of law, was never better stated than in the passage from Lord Kinnear's opinion in the case of *M'Neice*, which I venture once more to quote, where he says—"According to the statement, the man had certainly, in the course of his employment to traverse this particular road for his employers' purposes, and therefore the dangers and risks of that particular road at the time and on the occasion in question are, to my mind, incidental to the employment." And I think when Lord Kinnear said that he was stating the law with fulness and accuracy. And quite obviously, I think, his statement would not have been in any way affected—is not in any way affected—by the consideration that other pedestrians might have to face that particular risk if they were on the road at the time, or that the workman was on the road for the first and, it may be, the only time.

I am therefore for answering the question as put to us in the affirmative, although I agree with both your Lordships that the correct form of question is as suggested by Lord Skerrington.

LORD JOHNSTON was absent.

The Court answered the question of law in the affirmative.

Counsel for the Appellant—Sandeman, K.C.—D. Jamieson. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Respondents—Moncrieff, K.C.—MacRobert. Agents — Macpherson & Mackay, S.S.C.

HOUSE OF LORDS.

Wednesday, December 15.

(Before Earl Loreburn, Lord Dunedin, Lord Atkinson, Lord Shaw, and Lord Wrenbury.)

WALKER *v.* WHITWELL.

(In the Court of Session, March 20, 1914, 51 S.L.R. 438, and 1914 S.C. 560.)

Writ—Authentication—Signature of a Witness Adhibited not at the Time of Grantor's Signing — Conveyancing (Scotland) Act 1874 (*37 and* 38 *Vict. cap.* 94), *sec.* 39.

A witness to a deed cannot adhibit his signature to the deed after the death of the party to whose signature he was a witness.

Tener's Trustees v. *Tener's Trustees*, (1879) 6 R. 1111, 16 S.L.R. 672, *disapproved.*

Dicta on the attestation of deeds.

This Case is reported *ante ut supra.*

Whitwell appealed to the House of Lords.

At delivering judgment—

EARL LOREBURN—I do not propose to enter in detail upon the various Acts and decisions in Scotland which have been discussed at the Bar, because they are to be fully considered by those of your Lordships who are specially familiar with the law and practice. I shall merely offer to your Lordships certain considerations arising out of the facts of this case which appear to me of general importance.

There is ground for supposing that, owing to an erroneous view of the law, Dr Walker was neither empowered nor expected to attest this will as a witness at all. Manifestly an attestation by anyone merely interposing of his own accord would be nugatory, but it is not, in my opinion, necessary to prove an express request by the testator. Wills are often made by persons who are quite clear as to their intentions, and signify them by their signature. If such a person engages a solicitor or a friend to help him in making his will the circumstances might quite well be such as to warrant a conclusion that he impliedly authorised the procuring of witnesses to see him sign and attest his signature in order to carry out his governing intention, though he may not have been himself acquainted with the law. But that is not this case.

Questions have been raised as to the authority of a witness to sign *ex intervallo.* This point does not arise here, because it also is superseded by the other point, namely, that the signature was after the maker of the will had died. I will only say that the opinion of the Court of Session in *Frank's* case (M. 16,824), namely, "there never ought to be any considerable interval, yet when such a case occurs it must be judged of upon its whole circumstances," seems to me very wise and just and of very general application. A long interval, if unexplained, ought to be fatal, though I should call the quarter of an hour which was the period in that case a short interval. But any real interval calls for explanation. It may be that weeks or months will prove no impediment to the validity of an attestation, as, for example, if a request to sign from the maker of an unattested deed is proved. It is not easy to lay down a rule more precise than that which I have cited from *Frank's* case.

In my opinion, however, the real point in this appeal is that Dr Walker, whose complete integrity is unquestioned, adhibited his signature after the death of the maker of the will. There has been much difference of opinion in the Court of Session. I come to the conclusion that the appeal must be allowed with much regret, because I believe that the deceased lady intended to dispose of her property in terms of this will; and with some misgivings, because I am differing from eminent Judges, though sustained by other high judicial authority.

But what I feel most strongly is this. Every civilised system of jurisprudence—at least all that are known to me—requires certain definite solemnities before allowing a testamentary disposition to have effect, as that it must be holograph or duly attested. The opportunity for fraud is so great, the temptations of self-interest are so liable to distort even an honest recollection, and the hardship so manifest if a man's fortune is disposed of by loose proof, that it has been judged necessary to insist upon certain precautions or a choice of certain precautions.

It is quite true that a neglect, perhaps only accidental or springing from ignorance, as is indeed this case, may frustrate a perfectly honest will and thus cause the very mischief which these precautions were intended to avert. That risk is inevitable, and must have been foreseen. But it is held better that a few instances of that kind should occur rather than admit the flood of uncertainty which must follow if simple rules be relaxed. I am very sorry for it in this case, but let us see what might be the result of relaxing principle to meet the hardship of this case.

Dr Walker is a perfectly honourable man, but everybody is not like Dr Walker. Suppose it were admitted that a person who in fact witnessed the execution of a will by the maker of it could, after the maker's death, adhibit his signature. Seeing that the signature is by statute necessary to the validity of the will, it would remain at the pleasure of the witness whether or not the will should become operative, for surely no Court could compel him to sign if he were not so disposed. How long may he reserve his decision whether he will or will not invalidate the document? Is he at liberty to make terms and require some different arrangement of the deceased's estate? No Court would, I presume, allow him to keep the price, if he were dishonest enough to stipulate a price for adhibiting his signature. But would a will, the validation of which had been obtained by corruption, be enforced by a Court? Why not, if the argument be sound that the sole value of attestation is to comply with a formal statutory requirement, and that the fact of the maker's signature and the fact that the witness witnessed that signature, are the real things which have to be proved? If that be so then it would be due to the maker of the will and the beneficiaries under it to enforce the document, however corrupt might have been the transaction which got rid of the statutory obstacle. Why should the subsequent corruption of a witness affect an innocent legatee's rights?

The signature of the attesting witness is the statutory evidence required. But in my mind it is something more. It is essential to the document being a will at all. No one who is not alive can make a will. When Mrs Walker died this document was not properly attested. It was not a will. The lady died intestate so far as this piece of paper was concerned. I say nothing about testing clauses and the statutes and decisions in regard to them. There is no Act of Parliament authorising anyone to convert what was an ineffective piece of paper at this lady's death into a valid will after her death by adhibiting his signature. With all respect I cannot agree with the decision in *Tener's* case, which has been seriously doubted in Scotland for years. I do not think we are bound to extend the ancient doctrine about testing clauses so as to allow one person to be the arbiter whether another person's testament is to be valid, or to declare that a lady who was intestate when she died became testate afterwards by reason of some one else's signature.

