should have an annual income of £600 under the combined provisions of the marriage-contract and the trust-settlement, and it is just as clearly stated that whatever benefit Mrs Hunter may receive from the Bombay Civil Fund is to be imputed as part of that annual income. The amount payable to Mrs Hunter by her husband's trustees out of Mr Hunter's estate is just so much and no more as, in addition to the sum received by her from the fund, will make up a sum of £600 per annum. I think this result is necessarily reached from a consideration of the provisions of the settlement to which I have referred.

Had this result been in any decree doubtful, I think the doubt would have been removed by a consideration of what Mr Hunter has done by way of provision for his wife in the event (which has not happened) of her losing the benefit of the fund. In that event he has provided that she shall receive out of his estate an annuity of £500 "to which sum her annuity under said marriage-contract and these presents shall in that event be restricted." This is inconsistent with the idea that under the settlement Mrs Hunter was provided with an annuity of £300 absolutely, that is, irrespective of any benefit received by her from the fund, for if so, then the husband's restriction of her right would have been unavailing. If Mr Hunter under his settlement gave his widow absolutely an annuity of £300, then she is entitled to that in any case. But if the benefit of the fund ceased from any cause, then by the marriage-contract, in lieu of such benefit, Mr Hunter bound himself to make payment to his widow of £300 a-year. Accordingly, on the cessation of the benefit from the fund there would be due to Mrs Hunter in respect of her husband's marriage-contract obligation £300 per annum, which with the £300 absolutely hers under the settlement would give her an annuity of £600, although Mr Hunter expressly provides that on the cessation of the benefit from the fund his estate is only to be burdened in favour of his widow to the extent of £500. As he could not restrict his obligation under the marriage-contract it is plain that he intended the burden on his estate to depend on whether his widow received any benefit from the fund, and the amount, if any, which she so received. In short, as I have already said, Mr Hunter desired that his widow should have an income of £600 a-year, to consist (1) of whatever annuity or benefit she might receive from the fund, and (2) so much but no more from his estate as added to the amount received from the fund would make up the £600. I am therefore of opinion that the first question should be answered in the negative, and the second question in the affirmative.

The third question presents more difficulty. In regard to it I assume that the trustees paid Mrs Hunter £300 a-year irrespective of what she was receiving from the fund, in the view that this was her right under the deed of settlement. Although I think that view erroneous, I cannot say that the trustees were in any way to blame for so construing that deed. It was a view that might very reasonably be entertained. In these circumstances, as both the trustees and Mrs Hunter were in error as to the legal effect of the settlement, I think there is no claim for repetition of what has been already paid to Mrs Hunter. I would therefore answer the third question in the negative.

The Court answered the first question in the negative, the second in the affirmative, and the third in the negative.

Counsel for First Parties—W. Campbell. Agents—Skene, Edwards, & Garson, W.S.

Counsel for Second Party — Clyde. Agents—Stuart & Stuart, W.S.

Tuesday, July 17.

SECOND DIVISION.

BURNIE'S TRUSTEE *v.* LAWRIE.

Succession — Testament — Presumption — Holograph Writ — Unsigned Holograph Postscript to Signed Holograph Testament Held Valid.

An unsigned holograph postscript to a signed holograph disposition and settlement *held* (*dub.* Lord Rutherfurd Clark) to be valid and effectual.

Hugh Burnie died at Wigtown on 3rd December 1893. After his death there were found in the deceased's house two holograph testamentary writings. The first was in the following terms—"In the event of my death without heirs of my body, I leave and bequeath to Christina Shaw or Lawrie, wife of Sampson Lawrie, tailor, Liverpool, the property in Whithorn, belonging to her late brother James Shaw, Whithorn, together with the railway stock in my name, of Portpatrick and Wigtownshire Joint Committee, with a legacy of £10 sterling for dividends drawn. As witness my hand at Wigtown the 22nd day of November 1893 years.—(Signed) HUGH BURNIE." The second was a holograph trust-disposition and settlement in the following terms—"I, Hugh Burnie, residing in Agnew Crescent, Wigtown, in order to settle my affairs, Do hereby give, grant, assign, and dispone to and in favour of John Smith, Sheriff-Clerk of Wigtownshire, and Charles Arbuthnot M'Lean, law-agent, Wigtown, all and sundry lands and heritages, goods and gear, debts and sums of money, that shall belong to me at the time of my death, and I nominate and appoint the said John Smith and Charles Arbuthnot M'Lean my sole executors, and I declare the purposes of the trust to be—(first) for payment of my just and lawful debts, deathbed and funeral expenses; (second) for payment of following specific legacies to persons after named—To Margaret Thompson, daughter of Margaret Thompson, sometime in Culkae, £20 sterling; to Janet M'Culloch, Sorbie, £10 ster-

