Company from Martinmas 1845, with interest, as in full of all claims competent to them and Hamilton against the complainers, and that they proposed to amend their claim in the arbitration accordingly. The debate on the case was then concluded, the complainers having refused to accede to the offer above mentioned, on the ground that the whole nature of the claim was altered from being a claim for Barr's Trustees for twenty-one years certain (leaving open Hamilton's claim for the remainder of his tenancy) to a claim for the value of Hamilton's life interest as at 1845, and that thereby the arbitration would cease to be under the statute, to which they were not bound to agree.

At advising—

Lord Justice-Clerk — Hamilton sub-set the subject of the liferent lease to Barr, to have an endurance of twenty-one years, but not till after the Railway Company's notice. The result is that the right of Hamilton to grant a right to the ground embraced in the notice was extinguished, but the obligation on Hamilton to make over to Barr his interest in the damages to be got from the Company is unquestionable. There then followed the notice by the Railway Company to Barr, the negociations between them, and ultimately this arbitration. The present application is to suspend the arbitration proceedings, on the ground that Barr's Trustees have no title. The twenty-one years have now expired; Hamilton is still alive; and so Barr's Trustees have claimed damages for these years, leaving over the surplus of the liferent lease to form a separate claim for Hamilton. That was a great difficulty in the arbitration, and the Company were not bound to submit to it. But Barr's Trustees have now got a full assignation and power to discharge, and are thus now, but only now, in a position to proceed with the arbitration. It was said that it is not competent to alter the nature of the claim, but if the claim for the twenty-one years be beyond the respondents' right, there is no objection to its being restricted, which is now proposed to be done, and there is therefore no objection to the arbitration proceeding in regard to the claim as so restricted.

Lord Neaves concurred. It was, in consequence of the sale to the Railway Company, incompetent for Hamilton by a lease to create any new right in Barr, but then Hamilton could, by giving a lease subsequent to sale, assign to Barr his claim against the Railway Company, on the principle of inferred or implied assignation. From the first Barr was an assignee, and had a good basis for a claim, but his title, as it originally stood, was complicated, and the Company were entitled to have it cleared up; and that has now been done.

Lord Cowan and Benholme concurred.

The Court found the respondents liable to the complainers in expenses, which were modified to one-half of the taxed amount.

Counsel for Complainers—Mr Watson and Mr R. Johnstone. Agents—Messrs Hope & Mackay, W.S.

Counsel for Respondents—Mr Shand and Mr J. C. Lorimer. Agents—Messrs Duncan, Dewar, & Black, W.S.

Friday, November 10.

FIRST DIVISION.

MAITLAND'S TRS. *v.* MISS MARGARET MAITLAND AND THE REV. WILLIAM KEITH.

Testament—Holograph—Insanity. In the repositories of a deceased was found an envelope containing a deposit-receipt. On the envelope was written, "To my executors.—Miss Margaret Maitland. This nine hundred pounds belongs to her; five hundred to be sunk for her, and the remaining four to be given her. —Thomas Maitland." It was proved that only the signature and address, "To my executors," were in the handwriting of the deceased. *Held* (diss. Lord Deas) that the writing was not entitled to the privileges of a holograph writing, and that the bequest was invalid.

Held further, unanimously, that the granter was not of sound mind at the date when he subscribed the writing.

The late Mr Maitland of Pogbie died on 27th January 1870, leaving a trust-disposition, dated 12th April 1853, by which he conveyed his whole estate, heritable and moveable, to trustees, of whom the raisers of the present multiplepoinding are the survivors.

