they tried to do it month after month, and when the pursuers had lost their patience over these innumerable trials which were of no avail, and intimated to them that they would wait no longer for the machine, the defenders again asked, "Give us another chance and we will see what we can do. We are certain that we can put it right." That was done. Well, the thing could not be accomplished. But the reason for the retention of that machine was not to enable the pursuers to make up their mind whether they were to keep it—for it would have been too long a time to retain merely for that purpose—but to enable the defenders to fulfil their obligation.

In these circumstance I think there is no room for saying that there was abandonment on the part of the pursuers of their objections or any ground whatever from which the defenders could infer that they had accepted the machine as in proper fulfilment of their contract. Accordingly it seems to me that as against the case on the merits there is no valid defence stated in this case.

LORD MONCREIFF—We have had a full argument in this case, but I have come to the conclusion without any difficulty that the judgments of the Sheriffs are right.

Two questions were put to us—first, whether this machine was conform to contract; secondly, whether looking to the whole circumstances there was an unreasonable delay on the part of the pursuers in rejecting the machine. Now both these questions must, I think, be answered in the negative.

As to the first question I think it is clear on the evidence that the machine never at any time was conform to contract. The defender's counsel contended only in a very half-hearted manner that it was; but on the evidence I think it is quite clear that it was not.

The next question is the only one which to my mind raises any kind of difficulty in the case; and that is whether there was unreasonable delay in rejecting the machine. I think the case is exceptional. The delay was great—a year and a half—but the reason for that delay and the excuse for it, which I think was a sufficient excuse, was that the delay was not on the part of the pursuers but on the part of the makers of the machine. Under the contract they undertook to erect the machine and leave it in good working order on the premises of the pursuers; and the evidence shows this, that throughout the whole of that year and a half workmen from the defenders, or the defenders themselves, endeavoured frequently to get this machine to work properly and failed to do so.

As to payment of the price, that was made at the request of the defenders and before the delivery of the machine; and in that respect the case differs altogether from the case of *Morrison & Mason* v. *Clarkhouse & Others*, 25 R. 427, because in that case the machine was delivered in March 1895, tried and found satisfactory, and the pursuer thereafter paid the price on 31st May, while later on he wished to reject it; and I think that very properly it was found that it was too late to do so.

On the whole matter I agree with both your Lordships that the decision of the Sheriff should be affirmed.

The Court affirmed the judgment appealed against.

Counsel for the Defenders and Appellants—Wilton. Agent—William Douglas, S.S.C.

Counsel for the Pursuers and Respondents—Ure, K.C.—Graham Stewart. Agents—Dove, Lockhart, & Smart, S.S.C.

Saturday, December 24.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

FOREMAN AND ANOTHER *v.* DUKE OF BUCCLEUCH.

Expenses — Taxation — Account Incurred to English Solicitors as Local Agents—Remit to English Taxing Officer.

The pursuers in an action for damages obtained decree with expenses. Appended to their account of expenses was an account of expenses incurred by them to English solicitors, which they moved should be remitted to the Taxing Officer in London. The defender stated that large portions of this account were not chargeable against him, and moved that the account should in the first instance be sent to the Auditor in order that he might state what items were properly chargeable against the defender as between party and party. The Court *held* that the account incurred to the English solicitors fell to be taxed as between party and party according to English rules, and *remitted* the account to the Taxing Officer in London.

On the 21st February 1903 David Wallace Foreman, master mariner, St Andrews, Fifeshire, and John William Bell, farmer, Kilconquhar, Fifeshire, the registered owners of the ketch "T. W. Ashton" of Hull, raised an action against the Duke of Buccleuch and Queensberry, the proprietor of the harbour of Granton. In it they sought to recover £1000 in name of damages for loss suffered by them in consequence of the grounding of their vessel on a reef of rock in the harbour, through the fault of the defender or those for whom he was responsible.

On 9th December 1903, after a proof, the Lord Ordinary (STORMONTH DARLING) issued an interlocutor granting the pursuers decree for £395, 15s. 3d., finding them entitled to expenses, and remitting the account thereof to the Auditor to tax and report. The defender reclaimed to the First Division, but the interlocutor of the Lord Ordinary was adhered to with additional expenses, the account of which was remitted to the Auditor.

