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

55 Vict. cap. 3), by section 2, provides that "if at the time of the application for a writ or order for the production of the child, the child is being brought up by another person, or is boarded out by the guardians of a poor law union, or by a parochial board in Scotland, the court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person, or to the guardian of such poor law union, or to such parochial board, 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 having regard to all the circumstances of the case."

Charles Soutar, 2 Dundee Street, Edinburgh, was married on 8th April 1887 to Anne Carrie, who died in childbed on 27th January 1888, leaving a daughter, who continued to reside with her grandparents, James Carrie and his wife, as her father was not in a position to take care of her. In December 1893 Soutar married again and wished to have the child to live with him. In July 1894, upon the grandfather's declining to hand over the child, he presented a petition to the Court for its custody. Carrie lodged answers, in which he stated that he did not wish to part with the child; further, that it was delicate; that it had required exceptional care, necessitating considerable outlay; that he had expended more than £85 in its maintenance; and that the petitioner had only contributed in all £5, 4s. 6d. in small sums at different times. He submitted that the petition should not be granted until payment of £85 had been made, or at least only conditionally upon that sum being paid. He was, however, unable to furnish details of the expenditure of the money claimed. Soutar explained that he was a bootclicker with very limited means, but he offered to pay £15 in monthly instalments of 5s. if the petition were granted.

At advising—

LORD PRESIDENT—The section assumes that where an order is made for payment, an order for delivery of the child to its natural guardian is being pronounced at the same time.

The respondent asks us to order payment of £85, and he is met by an offer of £15 to be paid in instalments of 5s. a month.

We have not got the material here, and the respondent is unable to give us material enabling us to arrive at a decision of what larger sum would be reasonable.

We are entitled to take into account the position and income of the person who is called upon to make payment, and in the circumstances I think we should pronounce an order for payment of £15—not because that is the sum offered, but because the respondent has not supplied us with anything tangible or definite leading us to arrive at a different conclusion.

LORD ADAM concurred.

LORD M'LAREN—I do not read the section of the Act as providing that the whole sum expended in aliment must necessarily be given, but that a sum should be awarded as compensation to the person deprived of the custody of the child.

The circumstances and position of the person liable to make payment should be taken into account, and I agree with your Lordship as to the amount, and on the same ground, namely, that nothing has been said showing that a larger sum ought to be awarded than the sum offered.

LORD KINNEAR—I agree.

The Court pronounced this interlocutor:—

"Grant the prayer of the petition: Find that the petitioner is entitled to the custody of Annie Carrie Soutar, the child of the marriage between him and Annie Carrie mentioned in the petition; and decern and ordain James Carrie, dairyman, 66 Abbey Park, Arbroath, forthwith to deliver up the said child to the petitioner, or to those having his authority; and further, decern and ordain the petitioner to pay to the respondent the said James Carrie the sum of £15 sterling, at the rate of 5s. per month until the sum of £15 shall have been paid."

Counsel for the Petitioner—Strachan. Agents—T. F. Weir & Robertson, S.S.C.

Counsel for the Respondent—Findlay. Agents—Duncan Smith & Maclaren, S.S.C.

Thursday, July 19.

FIRST DIVISION.

MORRISON *v.* QUARRIER.

(*Ante*, *p.* 718.)

Custody of Children—Petition of Brother—Religion of Deceased Father.

A boy and girl—twins—aged twelve, whose father and mother were dead, were placed by their brother, a Roman Catholic, in an institution where the religious instruction was Protestant. He subsequently presented a petition to have them restored to his custody in order that they might be brought up as Roman Catholics, that having been, as he alleged, the religion of their father. The Court appointed a curator *ad litem* to the children, who, after making full inquiries, reported that the children were being well cared for, that they seemed very happy, and that they wished to remain where they were. Upon the question of religion the report stated that the children were baptised as Roman Catholics, but not until they were nine years of age, that from 1888-93 they attended irregularly Board Schools and irregularly Roman Catholic Schools in 1891-92, that the father who died in October 1893, although nominally a Roman Catholic had never