LORD DUNEDIN—[*Read by Earl Loreburn*]—This is a petition presented in terms of section 39 of the Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), which prays the Court to declare that a certain testamentary writing was duly subscribed by Mrs Walker, as maker thereof, and by Mabel Hayward and John William Thomson Walker, as witnesses attesting the subscription of the said Mrs Walker.

The circumstances which gave rise to the petition are as follows:—Mrs Walker, who was a domiciled Scotchwoman, had executed a trust-disposition and settlement in ordinary form, which, after certain legacies, left her whole moveable and heritable estate to be divided equally among her whole children, the issue of a predeceasing child taking the parent's share. She appointed Harry Walker, a son, and James Thomson as executors. Shortly before her death, being in London, she expressed a wish to alter her settlement, and sent for her son, Dr John William Thomson Walker, who resided in London. He wrote at her dictation on the 25th June 1913, on a sheet of letter-paper, a document, which on the envelope which contained it he designated as a codicil, but which was in reality a new will, by which, after certain bequests, she divided her whole property equally among all her living children, but she excluded her grandchild Henry Edward Leatham Whitwell, who as issue of a daughter predeceased would have taken his parent's share under the old trust-disposition and settlement.

Mrs Walker signed this document in the presence of Dr Walker and of Mabel Hayward, a housemaid. Mabel Hayward then subscribed as witness to the signature of Mrs Walker. No other signature of a witness was appended, because Dr Walker was under the impression that one witness to the signature of a testator was sufficient to make a valid will. He also thought that being a beneficiary under the will he was inadmissible as a witness.

The sheet of paper and the envelope were handed by Mrs Walker to another son, Henry Walker, and by him sent to the family lawyers in Scotland.

Mrs Walker died on the 1st July. Acting on advice, the family lawyers sent the document on the 24th July to London to Dr Walker, and on 25th July Dr Walker subscribed as a witness, his designation as well as the designation of Mabel Hayward being subsequently appended by one of the solicitors.

The present petition is as already set forth, and is presented by the whole of the surviving children. It is opposed by the infant grandchild through his father as his guardian.

The question thus raised was undoubtedly ruled by the decision of the Second Division in *Tener's Trustees*, 6 R. 1111, 16 S.L.R. 672. As, however, the soundness of that decision had been doubted by Lord M'Laren in *Brownlee* v. *Robb*, 1907 S.C. 1302, 44 S.L.R. 876, the case was sent to Seven Judges, with a view to the reconsideration of what had been decided in *Tener's Trustees*, which was a judgment of three Judges only. The

result has been to disclose a sharp cleavage of judicial opinion, four learned Judges having pronounced in favour of and three against the validity of the document.

I shall follow the example of the Court below and consider the question in the first place apart from the Act of 1874.

By the law of Scotland writings may be looked on as divided into two classes, viz., deeds and informal writings. I use the word deed, though it has no technical meaning different from writing or writ. A deed is a writing which to be effective must be authenticated as the deed of the grantor.

If the deed is holograph and signed it is so authenticated. But if it is not signed what must be its authentication? The law on this matter is statutory.

By statute various requisites are made necessary, and these requisites are always spoken of as solemnities. A deed without the requisite solemnities is not an authenticated deed.

In Lord Stair's time the matter was still in the making. Indeed, the Act of 1681 is generally understood to have been drafted by him. 1681 was the date of the first edition of the Institutions. That year he was removed from the presidency, had to fly to Holland in 1682, and was not restored to the presidency till 1689. But already by Bankton's time the matter is looked on as fixed. He says (vol i, p. 330)—"Writings require certain solemnities or formalities without which they are null." Erskine, iii, 2, 19, says—"The Acts 1579, 1593, and 1681 declare expressly that all deeds which are destitute of the solemnities thereby required shall bear no faith in judgment; or that they shall be null and not suppliable by any condescendence; the natural import of which expression is that they cannot produce an action against the grantor, or be pleaded as evidence before any Court to his prejudice. Agreeably to this interpretation, it has been adjudged by sundry decisions that such deeds could not be supported by the most pregnant proof that could be offered in their favour." Duff, Feudal Rights, p. 3, says—"The mode of attesting or authenticating deeds consists in the solemnities introduced by statute." And lastly, Menzies, at p. 80 of new edition—"Solemnities are the legal tests of the validity of deeds."

I have laid stress on this matter because I cannot help thinking that it is here I find the root of the divergence of opinion which exists between the learned Lord President and those who disagree with him. The Lord President looks upon the deed as the deed of the maker so soon as the maker has attached his signature thereto, subject doubtless to the subsequent ceremony of attestation, which is in his view a mere matter of evidence, though by statute only provable in a certain way, viz., by subscription. In the view of the others a deed is not made an authenticated deed by anything short of the prescribed solemnities. In other words, so far as signature is concerned, a signature is nothing, an attested signature is everything.

With that view I agree. The only difficulty arises, I think, from what has been decided, first as to the testing clause, and secondly as to the result if the subscribing witnesses append their signature *ex intervallo*. Now it is quite true that *prima facie* all solemnities would seem to stand on the same footing, or, in other words, that the absence of any would be fatal. And inasmuch as some of the solemnities consist in the designation of the writer, the mention of the number of pages, and the designation of the subscribing witnesses, all of which matters find their appropriate mention in the testing clause, it would logically follow that a deed without the testing clause was an incomplete deed, and null; and it would follow as a logical corollary that unless the maker of the deed saw to it that the testing clause was filled in at the time of subscription of himself and the witnesses, no one else should have the power to render valid that which *ex hypothesi* was invalid when it left the hands of the maker. Long decision has, however, settled this the other way, and it is settled beyond possibility of recal that a testing clause may be filled up *ex intervallo*, even though the maker of the deed may have died before it was filled up. But at the same time this has been recognised as anomalous and contrary to principle, and can, I think, only be supported as upon long usage. It is a true case of *communis error facit jus*. But in such a case it does not follow that the principle will be extended to other cases. That it is an anomaly has often been recognised.

