and there is something to support it, that he offered to take the child home when he was 7 or 8 years old. I do not think that was a serious offer at all. Very likely he spoke of it, as indeed he says he did, and when the mother objected he went away saying no more about it. Now, neither on principle nor on authority do I consider myself at liberty to hold that such an offer relieved him of his obligation and placed it entirely on the mother. I do not enter on the question of law, for I do not think it arises. The cases in which the Court will or will not sanction an offer by the father of an illegitimate child to provide it a suitable home are each a rule for themselves. A father may say, "I cannot afford a money contribution, but my mother or sister (it may be) will take care of the child till it is of an age to support itself, and I discharge my duty by making this offer." Well, there are no doubt circumstances in which the Court will sanction such an offer. In one of the cases cited to us—*Grant* v. *Yuill*—the girl was ten years of age, and the father, who was unable to contribute money, offered to provide a suitable home for her in the house of his sister, who lived in a farm-house, and of whose willingness and fitness to do so the Court were satisfied. There the Court sanctioned the offer and refused decree for money against the father. But no question of the kind arises here, and I repeat in passing that in my judgment all such questions are questions always of circumstances.

But we have to determine the pecuniary obligation of the father, who has only contributed up to this time 30s. Now, from 1857 he is certainly liable, for according to all the evidence before us the burden was on the mother till he attained the age of fourteen, when he first began to earn money for himself. But it is not necessary to pitch on any particular period. I think his pecuniary obligation, taking it from 1857, when the child was six, is not measured by £20. I think it is too small a sum. With the permission of your Lordships I asked Mr Scott if he would be content with £40. He replied in the affirmative, and I think too large a pecuniary obligation will not be placed on him by fixing the sum at £40. I therefore propose that we should find the paternity proved by holding that he is father of the child, and that in the circumstances of the case we should decern against him in favour of the pursuer for £40.

Lord Craighill—I concur in every word which has been said by your Lordship and in the judgment proposed.

Lord Rutherfurd Clark concurred.

The Lord Justice-Clerk was absent.

The Court pronounced this interlocutor:—

"The Lords . . . find that the defender is the father of the female pursuer's child libelled; ordain him to make payment to the pursuers of the sum of £40 sterling: Find the pursuers entitled to expenses: Remit the same to the Auditor to tax and report, and decern."

Counsel for Reclaimers — Scott — Gardner. Agent—Thomas M'Naught, S.S.C.

Counsel for Respondent—Jameson—M'Lennan. Agents—J. & A. Peddie & Ivory, W.S.

Wednesday, May 20.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

COLVIN (BRENNAN'S EXECUTOR) *v.* TURNER AND OTHERS.

Succession — Testament — Holograph Writing headed "Will of," and Subscribed by Maker.

In the repositories of a person deceased was found a pencil writing consisting of a list of names and figures, and having written at one side of it the words "Will of John Brennan." These figures and words were not in themselves intelligible without extrinsic evidence of their meaning. *Held*, after a proof, that while it is not necessary that a document relied on as a will take the form of a proposition or completed sentence, the document in question was by its own appearance, and also by the parole proof, shown to be only a memorandum, and not to have been intended as a completed will.

John Brennan, grocer, Dumfries, died on 31st January 1884. There was found after his death among his papers the following writing written in blue pencil:—

"3-500

'1000 Fr. Turner.
300 Altar.
500 Sisters.
100 Masses.
100 Do.
100 Nephew.
100 Infirmary.
100 Poor.
100 Fr. Macmanus.
100 Lord Douglas.
50 Matthew.
100 Hutchison and Books.
50 Blind.
20 Grave, &., &.
Watch, Chain, and Body-Clothing, and 50 St Vincent de Paul.'

Will of 'John Brennan.'

£1 per week to father."

This was an action of multiplepoinding in which John Colvin, executor-dative *qua* tutor and administrator-in-law of his pupil son John Colvin, the next-of-kin of the deceased John Brennan, was the pursuer and nominal raiser, and the various persons who might allege an interest under the said settlement were defenders, Joan Hutchison being the real raiser.

