LORD YOUNG—We have considered this case, and we are all of opinion that the voluntary liquidation which is going on now is lawful, and that there are no sufficient reasons why we should interfere with it by putting the Association under another form of liquidation and another liquidator. The result is that we will refuse the petition for judicial liquidation at the instance of Drysdale & Gilmour, and substantially—the form of the order may be matter for consideration—accede to the prayer of the note—that is, to sanction the voluntary liquidation under the supervision of the Court, and confirm the appointment of the liquidator and of the gentlemen who have been nominated to advise with him. The result is simply this, that as the Association must be wound up, we think that winding-up under voluntary liquidation is lawful, competent, and upon the whole the most expedient.

LORD WELLWOOD and LORD STORMONTH DARLING concurred.

The Court pronounced the following interlocutor:—

"Direct and ordain that the voluntary winding up of the International Exhibition Association of Electrical Engineering and Inventions 1890, resolved on by the resolution passed at the general meeting of the said Association held on 5th November 1890, be continued, but subject to the supervision of the Court: Confirm the appointment of the said James Alexander Robertson as liquidator of the said Association in terms of and with all the powers conferred by the Companies Act 1862 and Acts amending and extending the same: Also confirm the appointment of Sir Thomas Clark, John Wilson, Robert Cranston junior, Robert Shillinglaw, John C. Dunlop, Peter L. Henderson and George Gilroy as a committee to advise with the liquidator in relation to all matters or questions arising in the liquidation: Find the petitioners Drysdale & Gilmour, Alexander Drysdale and George Gilmour, entitled to the expenses of the petition, and direct the same to be expenses in the liquidation: And remit to Lord Stormonth Darling, Ordinary, in terms of the 6th section of the Companies Act 1886, to proceed in the subsequent proceedings in the winding-up: *Quoad ultra* refuse the prayer of the petition, and decern."

Counsel for the Petitioners—Asher, Q.C. —C. S. Dickson. Agents—Reid & Guild, W.S.

Counsel for the Association—Murray—A. S. D. Thomson. Agents — Davidson & Syme, W.S.

Friday, November 14.

FIRST DIVISION.

MACDONALD AND ANOTHER *v.* CUTHBERTSON AND ANOTHER.

Succession—Testament—Holograph in Essentials—Adoption of Improbative Writing—Skeleton Form of Will Filled up Holograph of Testator.

A domiciled Scotsman living in Shanghai, where English law prevails, obtained there a skeleton will in the English form, with a clause of attestation annexed. He filled up the blanks in his own handwriting, putting (1) his own name and designation, (2) the names of his two brothers, and the words "equally and jointly, if one deceased to the survivor only," and (3) the name of a friend, respectively, in the blanks left in the printed matter for the names of testator, legatees, and executor. He also filled in the date and subscribed the document, which, although partly written and partly printed, then formed a coherent whole expressive of definite testamentary purpose. The attestation form was unused as no witnesses attested the subscription, and the will was therefore invalid by English law.

Held (*diss.* Lord M'Laren) that it was invalid in Scots law, as it was not tested, and was neither holograph in essentials nor adopted as holograph by a probative writ.

Thomas Johnstone Macdonald, who was a Scotsman by birth and domicile, left Scotland about the year 1877 to fill an appointment at Shanghai, China. He subsequently entered into a business there, which he conducted down to 12th September 1887, when he died, leaving considerable property both in China and in Scotland, all of it moveable property, and consisting chiefly of securities.

After Mr Macdonald's death a search was made in his repositories with the object of finding whether he had left any instructions for the disposal of his estate, with the result that a document was found which formed the subject of this special case. It was the only document of a testamentary character found among the deceased's papers or in his private repositories. It consisted of a printed form of testament, having originally blanks left for the insertion of various details and particulars. These blanks were filled up by the deceased in his own handwriting, and he subscribed the document. In the representation here given of said document the portions filled in by the deceased are shown in italics; the whole of the rest of the original document was printed:—

"This is the last Will and Testament of me, *Thomas Johnstone Macdonald,* of *Shanghai.*

"I direct that all my just debts and funeral and testamentary expenses be paid and

satisfied by my executor hereinafter named, as soon as conveniently may be after my decease. I give, devise, and bequeath

