ent, and the respondent to be also entitled, but without any attendant, to visit the said child in the petitioner's house without the petitioner being present, at any time she may desire; *quoad ultra* continue the cause that either party may hereafter move the the Court in the event of any change of circumstances: Find no expenses in the cause due to either party."

Counsel for Petitioner—J. P. B. Robertson—Dickson. Agents—Fyfe, Miller, Fyfe, & Ireland, S.S.C.

Counsel for Respondent—Trayner—Graham Murray. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Tuesday, November 13.

FIRST DIVISION.

SPECIAL CASE—SKINNER AND OTHERS.

Succession — Writ — Holograph Writing — Superscription — Unsigned Testament.

In the repositories of a deceased person there was found at his death a testamentary writing holograph of him, commencing with his name, and complete in all respects except that it was unsigned. *Held* that in the absence of his signature it could not receive effect as his will.

Alexander Skinner, Newtown of Abbotshall, Kirkcaldy, died unmarried on 1st December 1882, leaving certain heritable property, and leaving also moveable estate which was of very small value, and was not referred to in this Special Case. After his death a holograph writing of a testamentary character was found in the deceased's repositories, lying in an escritoire where he kept papers of importance, folded and laid in a pigeon-hole or compartment along with other documents. This writing commenced as follows—"I, Alexander Skinner, being desirous to settle my affairs so as to prevent all disputes in regard to them after my death, do hereby nominate and appoint my niece Maggie Skinner Forbes, residing with her mother Mrs Margaret Skinner or Forbes, 291 High Street, Kirkcaldy, and the said Mrs Margaret Skinner or Forbes, both of them, to be my sole executors of my whole estates, heritable and moveable, real and personal, and I hereby convey to them all the writs, titles, and vouchers, and all such documents as is required by me to enable them to execute my last will and testiment, and which is to be as follows"—The deceased then proceeded to dispose of his heritable and moveable estate, giving directions also as to the disposal of the residue. The document concluded with these words—"And this written at Newtown of Abbotshall by my own hand this 17th day of July 1882." There was no signature.

This was a Special Case stated for the opinion of the Court upon the question whether this document was a valid testamentary settlement of the deceased's heritable estate, the parties to which were Robert Skinner, the heir-at-law of the deceased, of the first part, and Miss Margaret Skinner Forbes and others, heritable disponees under the said holograph settlement, of the second part.

Argued for the first party—This document not being signed by the deceased was invalid, and therefore insufficient to convey the heritable property which belonged to the deceased, which therefore belonged to his heir-at-law—Stair, iv, 42, 6; Bell's Dict. i. 82; Menzies 131; *Currence* v. *Halkett*, 2 B. Supp. 121; *Titill*, Dec. 6, 1610, M. 16,959; *Dunlop* v. *Dunlop*, June 11, 1839, 1 D. 912; *Baird* v. *Jaap and Others*, July 15, 1856, 18 D. 1246; *Speirs* v. *Home Speirs*, July 19, 1879, 6 R. 1359.

Argued for the second parties—The document was valid to convey the heritable property according to the rights and interests therein specified. Subscription was merely one of the evidences of completed intention, and not absolutely the only evidence of it — Act 1540, c. 117; *Hamilton* v. *White*, June 15, 1882, 9 R. (H. L.) 53; Dickson on Evid. 757, 759; *Gillespie* v. *Donaldson*, December 22, 1831, F.C., 10 S. 174; *Weir* v. *Robertson*, February 1, 1872, 10 Macph. 438.

At advising—

LORD PRESIDENT—The question in this case is whether an alleged testamentary paper left by the late Alexander Skinner, and found in his repositories, is invalid by reason of its being unsubscribed. The body of the deed is holograph, and it bears to dispose of the entire estate of the deceased. It contains a nomination of executors, and it concludes as follows—"And this written at Newtown of Abbotshall by my own hand this 17th day of July 1882." The following circumstances are also admitted — "After the funeral the deceased's repositories in his house at Newtown aforesaid were searched, and the only document of a testamentary character found therein was the document above mentioned. It was discovered lying in an escritoire where he kept papers of importance. It was folded and laid in a pigeon-hole or compartment of the escritoire along with other documents. It is holograph, and contains *in gremio* the name of the granter, but it is unsigned."