The averments in the condescendence were as follows:—"The first defender called is the Reverend William Turner, Dean of St Andrew's Roman Catholic Church, Dumfries. The deceased John Brennan was a Roman Catholic, a member of St Andrew's Roman Catholic Church, and on very intimate terms with the Dean thereof. He is therefore presumed to be the 'Fr. Turner' to whom the £1000 is bequeathed. The immediately succeeding bequest, or apparent bequest, viz., '300 Altar,' is presumed to be a legacy or offering of £300 to the altar of St Andrew's Roman Catholic Church, or some other church. The two bequests, or apparent bequests, viz., '100 Masses' and '100 do.,' are presumed

to be two bequests of £100 each to be expended for masses to be said by the said Reverend William Turner, or some other clergyman, for the rest of the deceased's soul. The said Reverend William Turner has therefore been called as a party as representing himself, and also these other three bequests of '300 Altar,' '100 masses,' and '100 do.' The bequest of '500 Sisters' in said testament is presumed to mean a bequest of £500 to the Lanark Hospital, Lanark, which is under the charge of Sisters of Charity, of whom the superior is the defender Sister Mary Blundell. There is also a special legacy 'of watch, chain, body-clothing,' and a general legacy of 'and 50 St Vincent de Paul.' These, it is presumed, mean the Sisters of Charity of St Vincent de Paul, St Vincent's School, Lanark, of which the sister superior is the said Sister Mary Blundell, or a branch of this society in Dumfries, presided over by the said Reverend William Turner. The said Sister Mary Blundell has therefore been called as a defender as representing these two societies or institutions, and the said Reverend William Turner as representing the branch of this society in Dumfries. The '100 Nephew' is presumed to be a legacy of £100 to his nephew, the said John Colvin junior, one of the defenders. The '100 Infirmary' is presumed to be a legacy of £100 to the Dumfries and Galloway Infirmary at Dumfries, of which the defender John Symons senior is treasurer. It is not known for whom the bequest of '100 Poor' was intended, but the defender Miles M'Innes has been called as representing the interests of the Parochial Board of Dumfries, and also the Reverend William Turner as representing the interests of the poor of the church of St Andrew's, Dumfries. The bequests of '100 Fr. MacManus,' '100 Lord Douglas,' and '100 Hutchison and Books,' are presumed to be legacies of £100 to each of the said defenders, the Reverend Patrick MacManus, the Reverend Lord Archibald Douglas, and Joan Hutchison, and in addition a special bequest of all books belonging to him to the said Joan Hutchison. The '50 Matthew' is presumed to be a legacy of £50 to his former shopman, the defender Matthew Campbell. All these defenders have therefore been called for their interests. The bequest of '50 Blind' is presumed to be a legacy of £50 to a Roman Catholic Institution in Lanark for the relief of the blind, presided over by the said Sister Teresa Farrell. She has therefore been called as a defender as representing this institution. The only other bequest or legacy in this testamentary writing is '20 Grave, &., &.,' which is presumed to be the sum the deceased desired to be expended as funeral charges. These, however, have been paid as afterwards detailed."

The real raiser further stated that the amount of the personal estate left by the deceased was £2314, 16s., and that the debts and funeral expenses amounted to £752, 17s. 6d., leaving a balance of £1561, 18s. 6d.

A claim was lodged for the nominal raiser John Colvin, as factor and administrator-in-law of his son John Colvin, claiming for his son, as next-of-kin of the deceased, the whole fund *in medio*. The claimant averred that the said writing was not a valid testamentary writing, that the deceased John Brennan therefore died intestate, and that the right to his estate vested at his death in his next-of-kin.

A claim was lodged for Miss Joan Hutchison, founding upon the writing as a settlement, and claiming to be ranked and preferred to (1) all the testator's books, and (2) the sum of £100, with interest, under deduction of a rateable proportion along with the other legatees whose identity could be established, so far as their united legacies might exceed the fund *in medio*.

The Lord Ordinary (M'Laren) on 4th November pronounced this interlocutor:—"In respect it is disputed that the document libelled is the will of the alleged testator, before answer allows the claimant Joan Hutchison a proof of facts and circumstances relevant to establish that the document libelled is his will, and to the claimant John Colvin a conjunct probation."