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all and every my household furniture, linen, and wearing apparel, books, plate, pictures, china, horses, carts, and carriages, and also all and every sum or sums of money which may be found in my house or be about my person or due to me at the time of my decease, and also all my stocks, funds, and securities for money, book debts, money on bonds, bills, notes, or other securities, and all and every other of my estate and effects whatever, and whatsoever, both real and personal, whether in possession or reversion, remainder or expectancy, unto *my two brothers, William Bell Macdonald, Donald Macdonald,* } *equally and jointly if one deceased to the survivor only,* to and for *their* own use and benefit absolutely. And I nominate, constitute, and appoint *Edward Ogilvie Arbuthnot, of Shanghai,* to be executor of this my Will; and hereby revoking all former or other wills and testaments by me at any time heretofore made, I declare this to be my last Will and Testament.—In witness whereof, I, the said *Thomas Johnstone Macdonald,* have to this my last Will and Testament set my hand the *twenty-third* day of *July,* in the year of our Lord One Thousand Eight Hundred and *Eighty Three.* "*T. J. MACDONALD.*"

* (Testator's Signature.)

"Signed, sealed, published and declared, as and for the last Will and Testament of the said × in the presence of us, who, in his presence and in the presence of each other, all being present at the same time, have hereunto set our hands as Witnesses thereto, on the day of the date written." × (Signature of Witnesses.)

The said document was, when found, lying loose amongst a quantity of unarranged papers, consisting principally of accounts and letters relating to the business of the deceased, some of which were several years old and some quite new, and including also private letters and other papers not relating to the said business but to the private affairs of the deceased. The document was on a sheet of foolscap paper, which was, when found, folded once as foolscap paper is usually folded before it leaves the stationers, so as to make it a sheet of four pages, and was folded once again so that the upper half of the front page faced and touched the lower half of the same page. The document was not otherwise folded, enclosed, closed, or sealed up, or fastened up, and it was not addressed or endorsed in any way.

The validity of this document was the subject of this special case, which was presented by (1) the deceased's brothers, the residuary legatees, and (2) the children of his deceased sister Mary, wife of Sir John Neilson Cuthbertson. Edward Ogilvie Arbuthnot, merchant in Shanghai, declined to act as executor, and the Sheriff of the Lothians and Peebles on 22nd October 1888 appointed the deceased's brothers executors-dative *qua* two of the next-of-kin of the deceased. The deceased was survived also by his mother, and a sister.

The first parties obtained confirmation of the deceased's estate, and were in course of realising it for their own behoof as sole residuary legatees, but this was objected to by the second parties, who contended that the said document was invalid, and that consequently they were entitled to a share of the estate *ab intestato* as representing their deceased mother. The other persons entitled to succeed to the deceased, namely, his mother and surviving sister, did not dispute the legal validity of the document as an effectual will.

By the Act 24 and 25 Vict. cap. 114, entituled "An Act to amend the law with respect to wills of personal estate made by a British subject," it is (section 1) enacted as follows—"Every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall, as regards the personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate and in Scotland to confirmation, if the same be made according to the forms required, either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin."

The law of the place where the deed was made (*i.e.*, Shanghai) is the law of England, but it is in English law essential to the validity of a will that the testator's signature be made or acknowledged by him in the presence of two or more witnesses, who shall also attest and subscribe the will. The present deed accordingly could not be supported as valid by the law of England, but it was sought to support it as valid according to the law of Scotland.

The first parties maintained that the deed was valid in Scots law, as it was entitled to the privileges of a holograph testament.

The second parties maintained that the document was not valid as a will, in respect that (1) it was not holograph of the deceased; (2) its essential or substantial parts were neither in his handwriting nor were they adopted by him as holograph; (3) the name and designation of the writer of the written portions of the body of the document were not expressed at length in the testing clause as required by section 149 of the Titles to Land Consolidation (Scotland) Act 1868 where a deed is partly written and partly printed; (4) the document had annexed to and incorporated with it a form of attestation by witnesses, in terms appropriate to its execution before witnesses, in accordance with the forms required by the law of the place where it

was made. It was therefore *ex facie* intended by the deceased to be executed with the solemnities of that law, or at least to remain inoperative unless and until acknowledged in the presence of witnesses, and the deceased having prescribed solemnities to himself, the document was invalidly executed according to the law of Scotland in respect of non-compliance with these solemnities. (5) The document was merely a printed draft or scroll intended as a guide in the subsequent preparation of a formal will.