ling; to John M'Keachie, Wigtown, and his mother, £20 sterling between them to; John M'Adam, son of the late William M'Adam, Clendrie, £20 sterling; to Mrs Heron, Glasgow, and Mrs Bryan, Monreith, £10 sterling each; to Mrs Broadfoot, Drough-dool, the body clothes and silver plate in house belonging to my late mother; and as both my mother and self were much benefited by the inhabitants of Wigtown, the rest residue of our joint means and estate to be divided as follows—eight-tenths to the poor of the parish of Wigtown, one-tenth to the poor of the parish of Kirkinner, and one-tenth to the poor of the parish of Glasserton, said sums to be divided at the discretion of my said trustees; witness my hand at Wigtown, the 30th day of November 1893 years.—(Signed) HUGH BURNIE. I have left special instructions respecting Mrs Sampsons Lawrie's legacy, and would like trinkets disposed of as follows to following kind friends if they will accept —Gold watch and chain to the Rev. Mr Paton; nickel watch to Miss Callie, Monreith Village; Shakespeare's Plays and all old china, crystal, and glass to Mr C. A. M'Lean; gold and diamond scarf ring to Mr Howatson, Barness; gold studs and walking stick, Malacca cane, to Mr David M'Kenna, Malzie; aneroid barometer to Mr Russell, Balsier; whatever books he may choose to Mr Russell, Knockann; gold brooch of my mother to Miss Jorie, Whithorn."

Besides the heritable property in Whithorn (worth about £70) and the railway stock (worth about £11) referred to in the holograph writing of 22nd November, the said Hugh Burnie died possessed of the following estate—1, Other heritable property in Whithorn, valued at £350; 2, leasehold property in the village of Monreith, which may be worth about £50; 3, personal estate, consisting of cash in house, money in bank, stock-in-trade, book debts, and household furniture, amounting in gross to about £840.

John Smith declined to accept the offices of trustee and executor under the trust-disposition of 30th November 1893, but Charles Arbuthnot M'Lean accepted office as trustee and executor.

In these circumstances questions arose with regard to the distribution of the deceased's estate in consequence of the existence of the various holograph writings above referred to. Mr M'Lean maintained that the holograph writing of 22nd November was invalid and inoperative, and conferred no rights upon Mrs Lawrie in the heritable property and railway stock thereby bequeathed to her, on the ground that that deed must be held as impliedly revoked by the later trust-disposition and settlement of 30th November 1893. He also maintained that the holograph writing appended to the said trust-disposition and settlement was invalid and inoperative, in respect that it was undated and unsigned by Hugh Burnie.

Mrs Lawrie, on the other hand, maintained that the said holograph writing of 22nd November had not been revoked, but must receive effect, and that she, by virtue of the bequests contained in it, had right to the said heritable property in Whithorn and the said railway stock. Mrs Lawrie, the Rev. Robert Paton, and the other persons mentioned in the holograph writing appended to the holograph settlement, further maintained that this holograph writing, although unsigned, was valid and effectual, and that they were in right of the bequests therein specified.

For the decision of these questions a special case was presented to the Court by (1) Mr M'Lean, (2) Mrs Lawrie, and (3) the Rev. Robert Paton and the other persons mentioned in the unsigned holograph writing appended to the holograph settlement.

The questions at law were—"(1) Is the said holograph writing of 22nd November 1893 valid to the effect of entitling the said second party to the bequests thereby made by the said Hugh Burnie in her favour, or, on the other hand, has the said holograph writing of 22nd November 1893 been impliedly revoked by the said trust-disposition and settlement of the said Hugh Burnie dated 30th November 1893? (2) Are the bequests in favour of the third parties contained in the said holograph writing appended to the said trust-disposition and settlement of 30th November 1893 valid or invalid?"

Argued for first party—The postcript to the trust-disposition and settlement being unsigned was invalid and inoperative, and could not receive effect—*Pettigrew's Trustees* v. *Pettigrew*, December 6, 1884, 12 R. 249; *Goldie* v. *Sneddon*, November 4, 1885, 13 R. 138; *Skinner* v. *Forbes*, November 13, 1883, 11 R. 88, Lord President's opinion, p. 90; *Dunlop* v. *Dunlop*, June 11, 1829, 1 D. 912. If the unsigned postcript was invalid, then the legacies therein could not receive effect, and the earlier deed must be held to be impliedly revoked by the trust-disposition and settlement, even although there was no express revocation of the former in the latter—*Brander's Trustees* v. *Anderson*, July 19, 1883, 10 R. 1258.