The purposes of the trust were—In the first place, the payment of the truster's debts, &c. In the second place, for payment of any legacies or donations the truster might choose to leave, and particularly of the several legacies therein mentioned. In the third place, for payment of the whole free rents of the truster's lands, and the interest of the residue of the trust-estate to the truster's son Thomas Maitland the younger. In the fourth place, upon the death of Thomas Maitland the younger, for payment of certain provisions to the child or children of the said Thomas Maitland the younger, other than his eldest son (£2000 if only one child; £3000 if two or more). And lastly, upon the death of the said Thomas Maitland the younger, the trustees were directed, after satisfying the other purposes of the trust, to dispone the lands of Pogbie, and whole residue of the trust-estate, to the heirs-male of the body of his son Thomas Maitland the younger, and failing such issue, then to the truster's sister Mrs Christian Graham Maitland or Keith, spouse of Dr James Keith, and the heirs whatsoever of her body, whom failing to the truster's nearest heirs and assignees whatsoever.

Thomas Maitland the younger predeceased his father, without male issue, but leaving one daughter, Miss Margaret Maitland. Mrs Keith also predeceased the truster, and the Rev. William A. Keith, as her eldest son, became entitled, under the destination in the trust-deed, to the estate of Pogbie and the residue of the trust-estate.

In July 1862 a petition was presented to the Court for the appointment of a *curator bonis* to Mr Maitland, as being incapable of managing his affairs. The Court appointed a *curator bonis*, and Mr Maitland continued under curatory till his death, on 27th January 1870. At the time of the appointment, among Mr Maitland's papers was found an envelope containing a deposit-receipt for £900, dated 24th April 1861. On the back of the envelope was written—

"*To my Executors.*
"Miss Margaret Maitland.
"This nine hundred pounds belongs to her; five hundred to be sunk for her, and the remaining four to be given her.—THOMAS MAITLAND."

This £900 formed the fund *in medio*. It was claimed by Miss Maitland as bequeathed to her, and, on the other hand, by Mr Keith, the residuary legatee, as a part of the residue of the trust-estate, on the ground that the writing on the envelope was neither holograph nor tested, and the bequest therefore invalid; and further, that Mr Maitland was not of sound mind at the date when the writing was executed.

The Lord Ordinary (JERVISWOODE) allowed a proof before answer, the import of which, as regards Mr Maitland's state of mind, will be found discussed in the opinion of Lord Ardmillan.

LORD JERVISWOODE, on 25th June 1871, pronounced the following interlocutor:—"Finds, *primo*, as matter of fact—1*st*, That on or about the 20th of May 1862 the now deceased Thomas Maitland of Pogbie, who was then possessed of considerable estate and funds, heritable and moveable, desired the witness Isabella Montgomery, who was then in his service as housekeeper, to bring to him a certain bank deposit-receipt for £900, which was then in a drawer in a room at Pogbie, occupied at the time by Mr Maitland as his bed-room; and that thereafter the said Isabella Montgomery, acting on what she then understood to be the wish of Mr Maitland, wrote on the envelope, which now forms No. 7 of process, the words 'Miss Margaret Maitland—This nine hundred pounds belongs to her; five hundred to be sunk for her, and the remaining four to be given her:' Finds that Mr Maitland then stated to the said Isabella Montgomery that he would sign the said writing on the envelope, but was as she thought, at the time unable to do so, until the said Isabella Montgomery wrote his name on a piece of paper, from which he copied the signature 'Thomas Maitland,' as the same now appears on the said envelope (No. 7): Finds that he then wrote on the said envelope the words 'To my executors,' which also now appear on the said No. 7 of process: And 2*d*, That at the time foresaid, and when the said deceased so acted and wrote the words above specified, he was insane, and was not of a sound disposing mind: Finds, *secundo*, and as matter of law, that the said writing, No. 7, is invalid and ineffectual: Therefore repels the claim made on behalf of the claimant Miss Margaret Maitland, which is founded thereon, and appoints the cause to be enrolled with a view to further procedure, reserving meanwhile the matter of expenses."

Miss Maitland reclaimed.

MILLAR, Q.C., and TRAYNER, for her, argued—(1) The writing is probative, inasmuch as it is holograph in its essential parts; Ersk. iii, 2, 22; Stair, iv, 42, 6. (2) It is adopted by anticipation by the trust-deed, which directs the trustees, who are named executors, to pay any legacy the truster may choose to leave. (3) The words in Mr Maitland's handwriting are sufficient to import adoption of the whole; *Macfarlane* v. *M'Intyre*, March 1, 1821, F.C.; *Brodie* v. *Muirhead*, Feb. 1, 1870, 8 Macph. 461. On the question of insanity, reference was made to *Nisbet*, June 30, 1871, and cases there cited.