Under these circumstances the parties desired to obtain the opinion and judgment of the Court upon the following question of law, viz.—"Is the document referred to in the foregoing case, and printed as an appendix thereto, a valid will according to the law of Scotland?"

Argued for the first parties—The deed was not tested nor was it holograph in the sense of being entirely in the testator's handwriting, but still it was entitled to privilege of holograph. A missive offer neither holograph nor tested was held privileged by mere subscription of the words "adopted as holograph" in handwriting of offerer—*Gavine's Trustees* v. *Lee*, 10 R. 448. But express words of adoption were unnecessary if the implication was clear or the material parts were holograph—Lord Kinloch in *Maitland's Trustees*, 10 Macph. 79. This will satisfied these conditions. [LORD PRESIDENT — Here neither the subjects conveyed nor the words of gift, which are both material, are holograph, but only the objects of the gift.] But there is enough to imply adoption of these. All through the deed there is a rational sequence of holograph words and printed matter, so dovetailed as to show clearly the intention to adopt the print. The case of *M'Intyre*, March 1, 1821 (F.C.), showed what was sufficient to this end. [LORD PRESIDENT—That is a clear case, and much stronger than the present, but is this a case of adoption at all? If so, what is the adopted thing, and what are the words which adopt it? It is plain the testator meant to make a will; the question is, has he made it?] In considering cases of adoption, the Court, as a matter of principle, has always insisted upon such safeguards as were necessary to protect the deed against forgery or fabrication, and here there was less chance of that than in *Gavine's Trustees*, *M'Intyre*, *Maitland's Trustees*, or in *Christie's Trustees*, 8 Macph. 461. The continuity of idea in the writing and printing taken together made forgery and fabrication impossible, so there was no bar in point of principle to the print being held adopted here. The rigidity and regularity of print were an additional safeguard, and with respect to deletions print was no worse off than holograph writ—*Evans* v. *Malloch*, Mor. Dict. 16,885; Stair, iv. 42, 6. The skeleton form for attestation by witnesses did not signify an additional solemnity prescribed to the testator by himself, and neglected, as in *Nasmyth* v. *Hare*, 1 Sh. App. 65. There the deed had been completed, with seal attached, and the seal was torn off; here the blank form was merely left as it was. But the point was settled at anyrate by the authority of *Yates* v. *Yates' Trustees*, 11 S. 915, and the docquet could be disregarded. The case of *Hay's Executor*, 11 S.L.R. 259, was referred to.

Argued for the second parties—The argument of the first parties confused intention and solemnity. Intention could not dispense with solemnity, which was imposed by statute in all cases, except when the deed was holograph, or by an extension when it had the privilege of holograph. It had this privilege if holograph in substantials, or adopted as holograph—*Maitland's Trustees*. The question here was, whether the deed was holograph in substantials or by adoption? But the subject of the gift and the words expressive of gift were not holograph here, and that was fatal to validity—*Heriot* v. *Bligh*, M. 17,020. Nor did the holograph words *per se* indicate a clear testamentary purpose — *Colvin* v. *Hutchison*, 12 R. 947. In all cases of adoption the incorporating of words must be distinct in themselves. An adopted deed became operative not from any privilege attaching to it, but because of distinct instructions with respect to it in a writ entitled to privilege. In *M'Intyre* the words of incorporation were clear, and in *Gavine's Trustees* and *Christie's Trustees* (both relating to *inter vivos* deeds) the intention to incorporate was made clear upon a proof. But proof of intention was here out of the question, as the rules admissible in cases of *inter vivos* deeds could not apply to wills. Contrast *Weir* v. *Robertson*, 10 Macph. 438, with *Skinner* v. *Forbes*, 11 R. 88. But the holograph words here by themselves made nonsense; they did not show what was to be adopted, so the printed matter must be disregarded. On the other point, the blank form for attestation showed the testator's intention to have witnesses to his signature. He could not adopt the form without adopting this part of it, and the case was one of prescribed solemnity, as in *Nasmyth* v. *Hare*. If he had not intended the solemnity he would have deleted the form for attestation.