A proof was taken, in which the following facts were proved:—Shortly after Brennan's death a search was made in his repositories, and the writing in question was found in a trunk, containing a number of letters and papers connected with business transactions, in the shop of the deceased. The writing was in a small 'shuttle' or compartment of the trunk along with letters which Brennan had received from the claimant Joan Hutchison. He was in the habit of using in business such a blue pencil as that with which it was written. The writing was enclosed in an old envelope addressed to "Mr F. S. Yates, 26 Bairstow St., Preston," a commercial traveller, and along with it was found a blank printed form of will. It was proved that sometime before his death the deceased had shown the document in question to several persons at different times, including the claimant Joan Hutchison and her mother, and had spoken of it as his will. The Rev. William Turner, St Andrew's Roman Catholic Church, Dumfries, however, deponed that when Mr Brennan came to him about his will he suggested to him and advised him to go to a solicitor to get it prepared, and that he was under the impression the deceased meant to do so. John Lynch, tailor, Dumfries, further stated that the deceased showed him the document, and said he intended to go to a lawyer to get it fully drawn up. It appeared that Joan Hutchison became engaged to be married to Mr Brennan in 1880, and in her evidence she stated that the engagement had never been formally broken off, although the habits of the deceased had been latterly intemperate, and she would not have carried out the engagement unless he reformed.

The Lord Ordinary (M'Laren) on 16th January 1885 pronounced this interlocutor:—"Repels the claim of Miss J. Hutchison; sustains the claim of John Colvin, and ranks and prefers him to the whole fund *in medio* in terms of his said claim: Finds no expenses due, and decerns.

"*Note.*—This is an action of multiplepoinding instituted by the executor-dative of John Brennan, grocer, Dumfries, for the judicial administration of the estate of the deceased.

"A claim has been given in for a legatee under an alleged testamentary writing, set forth in the second condescendence—a writing which is remarkable in this respect, that while it is entitled 'Will of John Brennan,' it consists of nothing more than a column of figures, with proper or descriptive names written against those figures.

"A proof of the facts and circumstances relevant to infer testamentary purpose was taken before me; and while, in the view which I am to state, this proof may appear to be unnecessary, it will not be without use in the event of a different view being taken by a higher Court.

"It was observed by the Lord Chancellor, in *Hamilton* v. *Whyte*, that if on the face of the instrument there is something to suggest a doubt or a question whether it was in fact intended by the testator to be a testamentary act, it is proper that the Court should be put in possession of the circumstances bearing upon the question. On this ground I allowed the party claiming under the instrument to support it by extrinsic evidence, so far as the instrument might admit of such support. On this part of the case I shall only say that if the instrument is capable of receiving effect as a will, the evidence is sufficient to set it up as such.

"The real question is whether a mere list of figures and names can receive effect as a will; in other words, whether such a list contains the elementary ingredients of a declaration in writing expressing a testamentary purpose. On the best consideration which I am able to give to this question, I must answer it in the negative.

"It is not required by our law that a testator should make out his will according to any prescribed plan, that he should make use of any prescribed words, or that he should appoint an executor to administer his estate. But he must declare his will in writing, and it is implied in this statement of the law that he must use significant words disposing of his estate.

"If in such a state as the present a testator were to say, 'I give to the several persons named in this list the sums of money written opposite to their names,' no one would dispute that this was a good will according to the law of Scotland. There is no objection to putting the legacies in a schedule, provided there are significant words of bequest capable of being applied to the schedule. On this ground it has been the practice to sustain holograph marginal additions to the legacies comprised in a regular will or trust settlement, because the words of gift in the regular instrument are understood to be applied by the testator to the specification of persons and things which he has added in the margin. In the present case the deceased has left no testamentary writing other than the one in dispute; and the testamentary intention, if declared, must be found within the four corners of this pencilled sheet of paper.

"Now, approving entirely, as I do, of the indulgent principles and methods of interpretation which our courts have applied to the wills of illiterate persons, and desiring to reject all merely technical considerations in this question, I confess that I am unable to accept a mere schedule as an expression of testamentary intention on which a court of administration may safely act. I think that the testator's intention, if such exists, must take the form of a proposition of some kind. But a list of names and figures, while it indicates that there is *some* relation connecting the persons named with the sums of money set opposite to their names, and perhaps also (although this is doubtful) that there is some relation between those persons and the writer of the schedule, is defective in this respect, that the relation between the persons and things specified is wholly undefined. It is not enough, in my opinion, that no other probable meaning can be suggested than that of a gift to these individuals of the sums specified. I may come to this conclusion by exhausting all possible suppositions to the contrary. But the law requires that the intention to bequeath should be expressed in the instrument, and in this instrument I do not find such an expression.