Lord Campbell in this House, in the case of *Cunningham* v. *M'Leod*, 5 Bell's App. at p. 257, said—"With respect to the testing clause, I was very much shaken indeed by the argument we heard, because, looking at the Statute of 1685, it is very difficult to say that the mode of proceeding, if it were *res integra*, would be justified by it. . . . Upon such a point I think that usage, even in the very teeth of an Act of Parliament, must be considered as entirely decisive." And Lord Neaves, in the case of *Hill* v. *Arthur*, 9 M. at p. 231, says—"Powers have been claimed over a testing clause which are very extensive and, in my opinion, not a little anomalous."

When a proceeding is, as this is, justified by practice and practice alone, it is, in my view, inadmissible to extract therefrom a logical principle which is perforce to be applied to cases said to be similar.

I now come to what has been decided as to the adhibition of the witnesses' subscription *ex intervallo*.

Undoubtedly the correct practice, as will be found laid down in all the text-books, is for the witnesses to adhibit their subscriptions then and there when they either see the maker sign or hear him acknowledge his subscription. *Ex necessitate rei* a moment of interval must elapse after either of these things before they can subscribe. What if that moment is prolonged and becomes a definite space of time? The leading case on the subject is that of *Frank*,

decided in 1795—only fourteen years after the leading Act—(M. 16,824) and affirmed in this House in 1806 (5 Pat. 278).

The reasons for judgment in the report in Morrison bear that subscription of the witnesses in presence of the grantor is not prescribed by the Act of 1681, and that "although there never ought to be any considerable interval, yet when such a case occurs it must be judged of upon its whole circumstances."

I do not propose to examine the cases which followed *Frank*, because that has been done with accuracy by Lord Johnston in his judgment in the Court below. There is authority, in my opinion, for the proposition that an interval which showed that the signing of the witnesses was not practically a continuous transaction at the signing of the deed by the maker would be fatal. (Duff, "Feudal Conveyancing.") I do not think it necessary to make up one's mind on that matter. The existence of the Statute of 1874 makes it unnecessary. It is sufficient for the present argument to note that no case of the adhibition of a signature of a witness after the death of the maker of the deed arose till *Arnott* v. *Burt*, 11 Macph. 62, which was, however, decided on other grounds, and that the first authority for the validity of such a proceeding is to be found in *Tener's Trustees*—the case which this case was sent to a Court of Seven Judges to reconsider. I ought, however, to notice that in *Arnott's* case Lord Justice-Clerk Moncreiff approaches the question, which he moots without deciding, from a point of view which I have already, in alluding to the judgment of the Lord President in this case, indicated as in my opinion erroneous. It will be remembered that *Arnott's* case was before the Act of 1874.

After mentioning the case of *Frank*, his Lordship proceeds as follows, p. 70—"For my own part I should not be prepared to say absolutely that the mere fact of the instrumentary witnesses signing after an interval was of itself a sufficient ground for setting aside a probative deed. My impression is the other way, but only with this proviso, that there appear in the circumstances leading to the delay reasonable cause and an absence of elements of suspicion. If witnesses follow so loose a course as to delay their subscription for a considerable period, it lies with the person who brings forward the deed to explain the circumstances in which the delay took place, and to show that these circumstances raise no suspicion as to the good faith of the deed itself. As to the question whether witnesses can subscribe after the death of the grantor, I do not think it necessary to come to an absolute conclusion on that matter. On the one hand it may be said that as the witnesses only attest the fact of subscription by their signatures it does not matter when they do so, for the fact remains the same. Death cannot alter the fact of subscribing. But on the other hand the concurring facts of the lapse of an interval and of the death of a testator are material elements."

Now this method of looking at the question seems to me to err in two particulars. First, it treats the signatures of the subscribing witnesses as a matter of evidence only, and not of solemnity; and, secondly, it construes the "circumstances" which are to be looked into in terms of the judgment in the *Frank* case as only circumstances which bear on the point whether the deed as finally produced was truly the same deed as was signed by the grantor. I think the expression "the circumstances" has a wider meaning, and one of the circumstances to be inquired into is whether the subscribing witness had a right when he did subscribe to subscribe as a witness to the signature of the maker of the deed, and in particular whether he can have such right when the maker has died before he subscribes.

Now, that the witness who is qualified by having seen the maker subscribe or heard him acknowledge his subscription is only entitled to sign at the request, express or implied, of the maker seems to me plain. The perfecting of the deed by authentication is the maker's affair and no one else's. What right could any third party have to thrust himself forward as a subscribing witness *in invitum* of the person who has it in his option to complete the deed or to leave it unfinished? And indeed the learned Judges who pronounce in favour of the validity of signature by witnesses after death of the testator seem to me to admit this position when they shrink from saying that the signature of a witness who observed the signature by stealth would do. It is nothing to the purpose to say, as Lord Gifford said, that there is no *invocatio testium* in our law. All that that truly means is that there is no formality connected with the setting of witnesses to their work of subscribing. None the less it is in obedience to the desire of the maker that they do so subscribe. It seems to me to follow, first, that before they subscribe the maker could interpel them from subscribing, and second, that as their subscription is in accordance with a continuing request which must be held as repeated every moment till subscription is effected, the continuing request necessarily fails when by death the person who is bound to make it can no longer act by way of request either express or implied.

Some stress is laid by learned Judges on the fact that there may have gathered in the circumstances of the present case a sort of general mandate of the testatrix to Dr Walker to do what was necessary to make a valid will. The same idea is expressed, I venture to say, even more crudely by the Lord Justice-Clerk in *Tener's* case (at 6 R. 1115) when he says—"We cannot doubt that if Mrs Tener had thought that two witnesses were necessary she would have desired Mr Tener to sign. He was entrusted to do all that was necessary to make the deed effectual, and as to his competency as a witness there is no question."

That seems to me tantamount to saying the testatrix made an ineffectual will, but had she known the law she would have made an effectual one; therefore the ineffectual will should be held to be effectual.

But after all what was this general man-

date to Dr Walker to do? Doubtless it was to do everything he could to help the testatrix to make a will, but it could not be a mandate to him to make a will for her, for that is impossible in law. Yet that is what the so-called mandate comes to, for if Mrs Walker died with an unauthenticated will—or, in other words, intestate—if Dr Walker can by adhibiting his signature make the will authentic, it is he that makes her testate, and not she herself. And whether he chooses to do so or not depends upon his volition, not hers. Admittedly he cannot be compelled to adhibit his signature. In the present case the parties are above suspicion. But the question is a general one. Why in another case should not the witness say—"Which of you two parties who gain or lose respectively by the will if valid—which of you will give me the best terms to sign or refrain from signing?" My opinion therefore is that apart from the Act of 1874 the will left by Mrs Walker was unauthenticated and invalid.

