amount thereof, but that under deduction of the sum of £70, 4s. 8d. sterling, being the taxed amount of the expenses found due by interlocutor of this date to the pursuer in the action of affiliation raised by her against the defender."

Action of Affiliation.

"*Edinburgh, 12th December* 1901.—The Lords having heard counsel for the parties on the motion of the pursuer for approval of the Auditor's report on her account of expenses, and for authority to allow decree therefor to go out and be extracted in her agent's name as disburser thereof, Approve of the said report: Find that the taxed amount thereof is £70, 4s. 8d. sterling, but find that the pursuer is not entitled to obtain decree therefor in her agent's name as aforesaid in respect that the defender is entitled to set off the expenses taxed at £187, 6s. 2d. found due to him in the action of damages for seduction raised by the pursuer against him in this Court, and for which sum of £187, 6s. 2d. under deduction of the sum of £70, 4s. 8d. foresaid, decree has been given in favour of the defender in the said action of damages by interlocutor of this date."

Counsel for the Pursuer—A. Moncreiff. Agent—J. W. Deas, S.S.C.

Counsel for the Defender — Wilton. Agent—Robert Macdougald, S.S.C.

Friday, December 13.

SECOND DIVISION.

INGLIS'S TRUSTEES *v.* INGLIS.

Writ—Authentication—Informality—Petition to Establish Execution of Informally Executed Will—Conveyancing (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 39.

On A's death a document in the form of a trust-disposition and settlement was found in his safe among other documents of value. This document was not holograph. It was written on two separate sheets of paper and extended to eight pages. It was signed on the last page only by A and by two persons who signed as witnesses. There was no testing clause, and the designations of the witnesses and the date of the deed were not stated. On the backing appeared the letters "Dft." In the body of the writing were a few clerical corrections made by the writer. The document was written continuously with the proper catchwords at the foot of each page. The deceased left no other will.

In an application presented for the purpose of proving the execution of the deed in terms of section 39 of the Conveyancing Act 1874, it was proved that the deed had been prepared as a draft by A's lawyers on his instructions, and written out by one of their clerks, and that it had been sent by them to him in November 1893; that it was never returned to them, and that sometime between January 1898 and May 1900 it was brought by A to his bank, where he occasionally took documents for signature, and there was signed by him before the two witnesses.

Held that the petitioners had sufficiently established the execution of the writing in question as the final trust-disposition and settlement of the deceased in terms of the statute.

By section 39 of the Conveyancing (Scotland) Act 1874 it is enacted, "No deed-instrument, or writing subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect according to its legal import because of any informality of execution, but the burden of proving that such deed, instrument, or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested shall lie upon the party using or upholding the same, and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such granter or maker and witnesses."

Robert Inglis, feuar, Greenock, died at Greenock on 29th September 1901. He left no issue, and was survived by his widow Mrs Elizabeth Bain Swan or Inglis, and by two brothers, George Inglis senior, Exeter, and Thomas Stewart Inglis senior, commercial traveller, London, and by the following children of his deceased brother James Inglis, namely, George Inglis junior, locomotive painter, Glasgow, Peter Inglis, house painter, Glasgow, and Mary Ann Inglis. He was predeceased by his father and mother.

After the death of Robert Inglis his repositories were searched, and there was found in an iron safe in his bedroom (1) a pocket-book containing securities and a copy of the deceased's antenuptial marriage-contract; (2) an envelope containing the titles of his house; (3) an envelope containing Turkish bonds; (4) an envelope containing Singer's debentures; (5) an envelope containing a document in the form of a trust-disposition and settlement.

The document, No. 5 of those mentioned, was written upon two separate sheets of paper and extended to eight pages. It was not written by the testator, and bore a signature on the last page only. At the foot of each page was the proper catchword connecting it with the next page. On the backing of the deed appeared the letters "Dft." By this deed the testator assigned and disponed his whole estate, heritable and moveable, to his wife Mrs Elizabeth Bain Swan or Inglis, his brother Thomas

Stewart Inglis, and Frederick L. Wrede, shipbroker, Greenock, as trustees for the purposes therein mentioned. The trust purposes were as follows—He directed his trustees to pay (1) his debts, funeral expenses, and the expenses of the trust; (2) to implement the obligations in the antenuptial contract between himself and his wife; (3) to increase the annuity payable to his wife under the marriage-contract from £200 to £300, subject to restriction to £100 in the event of her second marriage; (4) in the event of his brother Thomas Stewart Inglis surviving him, he provided that the residue of the estate was to vest in him, and to be paid to him or his heirs or assignees, subject to sufficient provision being made for securing the annuity to the testator's wife, the balance being paid to him and his foresaids on her death; (5) in the event of his brother Thomas Stewart Inglis predeceasing him, he directed that the residue, subject as aforesaid, was to be held for behoof of his children, the income to be applied to their education and maintenance till the youngest attained twenty-one years of age, when the fee and any accumulations of income were to vest and be divided among them equally, the issue of predeceasers taking their parent's share.