GUTHRIE SMITH and BLAIR for Mr Keith.

At advising—

LORD ARDMILLAN—Two questions have been presented for consideration in this case. A decision on either of these questions would be sufficient for disposal of the case. But both questions have been argued. I was disposed to think that both questions have been decided by the Lord Ordinary, but I now understand it was not so. It appears, however, to be right, and I think it is the wish of the parties, that a judgment on both questions should now be given.

In April 1853 Mr Thomas Maitland of Pogbie executed a trust-settlement, in which he directed his trustees to pay out of his estates, including his lands at Pogbie, his debts and "any legacies or donations I may choose to leave," and in which he makes a provision of £2000 for any child of his son Thomas Maitland. Miss Margaret Maitland, the only child of Thomas Maitland junior, appears as a claimant of £900, in addition to her said provision.

The claim of Miss Margaret Maitland for the sum of £900 is rested on a document in the following terms:—"To my executors—Miss Margaret Maitland. This Nine hundred pounds belongs to her. Five hundred to be sunk for her, and the remaining Four to be given her.—Signed THOMAS MAITLAND."

It is sufficiently proved that the words "To my executors," and the words "Thomas Maitland," being the signature, are in the handwriting of the late Thomas Maitland, grandfather of the claimant. The remaining part of this writing is not in the handwriting of Thomas Maitland. A deposit receipt by the Bank of Scotland for £900, dated 24th April 1861, was found among his papers, put up in the same envelope as the writing above mentioned. Indeed, the writing is on the back of the envelope. It has no date. It is said that this document contains a valid and effectual bequest of £900, in respect that it is signed by Mr Maitland, and addressed by him to his executors. I am of opinion that the claimant's plea on this head is not well founded. The words expressing bequest or gift; the words expressing the sum said to be bequeathed; and the name of the person said to be legatee or donee, are not in the handwriting of Mr Maitland. The signature is his. That of course cannot of itself make the writing holograph, nor give it validity if it is not holograph. Then, can it be held that the addition of the words "to my executors," at the beginning of the writing, has the effect either of making the writing holograph, or of making it valid though not holograph?

I am of opinion that the writing before us is not rendered holograph by the additions made to it, and I am also of opinion that, not being holograph, it is not effectual.

This case is quite different from the class of cases to which we have been referred, where effect has been given to a writing, not holograph or tested, in respect of a reserved power contained in a previous settlement to make bequests by any writing under the hand of the testator. In such cases the writing, though informal, is made effectual by adoption and recognition in the prior deed. The prior deed in such a case is read as a relaxation of the ordinary requirements of law; and informal writings, if distinct and genuine, are sustained in respect of such relaxation. There is no such relaxation here.

Nor does this case resemble another class of cases, where a writing is only partly holograph, and yet is sustained as holograph, because, being signed

by the maker, the substantial parts of the document are holograph. In this case not one single word conferring a bequest, setting forth the sum, or specifying the legatee, is in the handwriting of Mr Maitland. In no sense is this writing a holograph bequest. In point of fact, it is not so; and, in point of law, its character and its effect cannot be viewed as altered by the two parts of the writing which are holograph.