Now, as to the general rule that holograph writs in order to be binding on the granter require subscription, I do not think there can be any dispute, and if that is the general rule, it surely has very special application to testamentary writings, for they are almost invariably found undelivered in the repositories of the person making them.

I do not think it will be disputed now that the rule laid down by Lord Stair in the passage cited to us correctly expounds the law of Scotland. It is important to observe the connection in which Lord Stair states his general proposition. It is under this title—"Probation by Writ," and after mentioning what had been up to that time the general practice, he makes this statement in section 3 of the title—"Of a long time the attestation of writs was by the superscription or subscription of the name, designation, or title of the party. Kings do superscribe and their secretaries subscribe to their epistles, or to a breviate or docquet of larger writs, because princes have not the time to peruse the whole body, wherein there is much formality. Others do only subscribe." Thus clearly superscription is the prerogative of royalty, and no man except the king can bind himself in that way.

After describing the introduction of our rules as to the formal attesting of writs, Lord Stair goes on in the 5th section to express his great prefer-

ence for subscription by writing instead of by sealing, his reason being that it is much more difficult to forge the one than the other. Immediately after that, in the 6th section, we find the important words relating to this question—"Holograph writs subscribed are unquestionably the strongest probation by writ, and least imitable. But if they be not subscribed they are understood to be incomplete acts from which the party hath resiled."

Now, I think, as I said before, that if that rule applies to holograph writs in general, it has a peculiar applicability to testamentary writings, for if a man making or writing his own will lays it aside without signing it, he must be taken to mean that he wants more time to consider whether he should subscribe that will at all, or only after he should have made certain alterations in it. No doubt there are cases which give a certain countenance to sustaining his subscribed holograph testamentary writings upon consideration of facts indicating a purpose of the writer to treat the unsigned document as his completed act. The old case of *Titill*, for instance, and to a certain extent that of *Gillespie*, are examples of this, though I think that the latter case is susceptible of an explanation reconciling it to the doctrine of Lord Stair.

But we have a solemn and deliberate decision on the question in the case of *Dunlop* v. *Dunlop*, and I cannot find anything in the present case by which I can satisfactorily distinguish it from the decision there. The decision in *Gillespie's* case certainly tended in a different direction to that in *Dunlop*, but *Gillespie's* case was decided by a majority only of the Court, the Lord President, Lord Balgray, and Lord Gillies reversing the decision of Lord Corehouse, while Lord Craigie dissented from the views of the majority. It is, moreover, I think, apparent that Lord Gillies, when *Dunlop's* case came before the Court, saw that he had gone too far in *Gillespie*, but be that as it may, he concurred in the decision in *Dunlop*, and that decision was a unanimous affirmance by the Inner House of the judgment of Lord Cockburn.

It is not necessary to go into the illustrations from other branches of the law which have been brought before us. No doubt it has been held that notaries' docquets do not require subscription if the notaries' name appears *in gremio* of the docquet, but I do not suppose that anyone can maintain that that rule applies to wills. If we get no assistance from that class of cases, we get just as little from cases regarding obligatory documents passing from hand to hand and acted upon. In those cases the validity of the writing depends, not upon subscription or equivalents of subscription, but upon the actings of parties. On the whole matter, I have no hesitation in following the authority of Lord Stair, and of the case of *Dunlop*, and think that we are bound to pronounce this deed invalid.

Lord Deas—No doubt this is a very important case, and I am free to confess that I have a strong impression that this deed was meant by the testator to take effect as his testament. If it had not been for the case of *Dunlop* v. *Dunlop* I should have felt much inclined, notwithstanding the high authority of Lord Stair's *dictum*, to reconsider the general doctrine, for I think it would be reasonable to hold that superscription such as we have here was equivalent to subscription.