I now turn to the Act of 1874; there I think the point is a very short one. By section 38 several solemnities are as solemnities swept away. Section 39 goes still further, and dispenses with all "formalities," which I take to be equal to, or at least to include, solemnities. But it does so under one sanction, viz., that you can still prove that the deed was signed by the grantor and by the subscribing witnesses. That is to say, that as to these two matters (excluding the rules as to insertion of designations) it leaves the law where it was. Subscribing witnesses must be witnesses who did subscribe in the way in which by the old law they alone could do. Therefore if I am right in the former part of my opinion, they must be witnesses who subscribed (being duly qualified by having seen the maker subscribe or heard him acknowledge his subscription) in obedience to the continuing request, express or implied, of the maker.

But Dr Walker was not such a witness, therefore the proof necessary cannot be forthcoming. I have not dwelt on the fact that Dr Walker, so far from having been either asked, expressly or impliedly, to act as an instrumentary witness, expressly excluded himself from all intention to act as such. His change of attitude was made after the death. This point accentuates the argument, but I do not think alters it.

I have troubled you with observations at such length only because of my respect for the opposite views which have been expressed by the majority of the learned Judges in the Court below. Were it not for that, I should have been content to express my concurrence with the opinion of Lord Skerrington, who has dealt with the whole matter with extreme lucidity and in a manner which coincides exactly with the views which commend themselves to my humble judgment. I think that the appeal should be allowed and the prayer of the petition refused.

LORD ATKINSON—I concur.

LORD SHAW—I concur.

Mrs Isabella Thompson Walker, whose usual residence was at Newport in Fifeshire, Scotland, executed in London a document which bears to be a testamentary writing. The date of the signature was 25th June 1913. The document was written to her dictation by her son Dr Walker, and she signed it in the presence both of Dr Walker and of Mabel Hayward, a sick nurse. Miss Hayward in Mrs Walker's presence subscribed the document as a witness. It was then put by Dr Walker in an envelope and marked "Codicil to Will, 25.6.'13." On 29th June another son of Mrs Walker sent the document to the family solicitors in Scotland. Dr Walker was apparently of the opinion that the document to be a valid will required only one witness.

A week thereafter, namely, on 1st July 1913, Mrs Walker died. On 24th July, more than three weeks after her death, legal advice having been asked upon the subject, Dr Walker signed the document as a witness. The solicitors appended designations to Miss Hayward's and Dr Walker's signatures.

The respondents presented a petition under section 39 of the Conveyancing Act, 1874, to have it declared that the deed was subscribed by the grantor Mrs Walker, "and by the said Mabel Hayward and John William Thomson Walker as witnesses attesting" the grantor's signature.

In one sense it is true that the document thus brought before the Court is a document "bearing to be attested by two witnesses "subscribing," but it is admitted that the document must be judged of on the footing that one witness subscribed after an interval and after the death of the grantor, and that the question must be determined on these facts, and was not in any manner concluded by the appearance of the deed when produced in Court.

As Lord Skerrington says in his careful and lucid judgment in the Court below, "There is no doubt upon the evidence that the codicil, the formal validity of which is in question, truly represents the final testamentary intentions of the testator, and that the irregularity of its execution arose from no hesitation on her part and from no want of good faith on the part of the persons who attended upon her."

The question in this case is whether the codicil, which was defective at the time of Mrs Walker's death by reason of having signature attested by only one witness, was validated by Dr Walker's signature being appended after the interval mentioned and after her death. It is maintained by the respondents that the Conveyancing Act of 1874 covers such a case as the present, and that what occurred was equivalent to an informality of execution in the sense of that Act—an informality which could be rectified under the statutory provisions, and the deed thus rendered in all points a valid and probative instrument. The statute will be referred to presently.

A survey of the Acts of the Scottish Parliament bearing upon the execution and authentication of deeds reveals points which, though of archaic interest, are, of

course, remote from the exact issue to be determined in the present case. Apart from a special treatise like Bell on "Testing of Deeds," the survey is made among the institutional writers by Erskine, iii, 2, 6, *et seq.*, and by all the lecturers on conveyancing. Among the many references to the Acts occurring in decisions of learned Judges of the Court of Session, the brief and compendious narrative given by Lord Deas in *Maclaren* v. *Menzies*, 3 R. 1151, at p. 1156, 13 S.L.R. 703, takes a leading place; while the historical learning of Mr Walter Ross in the elaborate chapter on "the testing clause," contained in his lectures on the Law of Scotland, will always remain notable.

The principal Acts begin with 1540, chapter 117. Prior to this date deeds were sealed, not signed. The art of writing was little known. The sword was more practised than the pen, and it would have been difficult readily to find witnesses, except in ecclesiastical circles, who could sign their own names. As Professor Ross says (i, 122) —"The art of penmanship gradually advanced, but was altogether confined to the clergy. Military people would not submit to the acquisition of such an inactive employment, and therefore, though agreements might then be formed into writing, that writing could not be connected with the parties so as to authenticate its being their proper act and deed." Deeds had accordingly been sealed. The Statute of 1540 recognised the injury that may result from the loss of seals, and that "menzies seales may be feinzied or be put to writings after their decease." It was accordingly enacted that "na faith be given in time coming to ony obligation, band or uther writing under ane seale without the subscrivtion of him that awe the samin and witnesse; or else gif the partie cannot write with the subscrivtion of ane notar thereto." In the course of the same century, namely, in 1579 by cap. 80, and in 1593 by cap. 179, further statutory provisions were made on the subject. The former Act provided that deeds should be subscribed and sealed "by the principal parties gif they can subscrive; utherwise by twa famous notars befoir 4 famous witnesses denominat by their special dwelling places or some uther evident takens that the witnesses may be knawen being present at that time utherwise the saidis writs to mak na faith." The latter statute provided for the designation of the witnesses being inserted in the deed.

It is curious that while the number of witnesses who should attest the subscription of a notary is named, the number of witnesses to an ordinary subscription is not set forth. Stair in dealing with this subject alludes incidentally to the poverty of the country, and to wills being accordingly so few in number, and he says (iii, 8, 34)— "The effect of testaments being so small, the solemnities thereto are no other than what are requisite to accomplish any other writ, for two witnesses suffice, and if the testament be holograph it is valid." All the authorities recognise that the words "and witnesse" in the Act of 1540 must be read in the plural and that two witnesses were required.

