

Saturday, July 19.

SECOND DIVISION.

SPECIAL CASE—SPEIRS AND OTHERS v.

HOME SPEIRS AND OTHERS.

Writ—Holograph—Superscription—Subscription by Initials—Continuous Writings.

S died leaving in the same drawer of her desk two holograph writings, one wholly inside an envelope, and the other partly projecting. The first writing began "I," (with name in full) "now write what I intend to be my final wishes," and was dated, but not subscribed. The second writing began, "Also, I leave," and was initialed. It was admitted that the deceased often signed by initials, and that she had repeatedly told her relatives her intentions, just as they appeared from the writings. *Held* that the two writings formed one continuous document, and were probative and valid as the completed and final will of the testatrix.

Miss Helen Speirs died on 15th November 1878. On her death two writings, one on a sheet and the other on part of a sheet of note-paper, were found in the compartment of a desk belonging to her, and which she always kept in her own room. She kept the key of the desk. There was nothing else in the compartment except an envelope unaddressed, in which the sheet was found, and a small piece of work of her mother's. The part of a sheet was lying beside, and had been partly pushed into, the envelope. The two writings were (omitting the legacies) as follows:—

FIRST WRITING.

"Sept. 7th 1866.

"Wishing to make some little changes in my settlements, I, Helen Speirs, now write what I intend to be my final wishes, which I hope my dr. sister Elizth. will see carried out.

"According to our mutual agreement, my share of Laurel Hill and the money inherited from my mother in the Funds to be liferented by my sisters, also my share of money vested in the F. & C. Canal Company after my funeral expenses and small legacies are paid I wish all or whatever remains of the shares I have in the
or Scottish Central
Caledonian Railway to go to my dearest nephew & Godson Peter Alexr. Speirs. . . .

"My sisters know what my wishes are with regard to the final destination of Laurel Hill I would recommend it to be divided into three equal portions after the burden on it of £1000 to the heirs of each of my deceased brothers Graham Speirs & Ared. Speirs are paid if Harriet Anna or Peter Alexr. Speirs are without children Laurel Hill or what it might be sold for to revert to Ann Oliphant Home or her children.

"My charities to be all kept up."

SECOND WRITING.

"Also I leave to our & faithful servant Robert Hart the sum of £5 annually as long as he lives.

"H. S."

These writings were holograph of the deceased, the writing on part of a sheet having her initials subscribed. She had frequently signed letters by

adhibiting her initials. It was further stated in the case that she had often told her sisters during the last ten years of her life that she had made a will containing provisions to the same effect as those in the writings in question.

The question submitted to the Court was—"Are the two holograph writings above referred to, left by Miss Helen Speirs, probative and valid as her last will and testament?" The parties to the case were (1) the deceased's three sisters and Mr P. A. Speirs and his sisters, and (2) Dame Anne Oliphant Home Speirs and her husband, and their marriage-contract trustees.

Argued for the first parties—The only question was, Whether these writings could be taken as Miss Helen Speirs' completed and final will? Taking what was known of her expressed intention, it could be maintained that the provisions were as was intended. The only case against that view was *Dunlop*, but there were differences there. There was here—(1) a date, (2) no signs of incompleteness, (3) addition of the initials. The case of *Gillespie*, on the other hand, was quite in point.

Argued for the second parties—There were here two points—firstly, It was impossible to read the second writing here along with the first as one continuous document or writ; secondly, subscription by initials was not in itself sufficient whatever else there might be in the deed or in the circumstances.

Authorities—*Dunlop v. Dunlop*, June 11, 1839, 1 D. 912; *Gillespie v. Donaldson's Trs.*, Dec. 22, 1831, 10 S. 174; *Titto*, 1610, M. 16,959; *Weir v. Robertson*, Feb. 1, 1872, 10 Macph. 438; *In the Goods of Glover*, 5 Notes on Eccl. and Matr. Ca. 553; Erskine, iii. 2, 22; Stair, iv. 42, 6.

At advising—

LORD ORMDALE—The question which has to be answered in this case appears to me to be one of nicety and difficulty.

There are two writings which are said to constitute Miss Helen Speirs' will or testament. Both of them are holograph of Miss Speirs; and the larger of the two is dated but not subscribed by her; and this is the objection taken to its validity. In considering the effect of this objection, it is necessary to keep in view the other or smaller writing which, although not subscribed, is initialed by Miss Speirs. It is still objected, however—1st, that the two writings are not sufficiently connected as to entitle the Court to read them as one instrument; and 2dly, that Miss Speirs' initials are not sufficient to supply the place of her subscription. These are the two points upon which it appeared to me at the debate, and still appears to me, the disputed question depends.