The question, however, is, what is our law on this point as shown by the decisions? If there had been any firm ground for reconsidering the case of *Dunlop*, I would have been very glad to do so, but it is most important upon this branch of the law, especially when a rule is laid down, that in should not be opened up again except for some very strong reason. Here I look in vain for any sufficient reason why the rule laid down in the case of *Dunlop* should be reconsidered. If it were to be reconsidered, it would have to be done by the whole Court. No one has suggested that course, and I am not bold enough to suggest it myself. There are, no doubt, advantages in holding that subscription in such cases as this is absolutely necessary, and the rule that subscription in such cases is necessary, puts matters of this kind beyond question, for every man then knows that so long as he does not subscribe a testamentary deed it is not completed, and that he has power to recal it whenever he likes, or not to complete it at all. I think, therefore, on the authority of the case of *Dunlop*, that we must find this deed invalid.

Lord Mure—I am of the same opinion. I think that this is a document which falls under the rule laid down by Lord Stair in the passage of his work which has been mentioned. The deed is holograph of the deceased, but it is unsigned. In these circumstances the general rule as laid down by Lord Stair is that a document of that description is an incomplete act, and is not by itself sufficient to instruct the validity of a will.

There appears to be only one case to the contrary, namely, the case of *Titill* in 1610, which bears, in the short statement of the report (M. 16,959) copied from the Haddington M.S. notes, that a decision contrary to the rule subsequently laid down by Lord Stair was pronounced. But the authority of that case has been disregarded of late years, especially in the case of *Dunlop* v. *Dunlop*, so much so that when *Baird* v. *Jaap* was considered it does not seem even to have been referred to. In *Dunlop's* case, as your Lordships had shown, the general rule was applied in circumstances not very different from these we have here, and the main question here raised seems to me to be settled.

We were referred to another case, the case of *Baird* v. *Jaap*. But there the decision proceeded upon the ground that a regular deed had before been executed by which the testatrix appointed her executors to pay all legacies which she might leave by any separate writing, letter, or jotting under her hand, found in her custody or possession at her death. The document given effect to there was not signed, but it was initialed on the back; yet the Court seems to have given effect to it only because it was of the description contemplated by the trust-deed. On that ground eight of the Court were of opinion that it ought to be supported, while the minority of five came to a different conclusion. The ground of Lord Curriehill's judgment in the Outer House appears to me to have been adopted by the majority of the Inner House as the basis of their opinion, and the ground on which Lord Curriehill pro-

ceeded was, I think, what I have just stated.

I quite concur, therefore, with your Lordships in holding that the party founding on this document cannot maintain his position.

LORD SHAND—I am of the same opinion. There is no doubt that this case admits of being distinguished from that of *Dunlop* in two important respects—(1) The deed here may fairly be said to be quite complete in itself, including the date when it was written. It deals with the entire estate, heritable and moveable, of the writer. It does not appear to be a mere draft, and it wants only the subscription to make it in all respects an exhaustive and effectual settlement. The writing in *Dunlop's* case was not of this complete nature. And (2) the deed has been found in circumstances much more favourable to its being sustained as a testamentary writing than was the case in *Dunlop*. In respect of these important particulars, the case is one more favourable to the deed than *Dunlop's* case was. At the same time, I have come to the conclusion that the true principle of the decision in that case was really that enunciated by Lord Stair, viz., that when a holograph testamentary deed found in the repositories of the deceased is unsigned, it is to be held as an incomplete act, from which the party has resiled. It is admitted that the parties who maintain the validity of the deed are unable to exclude the view that the testator by not subscribing the deed intended to take time to consider whether he should sign it at all, or, at all events, whether he should alter it in some respects before signing it. No doubt the document lay for a long time in the deceased's repositories, but just as he might have taken one or two days to make up his mind about completing it, so he may have taken weeks or months, having the deed always under his control. In these circumstances the parties who say the deed is valid really ask the Court to weigh probabilities, and to say, that as the probability is that the deceased meant to leave this document as his will, it should therefore receive effect.