It is unnecessary to refer to enactments or statutory provisions other than those which deal with the subscription of grantor and witnesses. The ruling statute on that subject still is the Act of 1681, cap. 5. It recognised that by the practice of the country deeds had been held sufficiently authenticated if there had been witnesses to the fact of the subscription of the grantor although the witnesses themselves had not subscribed, and it proceeds—"Considering that by the custom introduced when writting was not so ordinary, witnesses insert in writs, although not subscribing, are probative witnesses, and by their forgetfulness may easily disown their being witnesses." The statute accordingly enacts and declares "that only subscribing witnesses in writs to be subscribed by any party hereafter shall be probative, and not the witnesses insert not subscribing." It was further declared "that no witnesses shall subscribe as witness to any party's subscription unless he then know that party and saw him subscribe, or saw or heard him give warrant to a nottar or nottars to subscribe for him, and in evidence thereof touch the nottar's pen, or that the party did at the time of the witnesses subscribing acknowledge his subscription; otherwise the said witnesses shall be repute and punished as accessorie to forgerie." There are other provisions with regard to the filling up of witnesses' designations, &c., but the careful provision of this Act of Parliament was that deeds had to be subscribed by the grantor and by the witnesses also, and that without this essential the deeds should, in the language of various old statutes, make "na faith" in judgment or be null. Testamentary writings (except holograph wills) and other deeds were all in the same category in this particular.

Other nullities from the lack of certain formalities there were. These matters were the subject of numerous decisions by the courts in Scotland, and to these it is not in point to refer, but the results were such that remedial legislation by the Act of 1874 about to be referred to was passed. The essentials just mentioned, however, namely, subscription by grantor and subscription by witnesses, remained and still remain essentials of the deed. The courts in Scotland, while constrained in many instances to give effect, as of course, to the statutory provisions with regard, for instance, to the signature upon each page, to the mention of the writer's name, and to the filling up of the designation of witnesses, did show not infrequent signs of an effort in the direction of a judicial remedy against what might have been otherwise considered an unbearable bondage. This explains, for instance, the case of *M'Leod* v. *Cunningham*, 3 D. 1288, affirmed in this House—5 Bell's App. 210—in which the attesting clause had filled up the witness's name as Crammord, whereas the witness himself had signed as Crammond, and the case of the *Bank of Scotland* v. *Telfer's Creditors*, M. 16,909, in which the

witness's name was entered in the attesting clause as Gibson instead of Dixon (see also *Earl of Strathmore* v. *Paul*, 1 Robinson 189). A modern instance of correction on similar lines is the case of *Richardson*, 18 R. 1131, 28 S.L.R. 889, where the name of a witness Robertson or Roberton had been confounded. In the last case advantage was taken of the provisions of the Act of 1874, and Lord M'Laren said that a blundered attesting clause was an informality of execution. But the former cases also indicate that even apart from the Act of Parliament courts of justice were struggling in their judicial sphere towards the same result by repudiating a meticulous technicality.

By the Conveyancing (Scotland) Act 1874 great relief was given against consequences of nullity attached to the omission of technicalities under former statutes. Sections 38 and 39 have been referred to. In Lord Deas' words in *Maclaren* v. *Menzies* (*cit. sup.*)—"If I read the modern statute law rightly, including section 38 of this Statute of 1874, a deed is now probative on the face of it if three requisites are complied with. First, if there are subscribing witnesses; second, if these witnesses are designed in the deed or testing clause or their designations are added to their subscriptions before the deed is recorded for preservation or is founded on in Court . . . thirdly, if the deed be subscribed by the grantor on the last page in the case of a deed on one sheet only, or subscribed by him on each of the sheets or pages in the case of a deed written on more than one sheet." The second and third cases need not be referred to. But with regard to the first, Lord Deas' opinion is this—"If the first of these requisites be omitted—that is to say, if the deed does not bear to be attested by at least two witnesses—no remedy is provided. The objection is necessarily fatal to the deed."

I am distinctly of opinion that that is still sound law, and is still the rule with regard to the attestation of deeds in Scotland. By section 38 of the Act of 1874 the objection as to the writer or printer not being named or designed, and the number of pages not being specified, disappear altogether. These things are no longer necessary. The objection that the witnesses are not named or designed in the deed also disappears if the names and designations are appended before the deed has been recorded or founded on in a court, but section 38 in no way deals with or limits the necessity for the subscription by the witnesses themselves, as under the former law, or alters the law in that particular.

On the contrary, as I read section 39, the informalities of execution which are there referred to are informalities of execution of a deed upon whose face the essentials of a good deed appear, namely, subscription by the grantor and attestation by two witnesses subscribing. Granted that these things are there, there may be many informalities of execution, as, for instance, from there being several pages of the deed, from the signature or signatures being on erasure, from the name or names having been misspelt in the testing clause—all these things fall within the phrase "informality of execution," and are subject to rectification and relief, so as to achieve the result that, notwithstanding the slips, &c., to which I have referred, the Court may declare that the deed was nevertheless a good deed. But I am of opinion that until the writing has been signed both by the grantor and by the witnesses it has not attained the status of a writing, with regard to which courts of law are permitted to rectify informalities of execution.

I will now refer to the practice adopted in Scotland of giving effect to the statutes.

It is plain, to begin with, that the testing clause which precedes the signature of the grantor is not filled up before he signs. To do so would be to make it speak prophetically as of treating a thing as done which has not yet been done, instead of as it ought to speak—historically recording the fact of signature and attestation as they occurred. Between the closing operative words of the deed and the signature on the last page a blank is left so that that record may be filled in—the record of the signature, of the attestation, and if the parties wish it, name, place, date, and the like. It is familiar knowledge that where a deed has to be signed by a number of people there may be some delay in getting the testing clause filled up. The deed is sent from place to place—in the usual case accompanied by the ordinary schedule—in which information is filled up as to when and where it was signed and who the witnesses were. As the result of this information, and necessarily after the lapse of a little time, the attesting clause is filled up. The information in the attesting clause has of course to be correct. If not the consequences of nullity on various points were made clear by the old Scottish statutes, and these are the subject of the amendment of the law in 1874 as above described.