The deed ended thus:—"And I consent to registration hereof for preservation.—In witness whereof, ROBERT INGLIS. Jno. Muir Maitland, witness. James Galbraith, witness."

Three or four clerical corrections had been made in the body of the deed by the writer by means of interlineations and scoring out with a pen.

In addition to the papers in the safe there was found in the pocket of the deceased Robert Inglis a paper with the following informal jottings relating to the disposal of his estate:—

"Trustee.
Thomas Stewart Inglis, Jnr.
7 Oppidans Road, South Hampstead, London.
the residue.
£10,000.
Leo Stewart Inglis, Sergant Trumpter, Canadian Dragons, Cavalry Barracks, Winnepeg, presentley in South Africa.
My Neice Cassy Fincher Mrs, 37 Canterbury Road, West Croyden, £500.
My Neice Beatrice Binns Mrs, Carndonach, Ireland, £500.
My Neice Loo Colquhoun Mrs, Drumchapel, near Glasgow, £500.
Mrs Robert Inglis in addition to what is secured to her by antenuptial contract £125 per annum.
the rest of my estate to be divided in equal proportions."

The estate of the deceased amounted to about £35,000.

No other testamentary writings were found in the depositories of the deceased.

On 15th October 1901 Mrs Elizabeth Bain Swan or Inglis, Thomas Stewart Inglis senior, and Frederick Lear Wrede, the trustees nominated in the said trust-disposition and settlement, presented a petition to the Court in terms of section 39 of the Conveyancing (Scotland) Act 1874, praying the Court "to find and declare that the trust-disposition and settlement above mentioned was subscribed by the said deceased Robert Inglis, as the maker thereof, and by the said John Muir Maitland and James Galbraith, as witnesses attesting the subscription of the said Robert Inglis, between the end of January and the beginning of April 1898."

The petitioners averred "that the said trust-disposition and settlement was the completion by the deceased of a draft prepared on his instructions by Messrs R. & S. Neill, Clerk, & Orkney, writers, Greenock, and was sent by them to him on 4th November 1893; that the said draft was never returned to them, but was subscribed by the deceased between the end of January and the beginning of April 1898, the witnesses to the subscription (the said John Muir Maitland and James Galbraith) being at the time clerks in the West End Branch of the Royal Bank of Scotland at Greenock. . . . That the deceased intended the said instrument to have testamentary effect as appears from the following facts:—(1) He retained the draft from 1893 till he executed it (in the period between 1898 and 1900); (2) he executed it; (3) he deposited it among his formal papers; (4) he left no other testamentary writing; (5) subsequent to April 1899 he indicated to his wife, the petitioner Mrs Elizabeth Bain Swan or Inglis, that he had made a will in terms of which she and the petitioners Thomas Stewart Inglis senior, and Frederick Lear Wrede were nominated trustees, and again in November 1900 and July 1901 he stated to the petitioner Thomas Stewart Inglis senior that he had left his whole estate to him with the exception of provisions in favour of his widow."

Answers to the petition were lodged by George Inglis junior, Peter Inglis, and Mary Ann Inglis. The respondents explained—"(1) That the alleged trust-disposition and settlement bears to be a draft and is signed on one page only; (2) that the sheets on which it is written are and always have been separate, and are not interleaved; (3) that it was not written by the testator; (4) that there is no testing clause or date of subscription; (5) that there are no designations or addresses of witnesses appended; (6) that it contains many erasures, alterations, and interlineations *in essentialibus* and otherwise; and (7) that there are no means of discovering when, where, and by whom such alterations were made. These and other objections render the alleged deed entirely null, and the respondents object (1) that no trust-disposition and settlement has been executed by the deceased; (2) that the writing produced has no force or effect in law, and is not capable of being set up under section 39 of the Conveyancing Act 1874; and (3) that if the document ever had any efficacy it was destroyed by the deceased having changed his intentions as to the disposal of his estate after he had appended his signature thereto, and that the alterations upon the document are entirely unauthenticated."