The account of expenses lodged by the pursuers had appended to it an account of expenses incurred by them in connection with the preparation of the case to Messrs Pritchard & Sons, solicitors, London, and on 24th December 1904, in the Single Bills, their counsel moved the Court to remit this account to the Taxing Officer of the Supreme Court of Judicature, London, with a request that he would report at what figure it should be taxed. It was stated that the Auditor would not deal with it as it depended on English practice, and reference was made to *Camper & Nicholson, Limited* v. *Wemyss*, July 16, 1903, 11 S.L.T. 290.

Counsel for the defender objected, and moved that the account should first be sent to the Auditor in order that he might state with what items of the account the defender was properly chargeable as between party and party, and that these items alone should be remitted for taxation in England. They explained that there were large portions of the account for which the defenders were not liable, and argued that any question as to these should be decided by the Auditor according to Scottish practice.

The Court (LORDS ADAM, M'LAREN, and KINNEAR) remitted the account to the English Taxing Officer, issuing this interlocutor—

> "Find that the account of expenses incurred to Messrs Pritchard & Sons, solicitors, London, which is appended to the pursuers' account of expenses, falls to be taxed as between party and party according to English rules: Therefore remit the said account to the Taxing Officer of the Supreme Court of Judicature, the Taxing Office of the Royal Courts of Justice, London, with a request that he will examine and report at what figure the said account falls to be taxed as between party and party."

Counsel for the Pursuers and Respondents—F. C. Thomson. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders and Reclaimers—Younger. Agents—Strathern & Blair, W.S.

Saturday, December 24.

SECOND DIVISION.

CURRIE'S TRUSTEES *v.* CURRIE.

Succession—Will—Unauthenticated Pencil Deletions and Alterations — Unsigned Holograph Note Found with Will—Alterations on Note Corresponding with those on Will.

A testator left a holograph trust-disposition and settlement having on it certain alterations and deletions in pencil which were not initialed or authenticated. Beside the trust-disposition and settlement there was found an unsigned, undated, and uninitialed holograph note, containing a list of names with sums set opposite thereto—being a recapitulation of the legatees named in the settlement with the amounts of their respective legacies. The holograph note had on it alterations and deletions in pencil and in ink corresponding to those in the settlement.

Held (1) that the trust-disposition and settlement was valid, and (2) that in construing it no effect was to be given to the alterations and deletions—these being merely deliberative and not expressing the final intention of the testator.

Adam Currie died on 8th February 1904 leaving a holograph trust-disposition and settlement dated 27th October 1903. He was never married, and his death occurred suddenly when he was away from home on a visit. The said trust-disposition and settlement was found, along with an unsigned, uninitialed, and undated holograph note or jotting containing a list of certain names, and sums set opposite thereto, in his travelling bag, which he had with him at the time of his death.

When found, the trust-disposition and settlement had upon it certain deletions and alterations in pencil. The holograph note or jotting, which contained a recapitulation of the legacies contained in the settlement, also had upon it alterations and deletions, both in pencil and in ink, corresponding to those made on the settlement. The alterations on both documents, so far as they were in writing, were holograph of the testator, and it was presumed that the other alterations and deletions on the documents were also made by the testator.

Under the settlement as it originally stood the testator's brother William Currie was named therein as one of the trustees and as residuary legatee. William Currie predeceased the testator unmarried on 20th November 1903. The deletions and alterations on the settlement, *inter alia*, included the deletion, by scoring out in pencil, of the name of the said William Currie from among the trustees, and also the deletion of the name of William Currie as residuary legatee.

Questions arose among the parties interested in the succession as to whether the settlement of the testator was valid and effectual, and, if so, whether it ought to receive effect as it originally stood, without any alteration or deletion, or whether the alterations and deletions fell to receive effect as part of the testamentary disposition of the testator.

A special case was presented for the opinion of the Court in order that these questions might be settled. There were five parties to the special case. The contentions of the several parties appear from their respective arguments *ut infra*.

The questions of law were—"(1) Is the said trust-disposition and settlement valid and effectual? (2) If the preceding question be answered in the affirmative, do the deletions and alterations on the said trust-disposition and settlement, or any and which of them, fall to receive effect in construing the testa-