There are a great many authorities on this point, and I have carefully considered them. I shall not now examine them. It is sufficient to mention the cases of *Lady Baird Preston's Trustees*, July 15, 1856, 18 D. 1246, *Wilsone's Trustees* v. *Wilsone*, Dec. 13, 1861, 24 D. 163; *Young's Trustees* v. *Ross*, Nov. 3, 1864, 3 Macph. 10; *Crosbie* v. *Wilson*, June 2, 1865, 3 Macph. 870; and *Brodie* v. *Muirhead*, Feb. 1, 1870, 8 Macph. 461. This last case, though briefly reported, was carefully considered. I think it went as far as any case which has been decided in our Courts in giving effect to a writing not itself holograph, in respect of the addition of words undoubtedly holograph. I agree entirely with the remarks made in that case by your Lordship now in the chair; and I concurred in the decision. The question even there was one of some delicacy, but the ground of decision was, that the holograph words were plainly relative to the words which were not holograph, and that the words binding the defender were in his own handwriting. It is not so here. In several old cases in the Dictionary the same point was considered. These cases were decided mainly in consideration of the words which were holograph in the writing. If these holograph words expressed the obligation, or, as the old lawyers termed it, "contained the substantials thereof," the writing was sustained. If the writing, in so far as holograph did not express the obligation, and did not contain "the substantials thereof," the writing was not sustained. Among other cases I may just mention the case of *Vans* v. *Malloch*, Jan. 23, 1675, M. 16,885; *George Heriot* v. *Blyth*, Nov. 1681, M. 17,020; *Allardice* v. *Forbes*, Jan. 25, 1710, M. 16,862.

On these grounds, on which I shall not further enlarge, I am compelled to arrive at the conclusion that the improbative character of this writing is fatal to the claim of Miss Margaret Maitland.

We have next to consider the plea, separately urged by the trustees, to the effect that when the late Mr Maitland signed the document founded on he was insane.

This question, interesting and important in every point of view, was fully argued on both sides. On the question of fact there are some points which appear to me to be beyond reach of dispute. That Mr Maitland was seriously insane previous to and up to the alleged date of this document is beyond a doubt. It is abundantly proved, and I scarcely think that was disputed at the bar. That he was also insane very shortly after the said date is proved by several witnesses who had good means of information, and whose testimony is entirely reliable. It is sufficient on these two points to mention the witnesses Isabella Montgomery, Jeanie Montgomery, the Rev. Mr Cooper, Mr Archibald Broun, Dr Otto, and Dr Skae. Mr Maitland's insanity was characterised and evinced by a specific and particular insane delusion. That delusion was that he had lost Pogbie, that he had been robbed and ruined by Dr Otto, and that he himself was a beggar. That he laboured under this delusion—that it was altogether groundless—that it excited and disburbed his mind—and that in respect of that delusion, and with reference to all subjects or transactions within the scope or influence of that delusion, he was insane, is abundantly proved. I cannot doubt it. Now, by his settlement, dated in April 1853, a provision of £2000 had been made for the child, if any, of his son Thomas Maitland junior. The claimant Margaret Maitland is the only child of that son. To make an additional provision to her of £900 by a writing of the nature of a bequest was, in my opinion, looking to the whole ascertained circumstances of this case, a proceeding within the scope and subject to the influence of the insane delusion to which I have adverted. I still retain the opinion which I expressed in the case of *Nisbet*, and which I need not now repeat. In its most important features this case stands in contrast to the case of *Nisbet*. In the case of *Nisbet* the medical testimony, and the nurse's testimony, and the testimony of friends who visited Major Nisbet immediately before and at the date, and immediately after the date, of the deed challenged, was all in favour of his sanity. It is not so here. I can find no witness in this case who, knowing Mr Maitland, and having opportunity of observing him at or near to the date in question, has declared that he considered Mr Maitland sane. The whole evidence is the other way.

In the next place, the rational conversation and conduct of Major Nisbet at and about the date of the deed rendered his recovery, or a lucid interval, very probable. A lucid interval of a considerable period, say of a month or more, was quite probable even in the most unfavourable view of Major Nisbet's case. I mean probable on the proof, not as a mere conjecture.