Proof was allowed and led, which established the facts above narrated and bore out the averments of the petitioners with regard to the framing and signing of the deed. The law-agent who had received the instructions of the deceased and had drafted the deed, and also the clerk who had written out the draft and made the clerical alterations, were examined as witnesses. Maitland and Galbraith, the two witnesses to the subscription, deponed that although they had no recollection of signing the particular document, they had no doubt that the signatures were their own; that Robert Inglis occasionally came to the bank and asked them to be witnesses to his signature to documents, and that the deed must have been signed between 24th January 1898 and 19th May 1900, during which period Galbraith was at the Greenock West End Branch of the Royal Bank.

Argued for the petitioners—This was a typical case for the application of the statute. The informality referred to in the Act was just such an informality as had occurred here. A will signed only on the last page had been held valid — *M'Laren* v. *Menzies*, July 20, 1876, 3 R. 1151, 13 S.L.R. 703, which settled the practice on the point—*Brown*, December 22, 1883, 11 R. 400 (opinion of Lord President Inglis, 401), 21 S.L.R. 267. A deed without any testing clause had also been held to be valid—*Addison*, February 23, 1875, 2 R. 457, 12 S.L.R. 334. The mere fact of the informality of the deed, or that some non-essential alterations had been made upon it, or that it was labelled "Dft.," did not prevent it from being a valid testamentary writing—*Speirs* v. *Home Speirs*, July 19, 1879, 6 R. 1359, 16 S.L.R. 784; *Forsyth's Trustees* v. *Forsyth*, March 13, 1872, 10 Macph. 616, opinion of Lord Kinloch 619, 9 S.L,R. 367; *Whyte* v. *Hamilton*, July 13, 1881, 8 R. 940, 18 S.L.R. 676, *aff.* June 15, 1882, 9 R. (H.L.) 53, 19 S.L.R. 688.

Argued for the respondents —The petitioners had failed to discharge the burden of proof imposed by the statute. The document was a mere rough draft as in the case of *Forsyth's Trustees*, *supra*, inoperative as a testamentary writing. This case was distinguished from *M'Laren*, *supra*, because in the latter case the deed was stitched together, the ends of the thread being sealed by the testatrix, and the deed itself was sealed, signed, and acknowledged with all due solemnity. No account should be taken of any parole evidence of the testator's intention — *Johanson* v. *Johanson's Trustees*, December 9, 1898, 1 F. 245 (opinion of Lord Travner, 250), 36 S.L.R. 169.

LORD JUSTICE-CLERK—I think that the cases cited to us clearly show that a will may be held to be valid under section 39 of the Conveyancing Act although the testator's signature is only appended to the concluding sheet of the paper on which it is written. I do not think that we could have a better example of a case where that rule should be given effect to than the present. This gentleman got a draft will carefully written out by a firm of lawyers according to his instructions. He retained it for five years in his possession, and then took it to his bank where he was accustomed to subscribe documents requiring to be signed before witnesses, and there signed it in presence of the usual witnesses. No doubt he only signed it on the last page. But the whole deed was in regular sequence, and the last sheet is not intelligible without the first. I think that if the testator meant to sign anything at all he meant to sign the whole deed. Looking to the earlier decisions I can come to no other conclusion than that this is a case for which the Act of Parliament meant to provide.

As regards the jottings, they are not signed; we have no indication of when they were written, and they show no characteristics of completed intention on the part of the writer. I am of opinion that they are mere jottings, and nothing else.

LORD TRAYNER—This is an application to have it declared that the settlement in question in this case was subscribed by the deceased and by the witnesses by whom it bears to be attested. The application proceeds upon section 39 of the Conveyancing Act of 1874, the terms of which are—[*His Lordship read the section.*] It appears from the proof that the petitioners have established what the section requires, viz., that the signatures are those of the deceased and of the witnesses. That being so, I think the inquiry, so far as section 39 is concerned, is exhausted. But it seems to me that the decided cases have gone beyond the limits of section 39, and have indicated that in proving the signature of the deceased it must also be proved *quo animo* it was adhibited. I think that is a reasonable requirement, and designed to meet the case, for instance, of the signature having been appended under misapprehension or by mistake. But any circumstances of that kind are out of this case. All the requirements of the decided cases and of section 39 have been satisfied.