"The argument on which the claimant's counsel, I think, chiefly relied, was founded on the title, 'Will of' John Brennan. This, no doubt, shows that the list was not a list of creditors but of persons to be considered in a will.

"But there are many ways in which a person may be named in a will in connection with money, and in the present case I am not at all satisfied, even as a matter of probability, that all the persons named in this schedule were intended to take individually and beneficially.

"There is not very much authority on this question, but my opinion has the support of a very carefully considered judgment of the Court, *Ford* v. *Lowson*, to which I desire to refer for a more complete expression of the grounds of my decision.

"I must add that it is inconceivable to me that any person desirous of settling his estate upon death should regard such a paper as this as being sufficient for the purpose. Whether the testator had any motive for showing a paper as his will, which he knew to be incomplete, is a matter as to which I cannot inquire, but it rather looks as if he had made a show of putting down certain objects on paper, while abstaining from using the words which, to ordinary apprehension, are necessary to make a completed will. I think if the deceased had been anxious to favour the objects specified in the paper, he would have found language adequate to the expression of such a wish; and it is in evidence that if he meant to make a will, he was not without good advice as to how he should set about it."

The claimant Joan Hutchison reclaimed, and argued—The document in question was holograph and sufficiently subscribed, the testator's name being at the end of the legacies. This case was therefore different from *Skinner* v. *Forbes, &c.*, Nov. 13, 1883, 11 R. 88, and came under *Russell's Trustees* v. *Henderson*, Dec. 11, 1883, 11 R. 283, and *Dunlop* v. *Dunlop*, June 11, 1839, 1 D. 912. The title "Will" was sufficient to determine the nature of the deed—Jarman on Wills, i. 13. But assuming the word to be ambiguous, proof was admissible to explain what was intended—*Whyte* v. *Hamilton*, June 15, 1882, 9 R. (H.L.) 53. The proof was entirely in her favour, as the document was found in a separate part of the trunk, and had been shown to several persons by the deceased during his lifetime and spoken of as his will. It must therefore be held that the deceased regarded it as a settlement of his affairs.

Argued for John Colvin—There was here intestacy. 1. This was not a document that could be set up by extrinsic evidence. It was not subscribed, and the words "will of," and "£1 a-week to father," were not part of the will but docquets. Further, there were no testamentary

words at all, the words "will of" being merely the title—*Lowson, &c.*, v. *Ford, &c.*, March 20, 1866, 4 Macph. 631; *Baird* v. *Japp and others*, July 15, 1856, 18 D. 1264. The document was merely a schedule without anything to show what the words or figures signified, and before it could be proved who the legatees were there must be testamentary words—*Magistrates of Dundee* v. *Morris*, 3 Macq. 134. The entries were quite vague, and the figures at the top "3–500" did not tally either with the amount of the legacies given, which was £2770, or with the amount of the testator's estate, which was, after deducting debts, £1561, 18s. 6d. 2. Even if the document could be set up there were circumstances against its being the will of the testator—*e.g.*, the fact that Miss Joan Hutchison, to whom the deceased was engaged to be married, was only left "100 and books."

At advising—

LORD PRESIDENT—I agree with the Lord Ordinary that this writing is not a testamentary document, but I am not quite sure that I arrive at this conclusion upon the same grounds as his Lordship. Now, the question involved belongs to a branch of the law which is of great importance, and I therefore think it right that we should express the reasons for our decision with care and at some length.

The Lord Ordinary says that a testator "must declare his will in writing, and it is implied in this statement of the law that he must use significant words disposing of his estate." In another part of his note his Lordship says, "I think that the testator's intention, if such exists, must take the form of a proposition of some kind." If the first statement which I have quoted means that words of gift expressed in the form of a verb denoting the conveyance are indispensable to a valid testamentary writing, I am not prepared to agree with him; and if by the second statement the Lord Ordinary intends to lay down that a gift or legacy must take the form of a proposition, or in other words, of a completed sentence, I am not prepared to agree with him. I do not think it matters how inelegant, or how imperfect grammatically a testator's language may be, if it can fairly be construed to mean that he legates and bequeaths a certain sum of money to certain individuals—clearly designed in the writing itself.