At advising—

LORD PRESIDENT—Mr Thomas Johnstone Macdonald was a domiciled Scotsman, but at the time of his death he was resident in Shanghai, and he made his will at that place. It is quite apparent upon the face of the document that he attempted to make the will according to the forms required by the law of the place where he lived, and if he had succeeded in this his will would have been valid. It is the common law of Scotland that the will of a domiciled Scotsman is valid if it is made according to the forms prescribed either by the law of his domicile, or by the law of the place in which he was resident at the time when the will was made. Now, we have it as matter of joint statement by the parties that the law of England is the law of the place where this will

was made, and that by English law it is essential to the validity of a will that the testator's signature be made or acknowledged by him in the presence of two or more witnesses, who shall also attest and subscribe the will. But this will is not attested or subscribed by any witnesses at all, and so by English law it is invalid. And it is equally clear that the document does not comply with the solemnities required by the law of Scotland in the attestation of written instruments. We have no statutory wills as they have in England, and the rules relating to the attestation of written instruments are applicable to the case of testamentary writings as well as to deeds *inter vivos*. The will can thus hardly be said to be a will made according to the forms of the law of the testator's domicile, and the only resource left to those who are supporting it is to main tain that it is a writing holograph of the testator, because if it be holograph of the testator the law of Scotland will recognise it as valid no matter where it was made.

Now, it is very difficult to believe that the testator intended this to be a holograph will, because he adopts a printed form—a skeleton of a will—intended to be completed according to the forms of the law of England. It contains not merely a declaration of his purpose, and a statement of various things which are necessary to the expression of a testator's intention, but it also bears that it is "Sealed, published, and delivered as and for the last will and testament of the said , in the presence of us, who in his presence and in the presence of each other, all being present at the same time, have hereunto set our hands as witnesses thereto on the day and date underwritten." He makes no use of that testing clause at all. He leaves it entirely blank except in so far as printed, and he contents himself with merely subscribing his name above that testing clause, and at the end of the document, which consists partly of printing and partly of certain words written by himself. It was maintained that the portion of the will written by the testator was sufficient to show what his intention was, and that if his intention can be gathered from the part that is written, the whole should receive effect as being holograph of the testator. But there are great difficulties in the way of sustaining that argument. The only parts of the document of any importance which are filled up in the hand of the testator are, in the first place, his own name and designation at the commencement; in the second place, the names of two persons who are apparently intended to benefit by the will; and in the third place, the name of a person who apparently is intended to be an executor. The words in writing do not appoint the executor; they merely express the name and designation of the supposed executor, but they fill up the clause which begins in print, "I nominate, constitute, and appoint." And that is the entire writing under the hand of the testator. We have no words of gift or bequest at all, and therefore, in so far as his writing goes, there is no evidence that he intends to make a gift or bequest. We have no description of what he intends to give or bequeath—it may be the whole of his estate or only part of it—so far as his writing is concerned we cannot tell. In short, of the essentials of a will there seem to me to be two of the most important absolutely wanting from that part of the document which is in the handwriting of the testator, viz., words of gift or bequest, and the subject of gift or bequest; and in these circumstances I feel myself bound to come to the conclusion, although somewhat unwillingly, that this is an invalid will and cannot receive effect.

A good deal of argument was addressed to us upon the analogy of cases in which writings not holograph were adopted as holograph, but I cannot see the application of that law to the present case. If at the end of this document there had been a writing holograph of the testator saying, "I adopt the whole of the above, both printed and written, as holograph, and declare it to be my last will and testament," that would have brought the case within the purview of the authorities cited. But we have nothing in the least degree approaching to that; we have nothing but the signature of the supposed testator, and therefore I think the doctrine of adoption as applicable to holograph and non-holograph instruments has no place in the present case.

LORD ADAM—The only question we are asked is this, "Is the document printed in the appendix a valid will according to the law of Scotland? According to my view of the law of Scotland I understand that a will to be valid must be a probative will. It must be either holograph or tested. The particular document with which we are dealing is not tested, and therefore the question arises whether it is holograph in the sense which the law requires. I quite concur in thinking that a writing to be holograph does not require to be wholly in the handwriting of the maker, but I entirely adopt Mr Bell's statement of the law as to what holograph documents are when he says that they "are wholly or in the essential parts written by the party and subscribed by him." I think that is a correct description of what a writing professing to be holograph must be. If that be so, the question that remains is this, whether or not the document we are considering is in the handwriting of the subscriber in its essential parts? I agree with your Lordship that it is not. All that we have in the handwriting of the maker is the names of parties who may or may not be intended to take benefit, and reading only what is written it is impossible to make sense out of the document. It has no directions to give his estate to anyone—no words of will—and when you come to what is a most material part, the subject of the grant, that is found to be entirely in print. Now, that being the character of the document, I can come to no other conclusion than this, that it is not in its essential parts in the handwriting of the maker. There is the peculiarity that