While it was from the nature of the case necessary (and I use the word "necessary" notwithstanding the language of Lord Campbell in *Cunningham* v. *M'Leod*, *cit. sup.*) that a certain interval of time should elapse between the signatures of the grantor and witnesses and the filling up of the testing clause, no such necessity existed to prevent or hamper the contemporaneous signature of witnesses with grantor. One has, however, to admit, although it may be with some regret, that by a few decisions of the Court such contemporaneous signature was not insisted on, but, on the contrary, deeds were upheld where a certain interval of time occurred. Such decisions, from *Frank* onwards, seem to have been always accompanied with much shaking of the head. The danger of abandoning the regular practice of the witnesses signing at the same time as the grantor is over and over again insisted upon, and many pronouncements of a hortatory character are made by judges and also by text writers. There probably has been no department of the law in which the decision in one direction has been so copiously accompanied by a wholesome warning in another.

At first the leak in the salutary practice

of contemporaneous signature was very small. In the case of *Frank* in 1796, M. 16,824, affirmed 5 Paton's App. 278, the interval was a quarter of an hour. After nearly a century, namely, 1892, the case of *Thompson* v. *Clarkson's Trustees*, 20 R. 59, 30 S.L.R. 93, occurred, and the interval allowed was three-quarters of an hour. A few years afterwards, however, the leak became a flood. In the case of *Tener's Trustees* (*cit. sup.*) a great interval of time elapsed between the signature of a certain deed by Mrs Tener, whose signature was attested at the time by only one witness, and the adhibition of the signature of the second witness. She signed on 24th October 1876. She died on the 3rd November, and it appears that the second witness's signature was only placed upon the deed more than two years thereafter. While it is too late to go back upon the cases of *Frank* and *Thompson* v. *Clarkson's Trustees*, I am clearly of opinion that *Tener's Trustees* was wrongly decided, and that upon both points, namely, upon the point of the interval of time, and also upon the point of the death of the grantor before the attestation of one of the witnesses. I think both of these things should have been fatal to the deed. I shall refer to the case in a moment, but I may observe that it has never been accepted with satisfaction by the legal profession in Scotland. Lord M'Laren voiced this feeling in *Brownlee* v. *Robb* (*cit. sup.*).

In the case of *Frank*, by reason of the extreme illness of the grantor of the deed, the two witnesses who had seen him sign went into the next room in order to avoid disturbing the patient. They signed the deed within a quarter of an hour, there being no doubt whatever that it was the deed they had just seen signed in fact. Yet even in sustaining that deed the Court went out of its way to remark — "There never ought to be any considerable interval, yet when such a case occurs it may be judged of upon its whole circumstances." Under this dictum it is plain enough that a great deal of looseness might be admitted. But it is to the credit of the legal profession in Scotland that such looseness does not seem to have entered into practice, and when *Thompson* v. *Clarkson* occurred the interval, as I have said, that was under discussion was three-quarters of an hour. The testator signed a deed on the 5th March. On the following day her solicitor sent two clerks to her house, and they heard her acknowledge her signature. This was of course correct procedure under the Act of 1681. They, however, did not then and there sign as witnesses, but they took the deed back to the solicitor's office and signed it there. It was the same deed undoubtedly that they saw signed. They were carrying out the express wish of the testator implied in the purpose for which she made her acknowledgment.

In my opinion the ratio of *Frank's* and *Thompson's* cases is this, that the signature of the witnesses and of the grantor was part of one and the same continuous transaction. They were not decided, nor meant to be decided, upon any other ground, and the law of Scotland would have been in an extremely loose condition if they had been. In *Thompson* the Lord Justice-Clerk refers to the nature of the Act of 1681 "that the party did at the time of the witnesses' subscribing acknowledge his subscription;" and he says—"I am of the opinion that this signature by the witnesses was a signature 'at the time.' I hold that these words must be read in a reasonable sense, and that 'time is not the same as 'moment.' I hold that where a signature is acknowledged and the deed is at once conveyed by the witnesses to the lawyer's office and there signed by them within half an hour or so, and without the deed ever being out of their hands or any other business being done by them in the interval, that such signature fulfils the statutory demand of being 'at the time.' Such a case seems to me to be quite different from one in which there has been an interval in a true sense—where the piece of business has been set aside, other things done, and then the attestation of the witnesses taken up of new and at a different time." Lord Rutherfurd Clark states broadly that "in the case before us the subscriptions of the witnesses were not adhibited *ex intervallo*."

The case which was much canvassed in the case of *Thompson* v. *Clarkson* was *Hogg* v. *Campbell*, 2 Macph. 848. It was there held that it was not a valid objection to the testing of a deed that the two witnesses who had each heard the grantor acknowledge his subscription were not in presence of each other when they did so. In particular, the statement of Lord President Colonsay has been much cited (at p. 855)—"There is no case that I am aware of to this effect, that a witness who attests a signature by reason of the acknowledgment of the party may adhibit his signature *ex intervallo* after that acknowledgment is made. The statute requires that he shall sign at the time the acknowledgment is made, and very properly, because there might be very great difficulty in knowing whether it was the deed that he acknowledged."

The case of *Thompson* as well as *Hogg* were cases, not of signature before witnesses, but of acknowledgment of subscription before them, and accordingly with regard to the simple case, namely, of signature before witnesses, the case of *Frank*, in which an interval of a quarter of an hour was allowed, stands practically alone, subject to this, that I think the judgment of Lord Kyllachy in *Thompson's* case was of a general character. "I do not think," said his Lordship at 20 R. p. 63, "that under the Act of 1681 witnesses were entitled to subscribe *ex intervallo*, and I am not prepared to differ from Lord Colonsay on that point, but I do not think that the subscription here was made *ex intervallo*. The proceeding was, I think, continuous." If that very learned Judge meant his language to be used as applicable generally to the attestation of deeds—and I think he did so—then I respectfully agree with him.

The truth is that prior to the case of *Tener's Trustees* the legal profession in Scotland held, and in my opinion rightly

held, that the statute prescribed contemporaneous subscription by grantor and witnesses, that nothing else was safe if the deed was to be a probative deed, and that the one exception to this rule was the exception of the adhibition of the witnesses' signature as part of one and the same continuous transaction, in the most limited period and under the most exceptional circumstances, such as the case of *Frank* might exemplify.

I think it right to state my opinion as to the attestation of deeds in Scotland from another point of view, and upon a more general survey.