But granting what I have said, I do not think it advances the case of the reclaimer. We have before us in this case a document of a very peculiar nature, and such as I have never before seen. When one reads the figures and the words which are opposite to each, the first thing which suggests itself to the mind is that the writing is a private memorandum not likely to be intelligible to anyone but the writer. It seems to bear that character upon its face, and to have been made for the purpose of keeping the maker in mind of certain things; and when the details of the document are examined, it is still more clear that this is its nature. The figurings are supposed to represent sums of money, but that at the top of the document has never yet been explained. It is not the sum of the bequest, for that only amounts to £2770. Neither does it represent the amount of the testator's estate, because he never had so much as that. No one can tell what the meaning of it is. And further, when we come to the other figures, they all require a great deal of explanation. This is the case even with the first, and with the words opposite to it. No one who was not very intimately acquainted with Brennan, and who did not know the circumstance that he was a Roman Catholic, and that there was a Mr Turner, a Roman Catholic priest in Dumfries, could have guessed what it meant. When we come to the next figure "300," and the single word which follows it, and which is explained to be the word "altar," it is still more unsatisfactory. The probable meaning is that the sum in question was to be bestowed upon the completion of the ornamentation of the church. Then "500 sisters" is supposed to imply a bequest to the Sisters of Charity, but where, and to what body of sisters it is most difficult to ascertain. It turns out that Brennan once lived in Lanark Hospital, and that he afterwards entertained a strong feeling of gratitude to the sisterhood of that hospital for their kind attention to him. I need hardly read further through the document, except to mention the item "100 Lord Douglas." There is no such person as Lord Douglas, but there is a Lord Archibald Douglas, and it is conjectured that the bequest is to him, and is destined for the benefit of the Institute of St Vincent de Paul, a home in London of which his lordship was the founder. Then there is another item "100 Hutchison and books." One of the strongest points against the contention that the deceased intended this document to be his will is the fact that the deceased appears to have been engaged to a Miss Joan Hutchison at the time of his death, and that the only provision made by him in her favour was this alleged £100. It seems most improbable that this could have been so, looking to the relation which is said to have subsisted between them. Then there is another item "50 St Vincent de Paul," which is quite unintelligible.

The reason why I dwell upon these particulars is not for the purpose of showing that the document is void from uncertainty, but in order to test whether it was intended to express a testamentary purpose, or was merely a memorandum in aid of the memory. Looking to the whole circumstances, I think it was nothing more than a jotting. It is suggested by the reclaimers that the other writing on the paper "will of John Brennan," "£1 per week to father," was added at a later date than the first portion of it. I do not think it matters whether this is so or not. It cannot have been written before it. But assuming that it was written afterwards, does this fact convert the writing into a will? I think not. The natural meaning of the words is that the writing contains the substance of a will, to be prepared from the memoranda there supplied, but which no one could prepare except with the assistance of the writer. Supposing this paper had been put into the hands of a man of business, he could not have proceeded to complete a will upon that information without full explanations. Looking at the paper by itself, it is clear that it can have been intended only as the foundation or substance of an intended will.

Evidence has been led to show how the document was dealt with by the deceased, and at first sight there may appear to be some significance in the way in which he spoke of it. But it is to be observed that when he consulted Mr Turner,

the Roman Catholic Priest, he got good advice, which he seemed inclined to follow. This witness says—"When Mr Brennan came to me about his will, I not only suggested to him, but begged him, to go to a solicitor to get it prepared, and not to make a muddle of it. I think he said he would adopt my suggestion; at any rate he left me perfectly under the impression that he meant to do it." Then a witness, John Lynch, who is examined for the respondent, gives evidence of some importance—"I am a tailor in Dumfries. I knew the late John Brennan, grocer in Friar's Vennel, intimately for a considerable period before his death. I remember of him speaking to me about his money affairs in his shop in Dumfries. To the best of my knowledge, the time he spoke to me was March 1881. He showed me a document and read it to me. (Shewn No. 9)—To the best of my belief, that is the document. He said he intended to go to a lawyer to get it fully drawn up." So that down to this time he appears to have intended to follow Mr Turner's advice. The same witness says again—"I won't swear to No. 9 being the document, but to the best of my belief it is it. I saw the writing on the top part of the paper, but I did not read it all. I did not look at the particular terms of it. I saw writing and figures in blue pencil. About a fortnight after this occasion I remember being in Brennan's shop when Mr Glover, coal agent, was present. I saw the same document again then. (Q.) And did Mr Brennan then speak of it as his will?—(A.) Yes. (Q.) What did he say?—(A.) He referred to the thing as his will. He went into an explanation of its terms, but I do not recollect what he said. He referred to it as his will repeatedly. He spoke about it on a subsequent occasion, and he referred to it as his will then also.

