clause which has been quoted. Thus, household furniture, silver plate, books, bed and table linen, sums of money belonging to the parties or due and addebted to the parties, or that might be acquired by them by their industry—are included, but nothing else is included. This appears to me to be an erroneous interpretation. The specification may have been, indeed I think was unnecessary, but there is nothing to show that it was resorted to for the purpose of contracting the comprehension of the conveyance of goods in communion. There is nothing that suggests such an idea, much less that forces upon us its adoption. The truth is, that were this reading to be taken, the words "goods in communion" would be as good as blotted out from the contract. The inappreciation of this consideration is the flaw in the reclaimers' argument. They are misled by what they think an analogy between the *voces signatæ* goods in communion with which the disposition begins, and general words often used to wind up a series of particulars representing the things intended to be conveyed. These general words, according to a well known rule of construction, take their quality from the class of things which are the subjects of specification, but though their effect is to this extent limited, there may be, and for the most part there is, carried something which but for them would not be included in the disposition. If, however, the words "goods in communion" as here used are to be limited in their signification to the particulars which follow, they are rendered insensible, and are in effect expunged from the contract. But these, I think, must be held to have been introduced into the clause, not that they might be disregarded, but that something which without them would not be carried might be covered by the contract. This is the natural, and appears to me to be the only reasonable conclusion, and there is no rule of construction with which I am acquainted that to any extent militates against it. Plain it is to me that the parties did not mean that the specification of particular things following the words "goods in communion" should be a limitation or extinction of this part of the clause. A similar peculiarity occurs in the concluding part of the clause of the contract, where there is exception from the "said generality, the paraphernalia, watch, jewellery, and clothes of the said Margaret Glas, upon which she may testate as she may see proper." In the first place, What is the generality? Not, I apprehend, the items which are specified, but those which are covered by words denoting everything which is comprehended in the expression "goods in communion," and this itself is the key to the true interpretation. But, in the second place, is it not obvious that all paraphernalia were to be excepted from the conveyance? And yet there is a specification of only some of the things of which the paraphernalia consists. For some reason in both cases particular items have been specified, but there is no reason for concluding in the one case or in the other—on the contrary there is the strongest reason for not concluding—that it was the purpose for which these particulars were introduced to limit the comprehension of the *voces signatæ* by which everything was conveyed.

These and the Lord Ordinary's are my reasons for thinking that his interlocutor should be affirmed.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court adhered.

Counsel for Pursuer—Trayner—Shaw. Agent—Andrew Gentle, L.A.

Counsel for Defenders — Jameson—Guthrie. Agents—Boyd, Jameson, & Kelly, W.S.

Tuesday, December 11.

SECOND DIVISION.

SPECIAL CASE—RUSSELL'S TRUSTEES AND OTHERS.

Writ — Holograph — Subscription — Unsubscribed Testament — Authentication from Circumstances.

A lady delivered to her nephew a packet sealed-up, and bearing on the outside the words, "To James Henderson, from Margaret Russell," in her own handwriting, stating when she did so that it contained her will and was not to be opened till after her death. Fastened to the packet by a string there was a letter in an envelope addressed to her nephew. Upon being opened after the lady's death the packet was found to contain a testamentary writing entirely holograph, and commencing, "I, Margaret Russell," but not subscribed. The letter, which was also holograph, was signed with her first name only, and referred to the document which it accompanied as her will. *Held* that the writing should receive effect as her will since the accompanying circumstances supplied sufficient evidence of authentication to overcome the legal presumption, arising from the absence of subscription, that it had been purposely left incomplete.

Succession—Provision to Child—Limitation of Power to Test—Exercise of Power to Test.

A testator by his will gave his daughter power to test upon a sum of £2000 in favour of such descendants of his body as she should think proper. The daughter, in professed exercise of this power, apportioned a sum of £100 to her executor as her funeral expenses, the remainder in special legacies to various of her nephews and nieces. *Held* that her will contained a valid exercise of the power to test conferred on her by her father's settlement, but that the apportionment of £100 for funeral expenses could not receive effect, and that these expenses fell to be paid out of her general estate.

This was a Special Case relating to the succession to Miss Margaret Russell, the facts of which, as set forth by the parties, were as follows:—"Miss Margaret Russell died on 14th May 1883, at Aspen Lodge, Harrow, where she was temporarily residing with her nephew Mr James Henderson. She was at the time of her death a domiciled Scotchwoman.

"In November 1881, being then also on a visit at Aspen Lodge, she delivered to Mr Henderson a

sealed-up packet, bearing on the outside her own signature and the words 'James Henderson' in her handwriting. Outside the packet, and attached to it by a piece of string, was an envelope addressed thus, 'To James Henderson, from Margaret Russell,' all in her handwriting. When delivering the packet she informed Mr Henderson that it contained her will, and was not to be opened till after her death.