I. By the law of Scotland a probative deed is the subject of solemnities of execution, and the witnesses as well as the grantor are participants in these solemnities. This language is embedded in our law. "All obligations," says Mr Erskine, iii, 2, 6, "reduced into writing, though grounded on contracts which are effectual without writing, require by the law of Scotland certain solemnities to give them legal effects." And referring generally to the old Scottish statutes he says, iii, 2, 19 —"The Acts 1579, 1593, and 1861 declare expressly that all deeds which are destitute of the solemnities thereby required shall bear no faith in judgment, or that they shall be null and not suppliable by any condescendence." The most pregnant proof was of no avail, not even a reference to oath. Other elements going to the making up of the solemnities may have been introduced under the sanction of the pains of nullity, and the Act of 1874 may have excluded them from the list, or may have given facilities with regard to rectification. This has been already discussed. But with regard to the grantor signing and each witness signing, that is a solemnity in which each is a participant. No probative deed can exist without that solemnity.

II. It is involved in this truth that until each of the participants in the solemnity has performed his function the deed remains improbative; and furthermore, that no witness is entitled to be a participant in that solemnity merely by reason of his mere accidental presence, or it may be his surreptitious presence. When the grantor signs the deed no person has the right to become an attesting witness unless and until he has the assent, expressed or implied, of the grantor to sign as such. This cuts at the root of the proposition that a person can become an attesting witness if only he saw the signing in fact, whether the grantor knew that fact or not, or assented to him signing or not. I think such a proposition to be as unsound as the practice upon it would be dangerous.

On this hand the authorities are really not doubtful. Even in *Tener's* case Lord Justice-Clerk Moncreiff says that subscription "before a casual, an accidental, or a concealed witness may not amount to subscription as required by the statutes." Why would this be so if the act and the truth were that they did see the grantor subscribe? It must be because the witness is, as I have put it, a participant in a solemnity, and cannot be such a participant unless with the consent of the principal party to that solemnity, namely, the grantor of the deed whose signature he attests. The moment one gets away from that, all sorts of difficulties and grotesque and anomalous results become possible. It is true that in the judgment of Lord Rutherfurd Clark in *Thompson* v. *Clarkson's Trustees*, his Lordship did say—"It requires no more than that the witnesses shall have a warrant in fact and truth for what they attest. They have such a warrant if they saw the grantor subscribe or heard him acknowledge the subscription." I observe that in the majority of the judgments of the Court below, and especially in the judgment of the learned Lord President, this is the view which prevailed. If Lord Rutherfurd Clark's judgment stood upon that isolated passage I should venture humbly to disagree with him; but I feel certain that Lord Rutherfurd Clark would have been the last to assent to the proposition that his judgment was meant to imply any dispensation of the assent of the grantor. I think that is the true meaning of his Lordship's next sentence—"If the subscription to the deed be the subscription of the grantor, and if the witnesses were warranted in attesting that fact, there is nothing lacking in essentials." The essentials of a warrant to attest the fact of the subscription did not, I feel assured, exclude, in the learned Judge's mind, the grantor's assent to which I have referred. If it did it would be committing Lord Rutherfurd Clark to the curious position that a deed signed by a man in what he conceived to be the solitude of his study could be reared up into an attested deed by the signature afterwards of persons who had peeped through the window, and in fact and in truth seen him sign. Such are the consequences of abandoning what I believe to be the cardinal principle that the witnesses can only sign if, with the grantor's assent, they participated in the solemnity required by law.

III. I have said that a person cannot be an attesting witness unless and until the grantor assents. And I would now add that he alone can be an attesting witness who at the time he signs as such does so with the grantor's assent. He cannot attest unless and until he has that assent, and he must attest only when and while he has that assent.

IV. The proposition that at the time when the witness signs he has the assent of the grantor to do so as a witness fits, and fits entirely with the other and main proposition which is being developed, that the entire solemnity of execution is one continuous process, and that in the eye of the law no interval occurs. This was so in the case of *Thompson* v. *Clarkson*, in which, in the language of Lord Rutherfurd Clark, "the subscription of the witnesses were not adhibited *ex intervallo* in the sense in which I think the Lord President used that expression" in *Hogg* v. *Campbell*.

I pause to say that while *Thompson's*

case was one of the acknowledgment of the signature before witnesses to which the language of the statute "at the time" of course applies, I can see no reason for considering the act as more strict in the case of an acknowledgment of a signature than in the case of visibly observing it. I agree in terms, if I may do so, with Lord Skerrington's remark—"If a witness who hears a person acknowledge his signature is required by the Act of 1681 to subscribe his name *unico contextu*, no reason can be suggested that the witness who sees the grantor subscribe should be entitled to sign his name *ex intervallo*."

V. All the above propositions hold good notwithstanding any conjectures or conclusions which might be formed as to the testator's or grantor's intention, and no testator or grantor has with regard to them any dispensing power.

I observe in the judgments of the majority of the Court below a reference more than once to the intentions of Mrs Walker. Such considerations are tempting but perilous. If they were permitted, the principle of them would apply not only to wills or deeds signed by one witness instead of two, but also to deeds signed without witnesses, and —for it must be logically so—to documents not signed at all. There are many documents with regard to which no doubt can exist that they express, say, the mind of a testator, but they cannot be lifted into the testamentary or the probative region unless the solemnities of law have been complied with. It would, in my humble opinion, be ludicrous as well as dangerous to permit law courts to turn an improbative into a probative deed because they were of opinion that the grantor meant the one to be as good as the other.

I have already remarked upon the exhortations which accompany, in all the law books and in very many of the decisions, the comments upon the case of *Frank*. But the case of *Tener's Trustees* shows how little such exhortations mean, and how loose a practice would become if the requirements of the law were not conformed to, and solemnities completed in one continuous transaction and with the necessary assent as I have above set forth. So far has this gone in the present case that I observe that Lord Salvesen says that it rather appears to him that any person interested in the incomplete will, that is, in a will with only one witness, would be entitled to demand an opportunity of signing as a witness "and so complete the document the execution of which he in fact witnessed," and he goes on to say that he does not know whether he might not be ordered by a court of law to affix his signature as a witness. I totally disagree with any such propositions, and I conclude my summary of the law by two observations which directly bear upon these.