Still further, in the case of Major Nisbet there was little insane delusion; and there was no connection between any insane delusion which on the proof he could be said to have had, and the deed he executed, while the deed itself, originating in his own mind, was rational and natural, and was in accordance with expressed intentions. Here the insane delusion of Mr Maitland had special reference to his property, and part of his property he disposed of by this writing. In dealing with his property, heritable or moveable, he was in thought and in act within the scope and influence of the delusion by force of which he insanely believed that he had been plundered and made a beggar by Dr Otto. If this writing is sustained Miss Maitland gets £900 in addition to her previous provision. But her previous provision was out of Mr Maitland's estate, and Mr Maitland insanely believed that he had no estate. If he fancied that her provision of £2000 was lost with the rest of his estate, and if, under that fancy, he gave this £900 to make up to her for the loss, then his insane delusion was at the root of the bequest, and the writing making the bequest on such a footing cannot be considered rational. It is also to be noticed that, as proved by Isabella Montgomery, Mr Maitland wished to send the £900 at once to Miss Margaret Maitland, then a young girl at a boarding-school. If he wished to do this in order to save it from the hands of Dr Otto, whose power and desire to plunder him he insanely dreaded, he being even disturbed by the fancy that "Otto dealt in magic," then the writing was certainly not "a rational act rationally done." The manner in which he dealt

with his gold watch and £10 seems to support this view. Isabella Montgomery says that on one occasion, after Dr Otto had been visiting Mr Maitland, he (Maitland) being much excited, gave his watch and £10 to his grieve James Montgomery, telling him to give the watch to Mrs Keith when he, Mr Maitland, died. Isabella Montgomery, whose testimony I see no reason to doubt, and without whose testimony the claimant cannot prove the writing founded on, says that Mr Maitland gave the watch to his grieve because he was afraid that Dr Otto would take his watch. This was not only a groundless but an insane fear. It was the very fear which overcame his reason, the very delusion by which his mind was insanely swayed. Now, if he signed the writing in question under this same fear of Dr Otto, and with the intention of saving the £900 from the plunder which he insanely dreaded, and a belief in which was his insane delusion, then he was under the influence of the insane fear and the insane delusion when he signed the writing.

The case of *Nisbet* has been very strongly pressed on us. I have no wish even to qualify the opinion which I expressed in the case of *Nisbet*, in regard to the effect of partial insanity, in regard to the possibility of lucid interval, and in regard to the strong presumption in favour of a deed rational and just. But this is a very different case. No lucid interval has been here proved. It has scarcely even been definitively suggested. The writing challenged might indeed have been rational and natural under other circumstances; but, viewed in its true light, and under the actual circumstances here ascertained, it was not, in my opinion, rational, but was connected with, and was actually the product of, the insane delusion. I do not now dwell on the evidence of the eminent medical gentlemen examined for the claimant, though I have carefully considered it. They did not know Mr Maitland. They did not attend or even see him professionally. I do not think that the medical testimony of these gentlemen goes beyond the expression of an opinion on their part formed on information given them, and without knowing or seeing the patient, that a lucid interval was possible. But this is not enough. The party who alleges a lucid interval in such a case as this must prove it. It certainly is not proved in this case.

The trustees have felt it their duty to resist payment of this alleged bequest; and on both the grounds to which I have adverted—1*st*, that the writing founded on is not holograph and not probative; and 2*dly*, that Mr Maitland was insane at the date of the writing, and in the making of the writing I am of opinion that the second and third pleas in law for the Rev. Mr Keith should be sustained, and thus Miss Maitland's claim be repelled.

Lord Kinloch—The first question in natural order which arises in this case is, Whether the alleged testamentary writing is to be considered as a holograph writing? If it is not, it is improbative, and cannot be read.

I am of opinion that the writing cannot be held holograph, and is improbative. And here, I think, we must exclusively consider the document itself, with such admissions, or evidence, as proves in whose handwriting the different parts of it are. We cannot allow it to be set up by parole evidence of its execution.

Admittedly no part of it is in the handwriting of the deceased Mr Maitland, except the address at the beginning of it—"To my executors," and the signature "Thomas Maitland" at the end. I consider this not to be enough.

I conceive that nothing will give the character of holograph to a document not wholly in the handwriting of the alleged granter, unless either—1*st*, There is so much of the material parts of it in his handwriting as sufficiently expresses its scope, and makes the rest of it unimportant; or 2*dly*, By words appended to it, over and above his signature, he declares expressly, or by indubitable implication, that he adopts the whole writing as his. We have instances in the books of documents held as holograph on one or other of these grounds.