There are several other witnesses who say that the deceased spoke of or showed them the document in question, saying that it was his will. I do not attach importance to that evidence; we must remember the nature of the language which the deceased was in the habit of using; he obviously spoke rather loosely and at random, and was of a bragging temperament, an instance of which was the way he had of repeatedly speaking of leaving £100 to the infirmary. In addition to this his habits were latterly very intemperate, and he seems to have constantly taken this document out of his pocket and to have boasted to his friends of the amount of money he had to leave. This evidence does not help the reclaimer's case, and what she and her mother say goes to show that the deceased never considered it a completed testamentary paper. So that the parole evidence goes to confirm the impression produced by the paper itself.

I shall only say in conclusion that I do not mean to say that a paper of this kind, consisting of a mere schedule, as the Lord Ordinary calls it, may not be effectual, if you can extract from it a testamentary intention. Supposing the paper had been headed—"This is the will of A. B.—to A. B., £100; to C. D. £200," &c., &c., and that it had been regularly subscribed, I am not disposed to say that I should not have given effect to it, if the persons to whom the legacies were left were so named as to be intelligible to others besides the writer, and if the language used is such as will make them comprehend what is meant. The executor, if named, must of course be in a position to understand the meaning, or if this is not so, then at least any person of ordinary intelligence must be so. But here no one but the writer can understand it, or at least its terms are so doubtful that a different commentator is required for each portion of them.

Lord Mure concurred.

Lord Shand—I am of the same opinion. But in the first place I desire to say that I am not satisfied that words of gift or conveyance are necessary to make an effectual testamentary settlement, and further I do not think that the testator's intention need be expressed in the shape of a proposition. The *dictum* which has been quoted from Mr Jarman's work upon Wills, I. 13, affords a good rule for testing the character of a document of this kind. Mr Jarman says—"It is sufficient that the instrument, however irregular in form or inartificial in expression, discloses the intention of the maker respecting the posthumous destination of his property." In that statement there is no limitation, such as seems to be indicated in the judgment of the Lord Ordinary, which would make it necessary that active words of gift or a proposition expressive of the testator's intention should be found in the document. It seems to me to be enough if the posthumous destination is disclosed.

Again, I am not satisfied that the present document was not duly signed, if it is to be regarded as of the nature of a completed will. The paper is holograph, and it is quite clear that after the writer had come to the bottom of the page it was then turned round and the signature of the deceased was added. There is therefore a great deal to support the conclusion that the document was a duly signed paper.

Accordingly, if in place of the single and very unsatisfactory words which we find here—words which from the first to the last, with the one exception of the case of the nephew, require extrinsic evidence to explain their meaning—the writing had contained an explicit enumeration of legacies, and the names of the persons favoured with the sums bequeathed to each had been clearly designated, and the writing had then concluded with the words "the will of," with the signature appended, my impression is that that would have been a good testamentary document without any words of conveyance. If in addition to these conditions, the word "to" had been prefixed to the names of the legatees, I cannot doubt that it would have been so. In other words the objection would have been removed if the names of the legatees and the amounts of their bequests had been specifically given; the document could then have admitted of but one construction, and it would have been a deliberate settlement by the deceased. But as it stands I have no hesitation about the answer which the Court must give to the question whether it is a will or a memorandum.

No doubt it is a strong circumstance, and Mr Goudy has quite rightly pressed it upon the Court that the writing is signed by the deceased, and that there are prefixed to the signature the words "The will of." But in reality the paper

is nothing more than a jotting. There is not a word in it which is not loose and unintelligible upon the face of it. Your Lordship has gone through the separate items in detail, and I need not do so again, but it appears to me, as was well said by Mr Strachan, that they are nothing more than memoranda for the use of the maker, and intended to assist his memory when he came to go to an agent. Each of them is exclusive of the idea that the document can be held to be a concluded will, and the words "the will of" are merely a title or heading to the memorandum. It is further not unimportant that the writing was made upon a loose bit of paper, and with a pencil, not a pen.