In regard to the two writings not being connected so as to be read as one, there are various considerations arising from the admitted circumstances of the case which must be kept in view—(1) Both writings are evidently of a testamentary character, and the one—the lesser of the two—reads in perfect consistency with the other or larger one, just as if it had been a continuation and completion of the other; (2) both were found after the death of Miss Speirs locked up in the same compartment of her desk; (3) while one—the larger writing—was found wholly enclosed in an envelope, the other writing was also found

partly in the same envelope and partly obtruding out of it; and (4) both were the only writings of a testamentary character found in Miss Speirs' repositories after her death. These are circumstances going far to connect the two writings, and to show that they were intended by Miss Speirs to be taken and read as together forming her will or testament. They are stronger tokens of the connection, I think, than if the two writings were found attached the one to the other by a pin, which appears to have been held sufficient in the case of *The Goods of Braddock* (1 Prob. and Div. 533); and if that be so, I think there is no reasonable ground to doubt that the initials of Miss Speirs to the lesser writing is sufficient, especially keeping in view that it is admitted that she frequently signed letters by adhibiting to them her initials, to show that they constitute, and were intended by her to constitute, her completed and finished will or testament, and are not mere memoranda intended to be afterwards altered and rewritten or extended in the form of a more regular instrument.

In the case of *Gillespie v. Donaldson's Trs.* (Dec. 22, 1831, 10 S. 174) it was held that two holograph writings bequeathing legacies, one consisting of a single sheet, the first page of which was dated but not signed, and the second page bore another date, but was signed, and the other of which was dated but not subscribed, were nevertheless valid and effectual. It is true that these writings were of the nature of codicils to a principal deed of settlement, in which the testator declared that all legacies should be effectual by separate writings or memoranda, although the same should not be formally executed, "provided the same express my will and intention, and are written, dated, and signed by me;" and it was thought that the name of the testator being found in the codicils in her own handwriting, just as in the present case, satisfied the requirement that they needed to be signed by her.

Upon the whole, I am disposed to answer the query submitted to the Court in the affirmative, the more especially as I cannot doubt from what is stated in the Special Case that Miss Speirs herself intended that the two writings referred to in the question should be held and dealt with as her last will or testament.

LORD GIFFORD—By taking the course which I understand it is your Lordships' intention to adopt, I believe that we are doing what the testatrix Miss Speirs herself intended to do, and are carrying out her real meaning.

The objections to this interpretation of the will are no doubt somewhat formidable, but still there is enough to enable us to take a view in favour of sustaining it as a whole. I shall endeavour briefly to point out the facts in the case which have largely weighed with me in coming to this conclusion—(1) Both these writings are holograph of Miss Speirs. (2) They were found in conjunction, both of them locked in a drawer of a desk to which Miss Speirs alone had access. (3) They were also truly found in one envelope, though one writing was no doubt only partly inserted in it. (4) When these two documents are read, they are continuous both in sense and form—indeed they read together; of course they are not written on the same kind of paper, but I do not place any great stress upon that fact.

(5) The two writings thus read as one sufficiently elucidate the intention of the testatrix. As to the form of her signature, it is in the one superscription by her full name, in the other subscription by initials, and this, it has been admitted on all hands, was a usual mode of signature with the lady. (6) The observations Miss Speirs is admitted to have made as to her final will were to the same effect as the provisions in the papers in question.

It seems to me that to refuse effect to all these considerations would be to give to technicalities and forms a force and power beyond what is desirable or just. I am therefore for giving effect to what manifestly was the intention of the testatrix.

LORD JUSTICE-CLERK—I have come to the same conclusion. These documents purport to be Miss Speirs' completed will. They were found in her confidential repositories together and in the same envelope, though one of them partly projected. The second document begins with the word "also," and that can only mean a reference to something preceding, which something can be nothing else than the first document. Then, lastly, there is the holograph name of the testatrix heading the first writing, while her initials are appended to the second. It does not appear to me that we require anything more, and I think the question put to us must be answered in the affirmative.

The Court therefore answered the question in the affirmative.

Counsel for First Parties—M'Laren—Keir. Agents—Frasers, Stodart, & Mackenzie, W.S.

Counsel for Second Parties—Kinnear—Mackintosh. Agents—Hope, Mann, & Kirk, W.S.

Saturday, July 19.

SECOND DIVISION.

[Lord Craighill, Ordinary.]

MUIR v. MUIR.

Husband and Wife—Divorce for Desertion—Bona fide Offer to Adhere.

Circumstances in which held that desertion had been established against a husband who had gone to Australia, a letter to his wife sent indirectly, and asking her in vague terms to go out to him not being regarded as *bona fide*.

Husband and Wife—Divorce for Desertion—Conjugal Rights Act 1861—Timeous Offer to Adhere.

Held that in an action raised for divorce on the ground of desertion it is too late to offer to adhere after the summons has been served.

This was an action for divorce on the ground of desertion, raised by Mrs Elizabeth Guthrie Watson or Muir against David Muir her husband, now abroad, and his next-of-kin for their interest. There was no defence.

The pursuer was married on 26th November 1869 to the defender, who was at that time a