Upon its being opened after her death the packet was found to contain a writing of a testamentary character, holograph of Miss Russell but not signed. The envelope was found to contain a letter holograph of Miss Russell to Mr Henderson.

The holograph writing was as follows:—"I, Margaret Russell, do hereby make my last will and testament, revoking all other wills.

"*Aspen Lodge, 25th November* 1881.

"I do hereby nominate and appoint my nephew James Henderson to be my executor.

"Under my father's settlement I have the power to test upon the sum of £2000 thereby provided for me. I hereby direct my executor to dispose of it as follows:—

"1. To pay my debts (which *if* any are small and few), deathbed and funeral expenses. For these I leave £100.

"As £3000 at my death goes to my brother James's family, arranged by my father, but the interest of it they have to give to my sister Jane as long as she lives, is the reason I have not willed her more. I, Margaret Russell, do hereby make my last will and testament, revoking all other wills.

"Joseph Burnett Russell is now the representative of the family, and George Dalziel, 66 Queen Street, Edinburgh, our man of business.

"1. Funeral expenses for self, one hundred pounds, £100.

"2. To pay to James Henderson the sum of two hundred pounds, £200."

Here followed eighteen other legacies, varying in amount, each to a nephew or niece of the testatrix, amounting, along with that to James Henderson, to £1860 in all.

Then followed a list of the bequests first mentioned, made up according to the families to whom they were left, which, with £100 as a sum for funeral expenses of the testatrix, and a sum of £40 to pay legacy-duty, came to £2000 in all.

The holograph letter was as follows:—

"*Aspen Lodge, Nov.* 1881.

"My dear James,—I have re-written my will for this year, and beforehand I want you to know that if I should be called from this world while at Aspen Lodge, I think it will be best to bury me in Brompton Cemetry, beside my niece Elsie, and cousin Violet and Bessy Rutherford; they are all together. . . . . After that last office is done you would read my will to them. . . . . —Ever, dear Jamie, your loving

"MARGARET."

The testatrix was the daughter of the late Professor James Russell, who died in 1836, leaving a disposition and settlement by which he conveyed his whole estate to his eldest son Dr James Russell, whom he appointed his sole executor. The settlement provided that Dr James Russell should, by acceptance of this universal legacy, be bound to pay certain provisions in favour of the other members of Professor Russell's family, and, in particular, the sum of £5000 to each of the testator's daughters—£3000 at the first term after their marriage, and £2000 at the first term after the death of their mother and their marriage.

The settlement contained also the following provision:—"Declaring hereby that it shall be in the power of each of my daughters who shall be unmarried, to convey by testament, to take effect at her death, to such one or more of the descendants of my body as she shall think proper the said provision of £5000 conceived in her favour, to the extent of £2000 thereof; declaring further, that in the event of either of my said daughters at present unmarried dying while unmarried, then the interest of the said provision conceived in her favour, at the rate aforesaid, or of such part of the said provision as shall remain undisposed of by her by testament under the power hereinbefore given, shall go and be payable to her mother and sister surviving, equally between them, during their joint lives, and to the survivor of them."

Professor Russell was survived by his two unmarried daughters, Miss Jane Russell and Miss Margaret Russell, the testatrix, and by several sons, including Dr James Russell, who accepted the general bequest in his favour contained in his father's settlement. Dr James Russell died on 21st November 1862, leaving a trust-disposition and settlement whereby he conveyed his whole property to trustees. Miss Jane Russell was still alive at the date of this case.

Miss Margaret Russell left property of the value of £171, 8s. 3d.

Those interested in Miss Margaret Russell's succession then adjusted the present Special Case to have their respective rights therein determined. The first parties were the trustees of Dr James Russell. The second parties were the legatees in Miss Margaret Russell's testamentary writing (who were all descendants of the body of Professor Russell), and the husbands of such of them as being females were married. The third party was Miss Jane Russell. The fourth party was Mr James Henderson, as executor of Miss Margaret Russell. The fifth parties were the next-of-kin of Miss Margaret Russell, together with the husbands of such of the females as were married.

The first and third parties maintained that the holograph testamentary document not being signed, was inoperative, and in any view was not a valid exercise of the power to test conferred on the testatrix by her father's settlement; and that the interest of the sum of £2000 fell to be paid to the third party (Miss Jane Russell) during her lifetime, the capital thereafter falling to be dealt with by the first parties in terms of Professor Russell's settlement. The second and fifth parties maintained that the writing was operative, and was a valid execution of the power. In the event of this latter contention being sustained, the second, third, and first parties contended that the apportionment of £100 to the payment of deathbed and funeral expenses was bad, and that these fell to be defrayed by the executor out of the general estate of Miss Margaret Russell. The fifth parties, on the other hand, maintained that the apportionment was good, and that the general estate of Miss Russell fell to be handed to them undiminished by payment of these expenses.