The only remaining question is, whether the parole evidence can be said to give the document a definite character. The parole evidence is conflicting. The deceased was told by one of the witnesses, a Roman Catholic priest named Father Turner, whom he consulted, that he ought to go to a solicitor to have his will prepared, and the witness left Brennan under the impression that his advice was to be followed. In these circumstances, I cannot accept the evidence of his having spoken to other witnesses of his "will," and of his having left different bequests to different objects as conclusive to the effect that he appended his signature to the document before us, intending it to be a completed testamentary writing.

Lord Adam—It appears to me that neither Mr Brennan nor anyone else of those to whom he showed this document can have regarded it as a completed testamentary writing. I do not think that the figures followed by the single words can have appeared to him to have had any intelligible meaning to anyone but himself. The document upon its face shows that it was a mere memorandum for future use.

If this is the character of the document itself, I do not see that that character was changed by the addition of the words "will of," followed by the signature "John Brennan."

Upon these grounds I agree with the judgment pronounced by the Lord Ordinary.

The Court adhered.

Counsel for John Colvin, Nominal Raiser and Claimant—Strachan—Rankine. Agent — John Walls, S.S.C.

Counsel for Joan Hutchison, Real Raiser and Claimant—Goudy—Macfarlane. Agent—Thomas M'Naught, S.S.C.

Thursday, May 21.

SECOND DIVISION.

WRIGHT *v.* BROWN'S TRUSTEES.

Poor — Poor's-Roll — Circumstances warranting Admission.

Held (*dub.* Lord Rutherfurd Clark) that a marine engineer earning 18s. a-week while at sea, and unable to find continuous employment on shore, was entitled to the benefit of the poor's roll to enable him to carry on an action of damages in the Court of Session.

Opinion (*per* Lord Justice-Clerk) that the nature of the action being such that the litigant's personal superintendence would be very desirable to its furtherance, did not affect the question.

William Leckie Graham Wright, designed as engineer, residing in Glasgow, made application for admission to the benefit of the poor's roll in the Court of Session to enable him to carry on an action of damages against the testamentary trustees of the deceased William Brown. Brown's trustees opposed the application, and the Court remitted to the reporters on the *probabilis causa litigandi*, who reported that it appeared that the applicant when in employment was engaged as an engineer on board sea-going vessels at an average wage of 18s. per week; that he was then unable to seek employment in consequence of the present application, which, in the applicant's opinion, required his own personal guidance and assistance, without which his interests would not be sufficiently secured during any absence from this country in his employment as a marine engineer; that the applicant stated that his present support was derived from private sources, from which he drew 5s. weekly; that they, having respect to the nature of the applicant's claim, considered that his personal superintendence of the intended proceedings would be, if not essential, at least very desirable to the furtherance of the applicant's interest, and that such personal superintendence was not compatible with the pursuit of his calling as a marine engineer.

A certificate of poverty procured by the applicant from the minister and elders of the parish of Kinning Park, Glasgow, bore that the applicant stated to them that he was forty-five years of age; that he had eight of a family living, four being married, and the other four living in family with him, aged respectively, seventeen, fourteen, ten, and nine years.

Argued for the objectors—The applicant had stated to the reporters that he could earn £3 a-week while at sea, and 18s. if he lived on shore; and they had taken no notice of this in their report. There was no precedent for admitting a litigant to the poor's roll who was not admissible on the ground of poverty merely because his occupation prevented him giving personal attention to his case.

Replied for the applicant—The applicant might have stated to the reporters that he had on exceptional voyages earned more than 18s., but they had after inquiry reported that sum as his usual earnings, and the Court must take it on their report. In *Stevens* v. *Stevens*, January 23, 1885, 12 R. 548, the Court had found a man, who had a salary of £1 a-week, entitled to the benefit of the poor's roll, to enable him to carry on an action in the Court of Session. The circumstances of the applicant's case were more favourable for the application, in respect that his earnings were less than those of Stevens, and that the applicant, in order to gain them, would have to withdraw himself from the personal superintendence of his case.

At advising—

Lord Justice-Clerk—It has been suggested, and the view has found favour with the reporters,