The document in question was written by a law-agent, or an agent's clerk, in conformity with the special instructions of the deceased. No doubt the draft shows that there have been some alterations which are not authenticated, and the rule is that unauthenticated alterations must be disregarded. But here the alterations are merely clerical corrections by the writer of the draft, and are not alterations by the testator after the draft was delivered to him. The will is written continuously with the proper catchword at the foot of each page to carry it on to the next. It is further to be observed that the draft lay with Mr Inglis for four or five years in the condition in which it was sent to him, and that he then took it to the bank for the special purpose, which he fulfilled, of signing it before two witnesses. That was a deliberate act indicating adoption after careful and long consideration, and is a very important and material circumstance in the case. It is also material that this deed was kept by the deceased in the safe in which he kept

his documents of value, and that no other will of the deceased has been discovered. It is suggested that the jottings which were found in the deceased's pocket indicate a change of intention by the deceased as to the disposal of his estate. We can, however, ascribe no effect of any kind to these jottings, which, in the first place, are neither signed nor dated, and in the second place, appear *ex facie* to be merely jottings for further consideration; and it is to be remarked that while the will was kept in the safe these jottings were found after the death of the deceased in one of his pockets.

On the whole, I am satisfied that the petitioners have established the draft as the final settlement of the deceased, and that it should be given effect to.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Campbell, K.C. — Sandeman. Agent — William B. Rennie, S.S.C.

Counsel for the Respondents—Ure, K.C. —George Brown. Agents — Macpherson & Mackay, S.S.C.

Tuesday, December 17.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

GRAY *v.* MILLER.

Reparation — Seduction — Averments of Seductive Acts—"Threats, Solicitations, Masterful Ascendancy."

In an action of damages for seduction brought by a domestic servant, twenty one years of age, against her master, a married man living with his wife, the pursuer averred that the defender seized hold of her, forced her down on a bed, and succeeded, partly by threats, partly by solicitations, partly by his masterful ascendancy over her, both as being her employer and as being so much her superior in years and position, in inducing her to allow him to have connection with her. *Held* that the action was relevant.

This was an action at the instance of Nellie Gray, domestic servant, against John Miller, hotelkeeper, Ayton, in which the pursuer claimed damages on the ground of seduction.

The pursuer averred that she was an orphan, twenty-one years of age, and had been in the service of the defender, who was a married man, from October 1897 till March 1901.

The pursuer further averred—"(Cond. 2) Prior to going to Ayton the defender carried on a wine and spirit merchant's business in Kirkintilloch, his dwelling-house being situated above his business premises. (Cond. 4) The defender was frequently the worse of drink, and on such occasions his wife, who assisted him in his shop, sent him up to his house to sleep off the liquor. On these occasions the defender made lewd and improper suggestions to her. He attempted to kiss the pursuer both in his house and in his shop, situated in Kirkintilloch aforesaid, but was always repulsed by the pursuer, who regarded his advances with disgust. The pursuer, who was young and inexperienced, did not fully realise the object of the defender's conduct, but she preserved her chastity. (Cond. 5) The defender persisted in his improper conduct, and finding that his devices were unsuccessful, he proceeded to exercise his authority over the pursuer as her employer. Accordingly about the middle of the month of August 1900, the defender, when in his house alone with the pursuer, who had not at the time attained majority, insisted on having connection with her. The pursuer became alarmed, and informed the defender that she would tell his wife unless he left her alone. The defender thereupon threatened to kill the pursuer if she did anything of the kind, and acted towards her in a masterful manner. The defender seized hold of the pursuer, forced her down on a bed, and succeeded, partly by threats, partly by solicitations, partly by masterful ascendancy over the pursuer, both as her employer and as being so much her superior in years and position, in inducing her to allow him to have connection with her. The pursuer only surrendered herself to the defender with great reluctance, and in great anguish and distress of mind, but the defender paid no attention to her tears and expostulations. The defender also made professions of love to the pursuer, and made pretence that no harm would ensue from what he did, and succeeded in inducing her to allow him to have sexual connection with her. The pursuer was afraid to tell the defender's wife what happened, and she had no friend to consult, her parents, as aforesaid, being both dead. The defender maintained his masterful ascendancy over the pursuer, and in his said house in Kirkintilloch in the end of the same month, and on several subsequent occasions, the pursuer yielded to his demands, and allowed the defender to have sexual intercourse with her, being induced so to surrender herself through fear of the defender, and by reason of his continued and anxious solicitations, and through the dominating character and the influence exercised by the defender over her, both as her senior and as her employer, to yield to his demands. The defender thus by artful practices, continued solicitations, and the exercise of authority and force over an inexperienced and dependent female, seduced the pursuer. . . .

The pursuer also averred that as the result of the acts of connection averred she became prognant, and was delivered of a child on 18th May 1901.

The pursuer pleaded—"(1) The defender having seduced the pursuer as condescended on, is liable in reparation as concluded for."

The defender pleaded—"(1) No relevant case."