the non-holograph parts instead of being in the handwriting of another are printed, but that does not make any difference in the consideration of the case. If the essential parts are not holograph, it is no matter how much of the rest may be written and how much printed. What we must look to is not the foreign element, but the neces sary element. Upon these grounds I have come to the conclusion that this document is not a valid will according to the law of Scotland. I may say that I do not think any question of intention arises here. I think it is likely enough that Mr Macdonald did intend to make a valid will, but then he did not carry his intention validly into effect. He did not comply with those things which are, I think, requisite by the law of Scotland to make a valid will.

At the discussion a great deal was said about the adoption of non-holograph writings, and upon that matter I agree with your Lordship. In order to the adoption of an informal writing you must have a probative writing, either holograph or tested, standing by itself, which expresses the matter of the adoption.

LORD M'LAREN—I am quite alive to the inconvenience arising from difference of opinion in matters relating to wills and conveyancing, but as I have formed a clear opinion in this case in favour of the validity of the will, I feel bound to state it. I do so the more willingly that these questions often come up in new and unexpected forms, and I am by no means certain that we have got to the end of this chapter of our law.

I approach the consideration of this case from a somewhat different point of view from that which your Lordships have chosen. I think the first question to be considered is, whether this is a document of a class which by our statute law must be authenticated by witnesses? The objection which is taken to it is, that it is not subscribed by witnesses, nor are any witnesses mentioned as having been present at its execution. Now, our law upon that subject, I need hardly say, is purely statutory. It is sufficiently evident from the statements of our institutional writers and from history that prior to the statutes with which we are familiar, the law recognised no broad distinction between deeds written by the granter himself and those written for him by another hand. In either case all that was necessary as matter of solemnity was that the deed should be signed and sealed, or sealed without being signed, and although for greater security it was usual to call in witnesses, these were not necessarily instrumentary witnesses; they were not required as matter of solemnity to subscribe the deed, nor was it necessary that their names should be inserted in the deed. Not to over-elaborate this question, but coming at once to the Act of 1681, I find that there the subscription by witnesses, and the requirement of the designation of the witnesses, and the writer's name, are all treated as one series of solemnities which were necessary to the validity of the deed, and therefore if it had not been that the writer and witnesses are classed together in the statute, there is nothing in the words of the Act which would exclude its application to holograph deeds. But apparently, just because the statute speaks of the writer and witnesses, its operation has uniformly been limited by authority and practice to the case where the deed is written by a hand other than that of the granter, and I take it that the distinction between deeds holograph and deeds not holograph means nothing more than this, that the one is the case of a deed written by a clerk's hand, and falling under the statute, and the other includes all deeds which are not of that description. Stair and Erskine in treating of holograph deeds speak of them expressly as exceptions to the operation of the statute. When they speak of a deed as being holograph, provided it is holograph in the essential parts, they are evidently treating of the case of a deed which is partly written in the hand of a different person, but has important portions inserted in the granter's own hand, and these are regarded as holograph deeds. I do not find that our writers treat at all of the case of a printed form filled up in the granter's hand, and I see nothing in their writings to exclude the proposition that such a deed may be a holograph deed. The case in the absence of authority must be treated very much as one of impression. It appears to me that where everything that is necessary to convert the printed schedule into a deed having a real meaning and application to the circumstances of the case is filled up in the handwriting of the granter, that is in truth and in substance a holograph deed, and it is only a verbal criticism to say that it is not strictly holograph, because all the reasons which lead to the exception of holograph deeds from the statute apply to a case of this kind. The main reason is the impossibility of interpolation. In the case of a deed admitted to be holograph, unless the granter's hand be actually forged, which is a case no authentication can guard against, you have the certainty that whatever was written there by the granter was meant to be part of his deed. In the case of a deed written by another hand you have not the certainty, because there may be the interpolation of pages, marginal additions, erasures, &c., and there is nothing to show whether these were done before or after subscription.