The present case presents neither of these two elements. Irrespectively of the signature, there is nothing holograph in the document except the words at the commencement, "To my executors." This may prove that the document was intended to operate as a codicil or testamentary instruction. But what was claimed in it, that is, what was testamentarily directed, is left altogether unestablished. Nothing more is proved than that the document was a testamentary writing of some kind. But of what kind is left an utter blank.

Again, there is nothing appended to the document except the simple signature; and so the case does not come under the category of a document formally adopted by holograph words expressive of such adoption. It is settled that the mere appending of the signature is not enough; and here there is nothing else. An addition of approbatory expressions, direct or implied, might have been sufficient, as implying a knowledge and ratification of all going before. But no such addition occurs. And with reference to the preliminary words "To my executors," they cannot imply any knowledge and adoption of what comes after. An addition at the end of a writing may bind the granter to what goes before. But preliminary words cannot fix or ratify what comes after, nor leave any just inference as to what the body of the writing was. There remains therefore nothing in the document, so far as proved, by Mr Maitland holograph, except that it was a testamentary document of some kind or another. What it contained there is no holograph to establish.

The second question before us is, supposing the document probative, Whether it was executed by the late Mr Maitland when in possession of a sound disposing mind. I am of opinion that this question must be answered in the negative.

I think it clearly proved that at the time of the execution of this writing, and both before and after, Mr Maitland was, generally speaking, in a condition of insanity. This is conclusively established. His mind was wholly out of joint. He was under a delusion as to his estate of Pogbie having been taken from him by the practices of his medical attendant and others, which indicated entire unsoundness of mind. His conduct in consequence was indubitably that of a madman. It is needless to go into details, for his general unsoundness of mind at this time was not disputed, and all that was maintained was, that the document must be held to have been executed by him during a lucid interval.

That a lucid interval may occur in the case of one generally insane, during which he may validly execute a deed, needs not to be denied. But a lucid interval involves nothing short of an entire

cessation for the time of the insanity. This must be clearly established to have occurred, the *onus* lying on the party who avers such an interval. Has anything of this kind been proved in the present case? I think not.

I consider the only proof of the lucid interval presented by the party averring it to lie in the alleged rationality of the writing executed. All the incidents of the insanity were indubitably the same immediately before and immediately after the execution of the writing. But the deed is said to have been so rational as to prove that during its execution the granter was sane. We are asked, in short, to believe that a lucid interval intervened, having precisely the endurance of the execution of the writing, neither longer nor shorter. I cannot adopt this view. I do not think the rationality of a deed can be taken by itself alone as conclusive of the sanity of the granter. It is a fact of the highest importance in determining the question of sanity. But it is not by itself conclusive, just because it does not necessarily follow that, although rational in its aspect, the deed was executed from a sane and rational motive. The contrary is rather to be presumed in the case of a man generally insane. To stamp a deed as rational, it must be shown to be rational in the motive prompting its execution. I can by no means think this established in regard to the writing now in question. It is not enough to say loosely that a writing by which a sum of £900 is given by a grandfather to his granddaughter is a deed of a rational character. This may or may not be the case according to circumstances. It must further be shown that the writing was executed under the influence of a rational view of his position and relations. I have the greatest possible doubt of the sanity of the view under which this writing was executed. Mr Maitland had already settled on his granddaughter a sum of £2000. It might be very rational to give her a sum of £900 additional. But I have no security that he did not do this under the influence of an insane belief that all his other means had been taken from him, and that if he did not give her this £900 she would have nothing whatever on which to live. The evidence leaves it exceedingly probable that this was his condition of mind; and I am disposed to adopt this theory as the true theory of the proceeding. But so to hold is of course utterly inconsistent with holding Mr Maitland sane at the time of the execution of the writing. The inference is directly the reverse.