The questions presented to the Court were :—"1. Is the holograph writing . . . . operative as a testamentary writing, and does it contain a valid exercise of the power to test to the extent of £2000 conferred on Miss Margaret Russell by her father's settlement? 2. If the foregoing question is answered in the affirmative, is the apportionment of £100 of the said £2000 to the payment of deathbed and funeral expenses entitled to receive effect? Or 3. Do the deathbed and funeral expenses of Miss Margaret Russell fall to be paid out of her general estate?"

Argued for the first and third parties—The writing was invalid as lacking subscription, nothing else than which could overcome the presumption in the case of a testamentary writing that it had been intentionally left uncompleted by the testator. The necessity was of "subscription;" superscription or signature in the body of the writ was not sufficient. The name "Margaret" at the end of the letter, besides being on a separate writing, was not a signature. Before it could be held equivalent to a signature it would require to be proved to be the party's usual mode of signing, like the initials in the case of *Spiers*. A signature to one testamentary writing might be held as validating a previous one on the same sheet of paper, but a signature on purely extraneous documents could never validate an unsubscribed will. Nor was there any case in which delivery had been held to have such an effect.

Authorities—*Dunlop* v. *Dunlop*, June 8, 1839, 1 D. 912; *Titill*, 1610, M. 16,959; *Gillespie* v. *Donaldson's Trustees*, Dec. 22, 1831, 10 S. 174; *Baird* v. *Jaap*, July 15, 1856, 18 D. 1246; *Spiers* v. *Home Spiers*, July 19, 1879; Stair, iv. 42, 6.

Replied for the second, fourth, and fifth parties—It was true, as a general rule, that a holograph writ, to be valid, required to be subscribed, but there was no absolute rule. Subscription to an attested writ was different from that to a holograph writ. In the former case it was a part of the necessary solemnity; in the latter it was merely meant to overcome the presumption which otherwise arose that the writ had been left incomplete by the granter. Where circumstances can be shown overcoming this presumption the writ will be valid though unsubscribed. This was here done by the delivery of the will to the executor with the statement narrated. Besides, the testatrix's signature was here shown on documents—the letter and envelope—sufficiently physically attached to the will to be claimed as a signature to it.

Authorities—Bell's Lect. on Conveyancing, 82, and cases there collected; *Weir* v. *Robertson*, Feb. 1, 1872, 10 Macph. 438; *Spiers* (*supra*); *Dunlop* (*supra*); Jarman on Wills, 79.

At advising—

Lord Craighill—Were subscription to a holograph will necessary as a solemnity in execution, the will in question behoved to be held ineffectual, because it has not been subscribed. But I consider the weight of authority inclines to the view that subscription is required, not to supply a solemnity, but to afford evidence or authentication of final resolution, in room of which, if the testator has not subscribed, extrinsic proof may competently be adduced. The leading authority on this subject is the passage from Stair, iv. 42, 6, which has so often been cited in cases of this description. Unfortunately it is ambiguous in its expression, the consequence being that some have referred to it to show that subscription is a solemnity, and others that it is merely authentication. In these circumstances the more liberal reading may reasonably be adopted, especially as there was an earlier decision of the Court (*Titill*, Dec. 6, 1610, M. 16,959) by which this view was fully supported. There is, so far as I know, no opposite decision, though opinions to an opposite effect have from time to time been expressed. These, however, have been counterbalanced by other opinions delivered on the same occasions. Thus, in *Dunlop* v. *Dunlop* (1 D. 912), Lord Mackenzie and Lord Gillies expressed an opinion that subscription to a will was necessary, citing Lord Stair as authority for this proposition. Lord Cockburn, however, who was the Lord Ordinary, obviously was of opinion that the want of subscription might be supplied, "first, by other unobjectionable writings connected therewith by the testator, or second, 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. It has always been combined with other writings or facts, and the question has constantly been whether the whole might not be taken as the legal expression of the deceased's will." This also must have been the opinion of the Lord President (Hope), for at the outset he considered it "important to attend to the circumstances connected with the document, which, though not admitted by the claimants, are not expressly denied." Among the circumstances to which he referred was that the alleged will "was found lying loose in this desk, neither folded up nor backed," . . . . "not in a charter chest, where a man keeps his title-deeds and other valuable papers, but in a portable and moveable writing-desk, such as one generally carries with him when travelling." Plain it is that had he thought subscription indispensable, the circumstances which he mentioned never could have been referred to as material considerations; and Lord Fullarton in delivering his opinion intimated that he did "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," he proceeds to say, "no such circumstances here." "The case," he added, "before us is quite pure." And so he held, as did the other Judges, that the alleged will could not be sustained.