I think it would not be a satisfactory state of the law that a question should be put in this form to the Court, and that the Court should sustain the will on the ground of what they consider was the probable intention of the writer. There is one way of putting the question of probability out of view, and that is by the testator signing the deed; and I think the view expressed by Lord Stair is the safe and proper view of the law on the point.

As regards the classes of cases regarding bills and obligatory documents usually delivered by the debtor, and notarial docquets, I think they have been decided on special grounds which do not apply to a testamentary writing like the present; and on the whole matter I concur in thinking that this deed is invalid.

The Court pronounced the following interlocutor:—

> "Find and declare that the writing referred to in the case as a testamentary paper of the deceased Alexander Skinner is not a valid will of the said deceased," &c.

Counsel for First Party—J. P. B. Robertson—Graham Murray. Agents—H. & H. Tod, W.S.

Counsel for Second Party — Mackintosh — M'Lennan. Agent—James Skinner, Solicitor.

Tuesday, November 13.

SECOND DIVISION.

[Lord Lee, Ordinary.

FOSTER AND OTHERS (BLYTH'S TRUSTEES) *v.* SIR MICHAEL SHAW STEWART, BART.

Property — Bounding Title — Description by Measurement—Ground gained alluvione *from River.*

A riparian proprietor disponed in 1815 a piece of ground, described by measurement as amounting to 218 falls 13 yards and 1 foot, and also by boundaries, one of which was "the river Clyde at low water on the north." Thereafter the river receded till in 1883 the low water-mark was 130 feet north of what it had been in 1815. *Held*, in an action at the instance of the successors of the disponee against the successor of the disponer, that the disponee having by the conveyance been made riparian proprietor, and the disponer having retained nothing, the pursuers, as riparian proprietors, were entitled to the ground so gained from the river.

By feu-contract dated 24th and 31st August 1815 Sir Michael Shaw Stewart, Bart., feued to James Stevenson and others, merchants in Greenock, carrying on business under the firm of the Clyde Pottery Co., "All and whole that piece of ground lying on the north side of the high road leading from Greenock to Port Glasgow, of the following mensurations, viz., one hundred and forty feet in length along the front of the said high road, the like number of feet in length at the back thereof at low water-mark, and five hundred and six feet in breadth on each side from the said high road to low water, amounting in measure to two hundred and eighteen falls twenty-three yards and one foot or thereby, computing each fall to contain thirty-six superficial yards, and bounded as follows, viz., by the said high road on the south; by an intended street of fifty feet wide from the high road to low water-mark on the east; by the river Clyde at low water on the north; and by the ground feued to the Whale Fishing Company on the west, with the teinds, parsonage and vicarage, thereof, and free ish and entry thereto from the said high road, street, and sea, lying within the old parish of Greenock and shire of Renfrew." Sir Michael was proprietor of the lands and barony of Greenock, of which the subjects formed part, "cum totis fundis et terris intra fluxum et refluxum maris jacen. contigue ex adverso terris de Wester Greenock in quantum eadem sunt boundatæ versus mare."

Since 1815 the river Clyde has receded, and the low water-mark was in 1882 about 130 feet further north than it was in 1815 The subjects forming the Clyde Pottery were at the date of this action (February 1883) vested to the extent of one-half *pro indiviso* in George Foster and others (Blyth's trustees), and to the extent of the other half *pro indiviso* in Robert Blyth and others (Foster's trustees). The Clyde Pottery was in 1882 taken by the Glasgow and South-Western Railway Company under powers contained in their Act of Parliament, and compensation was claimed by Blyth's trustees and Foster's trustees on the footing that their property extended to the low water-