The will we have under consideration fulfils this requisite of a holograph deed, that every written word in it authenticates itself, because it is in the handwriting of the granter. It is quite true that if you take the manuscript words without the printed words you cannot make sense of the will. That observation would apply to every instrument which could be prepared in such form. It may be said with equal truth and propriety that there is nothing in the print the sense of which is complete in itself without the manuscript addition. It is the intelligent filling up of the deed, the combination of the printed and manuscript words, which make sense of the deed, and

all that is necessary to convert the printed form into a deed is in the handwriting of the granter. For these reasons, I think it is very much to be desired that this convenient mode of making a simple will such as this is—a mode which affords perfect security against fraud—should be recognised. I find nothing in writers of authority against the reception of such an instrument, and therefore if the matter were to depend upon my opinion I should hold this to be a good writing at common law, and not falling under the statutes regarding the authentication of deeds.

LORD KINNEAR—I agree with the majority. If this were a question of intention merely, there would be a great deal to be said in support of the will. But we are not looking at this instrument as a court of construction for the purpose of ascertaining what the writer intended to effect. The preliminary question with which alone we are concerned is, whether it satisfies the conditions prescribed by law for the authentication of written instruments? These conditions are prescribed by statute, and if the statutes are applicable, the only question we have to consider is, whether the statutory conditions have been fulfilled or not? But then it has been held from the earliest time, since the statutes regulating the authentication of written instruments were passed, that properly construed they do not apply to holograph writings, which means and can only mean, instruments written entirely by one hand, and that the hand of the subscriber. No doubt that definition requires to be enlarged by admitting that instruments may in certain cases be considered holograph although they may contain other writing than that of the subscriber, but then that has been allowed only in cases in which those additional words, which are not in the hand of the subscriber of the document, are purely formal or superfluous, so that if they were struck out or disregarded you would still have a complete expression of the writer's intention. It appears to me therefore that the question whether a document can receive effect as holograph is a mere question of fact, and I am unable to entertain any doubt that a document which is partly written and partly printed cannot by any possibility be holograph if the printed parts are of any importance at all, because that contradicts the very definition of the word "holograph." It is of no consequence whether these parts of a document which are not autograph of the subscriber are written by somebody else, or whether any are printed or lithographed. It is not holograph in the one case any more than in the other.

But a question has been raised which requires consideration—whether the statute of 1681, which regulates the attestation of instruments that are not holograph, applies at all to instruments like that in question which are partly written and partly printed. Now, it would appear to me that if it did not, the conclusion would be that such an instrument ought to be sustained, not merely where important parts of it or certain parts of it are in the handwriting of the subscriber, but where the whole instrument is printed, provided it be subscribed, because upon that hypothesis there is no statutory solemnity applicable to such instruments. But I do not think it is necessary that we should consider the effect of the Act of 1681 upon that question as if it stood alone, because whether it applies to such instruments or not, it is at all events quite certain that the Act of 1868 applies to them, and that Act regulates in very clear and positive terms the conditions upon which such instruments are to receive effect. It provides that all documents may be partly written and partly printed, engraved, or lithographed, provided always that certain conditions are satisfied as to the character of the testing clause. Now, that appears to me to be a statute which regulates the attestation of such a document as this, and I am unable to see any ground upon which we could refuse to apply that enactment unless we were to hold that the document in question did not really fall within its terms, because it was not in a reasonable sense a document partly printed, but was in a reasonable sense holograph.

I entirely agree with the observations which your Lordship and Lord Adam have made with reference to cases of adoption, which do not appear to me to be applicable to the question at all.

Counsel for the First Party—Sol. Gen. Pearson—C. K. Mackenzie. Robert Strathern, W.S.

Counsel for the Second Party—Asher—M'Lennan. Agents—Auld & Macdonald, W.S.

Friday, November 14.

FIRST DIVISION.

COLVIN *v.* JOHNSTONE

Reparation—Breach of Promise of Marriage—Whether Action Barred by Mora.

A having promised to marry B in 1879, married another woman in 1889. B then brought an action of damages for breach of promise against A, who pleaded that her claim was barred by *mora*. The case was sent to trial before a jury, when these facts appeared—In 1885 the defender having begun to court the woman whom he afterwards married, the pursuer intimated that she did not intend to release him from his engagement to herself, and again in 1889, shortly before the defender's marriage, a similar intimation was sent to him by the pursuer's agent. The jury returned a verdict for the pursuer. The defender having applied for a new trial, on the ground that the verdict was contrary to evidence, the Court *declined* to set aside the verdict, Lord Trayner holding that the jury had come to a right decision; the Lord