VI. If it be sound that the assent, express or implied, of the grantor is necessary at the time when the witness signs as such, and that the solemnities are part of one continuous transaction, then the impossibility of a witness affixing his signature after the death of the grantor, and so rendering the deed probative, becomes clear. We are not in the philosophical or psychic but in the civil and legal sphere, and in that sphere the assent of the grantor cannot be given at the time when the witness signs, if at that time the grantor be dead.

VII. Lastly, I am not at present able to figure any case in which the attestation by witnesses is other than a voluntary act or can be compelled by law. Indeed, it follows from what I have said that assent of the grantor being required at the time of their subscription to witnesses signing, it is always open to the grantor to withdraw his assent in the course of the continuous transaction, and it is always open for the witnesses to decline to append their names, with the consequence that others may do so if they can be obtained. I see no reason to give any countenance to the idea that compulsion and sanctions of law can invade this voluntary sphere.

I may, in conclusion, point out that in regard both to contracts and to wills the results otherwise might be of an extraordinary description. The possession of improbative documents, and even their existence, would leave a state of affairs in which, apart from the will of the grantor, each document could be reared up into valid and probative writings. And with regard to testamentary arrangements, a person dying without having made a will could have a will made for him by attestations made after his death. This might be adhibited by reason of a variety of considerations, or, as I gather the suggestions to be, even by force. I disagree with the whole of this reasoning. I respectfully adopt Lord Kinnear's language in *Campbell* v. *Purdie* (22 R. 443, at p. 448) that all this is quite inadmissible, on the general ground "that a will cannot be executed after the death of the testator."

LORD WRENBURY—If the order under appeal is right this lady died intestate on the 1st July and became testate twenty days later, when her son attested the document. This is impossible. The only escape from this conclusion lies in the view which I understand the Lord President to have taken. That view is that the deed *mortis causa* became operative when the lady signed and the one witness attested, that the attestation of the other witness was required only by way of evidence to render the deed probative, and that such evidence may be given, as no doubt it may, after the death of the grantor. If this view is right it must be true as much of both witnesses as of one of them. The view must necessarily be that so soon as the lady signed the deed became operative, and when the witnesses, or the second of them, subsequently signed, it became probative. As I understand the law of Scotland as already expressed in detail by two of your Lordships, the deed is not operative as soon as the grantor signs, but is operative so soon as the deed is completed with the solemnities in law required. One of these solemnities is that the grantor must sign and two witnesses must attest. It is not necessary

in the present case to consider whether the solemnity will have been observed if the witnesses attest *ex intervallo*. I do not doubt that attestation after some *intervallum* will suffice. There must always be some *intervallum*, although if the witnesses sign immediately after the grantor has signed the *intervallum* will be very short. The question here is whether the solemnity has been observed when during the *intervallum* the death of the grantor supervenes. It is obvious that in such case the solemnity has not been observed during the grantor's lifetime. The deed therefore was not a deed when the grantor died. It is impossible that it can become for the first time her deed after she is dead.

In the course of the argument I asked the respondent's counsel whether he discriminated between probative and operative. He answered that he did not. It is obvious that to support his argument he must discriminate. This House will not hold him bound to that answer. His argument is, and must be, that this deed was operative during the lady's lifetime although it did not become probative until after her death. He cannot say that it was probative until both witnesses had signed; he must say that it was operative before the lady died.

The whole point of the case is to determine whether the attestation of the witnesses is merely evidential or is a necessary solemnity of execution. According to the law of Scotland it is the latter. It follows that this appeal succeeds.

Their Lordships reversed the interlocutor appealed from.

Counsel for the Appellant—Macquisten—Douglas Jamieson. Agents — Sharpe & Young, W.S., Edinburgh—Stevenson, Sons, & Plant, Darlington—Adam Burn & Son, London.

Counsel for the Respondents—Chree, K.C. — Graham Robertson — Tyrrell Paine. Agents—Johnstone, Simpson, & Thomson, Dundee — Elder & Aikman, W.S., Edinburgh — Linklater, Addison, & Brown, London.

COURT OF SESSION.

Tuesday, November 23.

SECOND DIVISION.

[Sheriff Court at Glasgow.

EADIE AND OTHERS *v.* CORPORATION OF GLASGOW.

Burgh — Burgh Accounts — Objections to Accounts—Common-Good—Glasgow Corporation Act 1909 (9 *Edw. VII, cap. cxxxvii*), *sec.* 14.

The Glasgow Corporation Act 1909 enacts, section 14—"Any elector who shall be dissatisfied with any of the accounts or any item therein may, not later than the 20th day of December, complain against the same by petition to the Sheriff specifying the grounds of objection, and the Sheriff shall hear and determine the matter of complaint, and his decision shall be subject to the same right of appeal as in ordinary actions in the Sheriff Court: Provided always that where the petition is dealt with in the first instance by the Sheriff-Substitute there shall be an appeal to the Sheriff."

Certain electors of the City of Glasgow presented a petition in the Sheriff Court at Glasgow under the above-recited section concluding for declarator that they were entitled to inspect and examine just and accurate accounts of the common-good of the city, showing the purposes to which the revenue thereof had been applied, for declarator that the defenders had not made up accounts of the common-good as required by the Act, and that an abstract of accounts produced by them did not constitute "the accounts" within the meaning of the Act, and for decree ordaining the defenders to produce such a detailed account of certain items in their abstract of accounts as would enable the pursuers to ascertain the purposes to which the revenue had been applied, and whether such application was legal or illegal, and if dissatisfied therewith to complain against the same as provided by section 14 of the Act. *Held* (*diss.* Lord Salvesen) that the action as laid was incompetent and irrelevant and should be dismissed.

Expenses—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. cap*, 61), *sec.* 1 (*b*).

The Public Authorities Protection Act 1893, section 1 (*b*), enacts—"Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution, or intended execution, of any Act of Parliament . . . or in respect of any alleged neglect or default in the execution of any such Act . . . the following provisions shall have effect—(*b*) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between agent and client."

A petition in the Sheriff Court by certain electors challenging the mode of publishing the accounts of the common-good of the City of Glasgow was, after appeal from the Sheriff to the Court of Session, dismissed as incompetent and irrelevant. *Held* that the Corporation were entitled to expenses taxed as between agent and client.

The Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii) enacts, section 5—"The Corporation shall yearly cause to be made out just and accurate accounts of all revenue and expenditure . . . of (*a*) the common-good and revenue of the city." Section 13—"The Corporation shall forthwith, after the accounts have been deposited with the town-clerk, (*a*) cause the accounts or abstracts thereof, together with the auditor's