrs Dalmahoy, Wood, & Cowan, W.S.

This was a question betwixt the North British Railway Company and the City Parish of Edinburgh. The point raised was whether the refreshment-rooms, book-stalls, and cab-stands at a railway station are liable to be assessed for poor-rates, separately from the general undertaking of the railway company. The Lord Ordinary (Kinloch) held that they were not, and the inspector of the poor having reclaimed, the case was argued before the Second Division. The Judges of that Division being equally divided in opinion, they called in three Judges from the other Division, and the case was re-argued. Judgment was given to-day. In regard to the book-stalls and cab-stands, the Court were unanimous in adhering to the Lord Ordinary's interlocutor; but in regard to the refreshment-rooms the interlocutor was altered by a majority of four to three. The majority consisted of the Lord President, the Lord Justice-Clerk, Lord Ardmillan, and Lord Neaves; and the minority of Lord Cowan, Lord Benholme, and Lord Curriehill. The following is the judgment of Lord Neaves, which was adopted by the majority:—

"By the Valuation of Lands Act, 17th and 18th Victoria, c. 91, two modes of valuation are to be resorted to according to the nature of the subjects valued. Ordinary subjects are to be valued severally and individually by assessors, to be appointed by the commissioners of supply of every county, and the magistrates of every borough; while, on the other hand, railways and canals are to be valued in a peculiar manner by a special assessor, to be appointed by the Crown. The principles and results of these two modes of valuation are essentially different, and it may often be, as it seems to be here, a matter of practical importance whether a particular subject shall be valued separately by the ordinary assessor, or shall be held as an adjunct of a railway or canal so as to be included in the valuation of those subjects made by the special assessor. The mode of valuing individual subjects of the ordinary kind is by ascertaining the rent at which one year with another they might be reasonably expected to let. The mode of valuing railways and canals, including the lands and heritages attached to them, is more complicated. The special assessor is to inquire into, and fix *in cumulo*, the yearly rent or value of all lands and heritages 'belonging to or leased by each railway and canal company, and forming part of the undertaking,' including *inter alia* the cost of the stations and other houses and places of business of or connected with the under-