Argued for the second and third parties —The unsigned addendum was valid and effectual. It was written *unico contextu* with the main writing, and was thus connected with a formal, regular, and complete deed—Stair, iv. 42, 6; Bell's Lectures on Conveyancing, i. 82; *Gillespie* v. *Donaldson*, December 22, 1831, 10 S. 174; *Spiers* v. *Home Speirs*, July 19, 1879, 6 R. 1359. The small bequests contained in the addendum were therefore valid, and the deed of 22nd November had not been revoked by the testator.

At advising—

LORD YOUNG—Both of the questions in the present case depend on whether the postcript to the holograph disposition and settlement of 30th November is valid, or whether it is invalid because it does not bear the subscription of the testator. If it is valid it signifies to us quite distinctly no intention on the part of the testator to

revoke his settlement of 22nd November by his settlement of 30th November, but if the postcript is invalid, it may be that the first settlement is impliedly revoked by the second.

It is maintained by the first party, founding on a passage in Stair, and on the case of *Skinner* v. *Forbes* and other cases, that the postcript is invalid because it is not signed. The passage in Stair is in these terms—"Holograph writs subscribed are unquestionably the strongest probation by writ and least irritable. But if they be not subscribed they are understood to be incomplete acts from which the party hath resiled."

Now, I am not at all disposed to dissent from the law there laid down, and which has been acted on and recognised by Divisions of the Court. But assuming the law to be as stated in Stair, is it applicable to the case before us? I think as an ordinary rule a holograph will with no signature would be held by us to be an incomplete act from which the party had resiled. But the settlement with which we are dealing is subscribed, and that being so, the question is, whether the rule applies to a writing upon it in the handwriting of the testator, whether at the top, or on the margin, or at the end of it. It is not a question as to the validity of an unsubscribed holograph will, but as to the validity of a holograph writing upon a subscribed holograph will explanatory of its contents. I do not think a case of that kind necessarily falls within the rule as stated by Stair. Whether we should give effect to a writing appended, or prefixed to, or on the margin of, or indorsed upon a holograph will may depend on circumstances, but I do not think that there is any formality compelling us to reject it. The rule laid down by Stair is not a rule of formality or technicality; it is one founded upon considerations of good sense, for it is plain to the human understanding that a mere unsigned jotting by a person of how property is to be disposed of, is not a complete writing. But is that consideration at all applicable to an explanatory note prefixed, or subjoined to, on the margin of, or indorsed upon a holograph will? Suppose it is explanatory of whom he means to refer to. Or suppose it be a description of the subject of a legacy. I do not think that would fall within the rule as an inchoate incomplete writing. It is quite complete, explanatory of what is meant, identifying either the donee or the subject of the gift. I give that merely as an illustration of what would not fall within the rule of law stated by Stair. Here the writing is explanatory of his having left special instructions respecting Mrs Sampson Lawrie's legacy. I think these words indicate quite distinctly that he did not mean to imply a revocation of that legacy. I think that does not fall within the rule that an unsigned testament is an incomplete writ. I therefore hold it to be good altogether, and therefore it must have effect not only to that extent, but as regards the Shakespeare's Plays and the trinkets as there referred to.

My opinion on the whole matter is that the first question ought to be answered to the effect that the will in favour of Mrs Lawrie is not impliedly, as it certainly is not expressly, revoked by the codicil, the conclusion that the testator had no such intention being arrived at from the note in the testator's own handwriting.

As regards the second question, I think that the writing is also effectual as regards the legacies. If it is effectual in part, it must be effectual altogether.

LORD RUTHERFURD CLARK—I am very glad that Lord Young has reached the conclusion he has expressed, and with which I understand your Lordship in the chair agrees. I do not think I should say more.

LORD JUSTICE-CLERK—I concur in the opinion of Lord Young.

LORD TRAYNER was absent.

The Court answered the first alternative of the first question in the affirmative, and the first alternative of the second question also in the affirmative.

Counsel for the First Party—C. N. Johnston. Agent—Keith R. Maitland, W.S.

Counsel for the Second and Third Parties — Wilson. Agents — John C. Brodie & Sons, W.S.

Thursday, July 19.

FIRST DIVISION.

SOUTAR *v.* CARRIE.

Parent and Child—Custody of Child—Payment to Person Deprived of the Custody —Custody of Children Act 1891, *sec.* 2.

The Custody of Children Act 1891, by section 2, provides that "if at the time of the application for an order for the production of the child, the child is being brought up by another person . . . the court may . . . order that the parent shall pay to such person . . . the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the court to be just and reasonable." . . .

A father sought to have his father-in-law, in whose house his infant child had been living for five years, ordained to deliver up said child. The grandfather submitted that he was only bound to do so upon payment of £85, which he alleged he had expended upon the child. He was, however, unable to furnish details of the outlay of this money. The petitioner offered to pay £15 in monthly instalments of 5s.

The Court, upon the ground that the respondent had failed to show why more than £15 should be paid, *granted* the prayer of the petition.

The Custody of Children Act 1891 (54 and