At the same time it is not necessary to come to an absolute conclusion as to the precise motive prompting Mr Maitland to execute this writing. It is enough if it be altogether uncertain whether the motive leading to its execution was a sane or insane one. This uncertainty, which is what will generally, if not always, occur in such a case, is, to my mind, altogether preventive of the writing being considered valid. The general insanity being assumed, the exceptional case is without sufficient establishment.

I am therefore of opinion that Miss Maitland's claim must he repelled.

Lord Deas — There are two questions in this case—(1) Whether the writing is entitled to the privileges of a holograph writing? and (2) Whether at the time of the bequest the granter was insane? The Lord Ordinary has explained verbally that he did not intend to decide the first question. I regret that it should have been thought necessary to decide this question. It is always unsatisfactory when there are two legal questions decided, each sufficient for the decision of the case. In my opinion this writing is entitled to the privileges of a holograph writing. There are three classes of cases that may be mentioned. *First*, Where there is a deed declaring that any writing, formal or informal, under the hand of the granter is to receive effect. *Second*, Where the essential parts are written by the granter. *Third*, Where a writing not holograph is adopted by the party by some writing which is holograph. It is not necessary in this last case that the words in the granters handwriting shall be *inter essentialia*, if they show distinctly that the writer adopted by a holograph writing the words which are not holograph. We must distinguish between the kinds of documents. The same sort of adoption which is sufficient in one case may not be sufficient in another. In particular, the distinction between an *inter vivos* deed and a *mortis causa* deed is important. This belongs to the latter class. We must also look to the circumstances in which it was granted. It is quite competent to look at the evidence of Isabella Montgomery, who wrote the body of the writing, to see the circumstances. These begin as far back as 1853. In that year Mr Maitland executed a regular probative trust-settlement, in which he conveyed his estate to trustees, whom he named his executors. They were directed to pay his debts and any legacies he might choose to leave. When he does wish to leave a legacy, he is in a feeble state of health and afflicted by paralysis, which makes it very difficult for him to write. He takes the assistance of his housekeeper. It is not material in what order he wrote — whether he wrote "To my executors" first, dictated the bequest to his housekeeper, and then signed; or whether, as she says, she wrote the words to his dictation, and he then signed the writing and prefixed the words "To my executors." The question is Whether the writing she wrote was adopted by him by his signature and the words he prefixed to the writing? It is difficult to see a more complete adoption. He wishes to make a legacy. He is not very able to write, and gets his housekeeper to do it. He deliberately puts his signature at the end, and the words "To my executors" at the top. He had already appointed executors by a holograph deed. He addresses this note to them to show that it is of a testamentary character of the kind contemplated in the probative deed. Testamentary writings are entitled to favour. I am of opinion that this writing is entitled to the privileges of a holograph writing.

There remains the question, Whether the writing was executed while the granter was insane? I agree with Lord Ardmillan that no such question arises here which was raised in *Nisbet*, viz., How far a person may be subject to an insane delusion, and yet make a good will? But, on the other hand, I am of opinion that it must be clearly proved that insanity produced the deed. If this had not been established, a difficult question might have arisen. Externally, Mr Maitland's conduct in executing this bequest was businesslike and intelligent. And nothing could be more natural and reasonable than a wish to increase Miss Maitland's provision. The ground on which I go is that he was under an insane delusion which directly affected what he did. Under the delusion that his whole property was gone except this

£900, he bequeathed it to Miss Maitland. Now, the subject of his delusion was the state of his affairs, the very thing essential to the making of a good will. Therefore, although it was natural to give her £900, it was clearly done under the influence of an insane delusion.

LORD PRESIDENT—I am of opinion that when this writing was executed Mr Maitland was not of a sound disposing mind. I do not think this case can be decided as one of general insanity. The true ground is, that Mr Maitland was labouring under a special insane delusion, and that delusion powerfully affected his mind in regard to the subject-matter of the writing. Upon that ground I hold this writing invalid.