The case of *Skinner*, decided on 15th November 1883 in the First Division [*supra*, p. 81], was also quite pure, there being no extrinsic circumstances whatever to make up for the want of the testator's subscription, and the decision that the writing claimed on as a will was invalid is an authority only to the effect that where there is nothing but an unsubscribed holograph writing to refer to as evidence of a completed will the writing will not be sustained. But in the case now before us there are extrinsic circumstances by which, as I think, the character of completeness or finality is impressed upon the document. In the first place, there is the statement in the Special Case made on behalf of all the parties before the Court,

that when the sealed-up packet, which afterwards was found to contain the writing in question, was delivered by Miss Russell to Mr Henderson, she informed him "that it contained her will, and was not to be opened till after her death." The delivery, accompanied by this declaration, is far stronger evidence that the writing was a completed writing, and that it was intended to be her last will, than would have been the placing of it in the strong box in which all papers considered of value were kept for security. The delivery of a will, indeed, does not affect it irrevocably, but it unmistakeably shows that, when delivered, it was considered to be a completed and, unless recalled or altered, an effectual settlement of her affairs. In the second place, the letter and the signature on the envelope referred to, which were attached to and delivered with the packet, are reasonable and sufficient tokens of authentication. The signature on the envelope supplied the want of a signature to the holograph letter which was enclosed, and this letter again, taken, as it must be, as an appendage to the will, is truly authentication under the hand of the testatrix.

For these reasons, I am of opinion that the first of the questions submitted to the Court must be answered in the affirmative. The second question must, I think, be answered in the negative. The bequest of the £100 there referred to was in effect an appropriation by the testatrix herself of so much of the £2000 over the capital of which she had only the power of disposal in favour of one or more of the descendants of her father. The beneficiaries of this bequest were not of this class, and were it to be held that the leaving of this £100 to Miss Russell's executor was a valid exercise of the faculty, the whole £2000 might, had the testatrix thought fit, have been also effectually bequeathed, which, in the circumstances, would be an inadmissible conclusion, as there would be a plain violation of the condition upon which the faculty alleged here to have been exercised was conferred.

LORD RUTHERFURD CLARK concurred.

LORD YOUNG—I also agree. I think the law is accurately stated by Lord Stair in the passage which Lord Craighill has referred to. "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." I think the word "understood" is as accurate a word as could have been used by Lord Stair to express his meaning, which is not that there is any rule *positivi juris* requiring subscription as essential, but merely that it is a reasonable conclusion, and one on which a Court would determine, that if the writ be not subscribed, it is incomplete, and was not intended by the writer to be complete. That this was Lord Stair's opinion is plain—from what follows:—"Yet, if they be written in count-books or upon authentic writs, they are probative, and resiling is not presumed." It is therefore a question of circumstances. The strongest case is where in some separate writing the testator has declared that any writing of a testamentary character, though not subscribed, should have effect—that is to say, should not be "understood" to be incomplete. In short, it removes the ground on which the understanding rests; it makes it no longer reasonable to understand that the writing is incomplete. Now, I think that that is plainly the case here; for we must take the facts as they are agreed on by the parties; and the fact is not in controversy that this testamentary instrument was delivered by the testatrix to her executor in a sealed-up packet, "bearing on the outside her own signature, and the words 'James Henderson' in her writing. Outside the packet, and attached to it by a piece of string, was an envelope addressed thus, 'To James Henderson from Margaret Russell,' all in her handwriting. When delivering the packet she informed Mr Henderson that it contained her will, and was not to be opened till after her death." With reference to these concluding words, we must take it as a fact that she delivered the packet, stating that it contained her will, and that it was not to be opened till after her death. I think that removes all ground for the understanding which in general is referred to by Lord Stair. I therefore agree that we answer the first question in the affirmative, and the second in the negative, and the third requires no answer.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the Special Case, are of opinion and find, that the first question therein put falls to be answered in the affirmative, and that the second falls to be answered in the negative; find that it is unnecessary to answer the third question, and decern," &c.

Counsel for the First and Third Parties—Maconochie. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Second, Fourth, and Fifth Parties—Graham Murray. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Tuesday, December 11.

SECOND DIVISION.

[Sheriff of Aberdeenshire and Kincardine.

MILNE (INSPECTOR OF POOR OF THE PARISH OF MONTROSE) *v.* ROSS (INSPECTOR OF POOR OF THE PARISH OF LAURENCE-KIRK).

Poor—Relief—Settlement—Liability for Relief granted to Able-Bodied Man in respect of Minor Child Permanently Disabled by Natural Infirmity.

An able-bodied man received from the parish of M, in which he had then no settlement, his settlement being in that of L, relief for his son aged about seventeen years, who from infancy was partially paralysed and epileptic and weak-minded, so as to be disabled from gaining his own livelihood, and who lived in family with him. While relief was being thus given the father lost his