Upon the other branch of the case I agree with the majority of the Court. I begin the few remarks I make upon it by calling attention to the circumstance that the proof is entirely on the question of insanity. If there had been no question here except whether this writing is or is not entitled to the privileges of a holograph writing, all the parole evidence would have been incompetent and excluded, except for the purpose of ascertaining whether this writing was in the handwriting of the deceased, and what part of it was so. That being ascertained, the writing must stand or fall, and cannot be affected by extrinsic evidence. I cannot follow Lord Deas into an examination of the circumstances under which it was executed. To do so would be to violate the fixed rule of the law of Scotland, that a writing shall not be esteemed probative unless it is tested in terms of the statute, or is among the privileged writings. The only privilege that can attach to this writing is that it is alleged to be holograph. The only words which are in the handwriting of the deceased are his own signature and the address "To my executors." The question is, whether this is sufficient to confer the privilege of a holograph writing on the whole document. There are two exceptions to the general rule that a holograph writing must be entirely in the handwriting of the granter—*First*, Where the essential parts of the document are in the handwriting of the granter, and merely formal words are in the handwriting of another person. *Second*, Where there are in the handwriting of the granter words which clearly express an adoption of what is not in his handwriting. Lord Deas admits that the former exception does not apply to this case, but he is of opinion that there is enough to show adoption of that part not in the handwriting of the deceased. I am not aware of any case in which the principle of adoption was carried further than this—that a writing not holograph has been adopted by the granter by a holograph writing. The most remarkable case is that of *M'Intyre*. In that case there were two codicils to a will, the first not holograph, the second holograph. The Court gave effect to the non-holograph codicil, the holograph codicil referring to and adopting the non-holograph codicil, and making an addition to it. The only other case of much importance is that of *Christie's Trustees* v. *Muirhead*, in which the words holograph of the defender and held binding upon him were, "received the sum of £50 stg.—James Muirhead." These words were written after words not holograph, which showed that the money had been advanced as a loan by his sister. It was held, after some hesitation, that the words in the defender's handwriting were sufficient to bind him, being explained by the previous words. This case is very different. There are no words holograph of the testator expressive of his intentions at all. The address to his executors only shows that he had a testamentary purpose. What that purpose is is not to be found, except in the words not in his handwriting. There is nothing in his handwriting to intimate anything beyond that he was going to give some direction to his executors. It might have been to pay a legacy, or to refrain from paying a legacy. If we are to sustain this as a holograph writing, we cannot say where we are to stop. Suppose a person writes a skeleton will, and appends his signature, while the legacies are filled up by some one else, would that be a holograph writing? The case would be at least as strong as the present. A testamentary purpose would be very clearly proved from the person writing a skeleton will. There would be the subscription there as here. Still the person's will would not be expressed in the holograph part. The will does not consist of the formal parts of the writing, but of the substantial directions contained in it. To sustain this writing as holograph would be to sanction a principle inconsistent with the general rule of law.

The following interlocutor was pronounced:—

"*Edinburgh, 15th November* 1871.—The Lords having heard counsel on the reclaiming-note for Margaret Maitland against Lord Jerviswoode's interlocutor of 5th June 1871, recall the interlocutor of the Lord Ordinary; Find that the writing founded on by the claimant Margaret Maitland, as containing a legacy of £900 in her favour by her deceased grandfather Thomas Maitland of Pogbie, is neither tested in terms of the statutes, nor holograph of the said deceased, but is improbative, and is therefore invalid and ineffectual as a testamentary writing: Find *separatim*, that when the said deceased Thomas Maitland subscribed the said writing he was labouring under insane delusions, and was not of sound disposing mind; Therefore of new repels the claim for the said claimant Margaret Maitland, and remit to the Lord Ordinary, with power to his Lordship to decern for the expenses hereinafter found due, when the same shall have been taxed; Find the claimant the said Margaret (Margaret) Maitland liable to the other claimant the Rev. William Alexander Keith in the expenses of the competition, and remit to the Auditor to tax the account of said expenses when lodged, and report to the Lord Ordinary."

Agent for Miss Maitland—W. R. Skinner, S.S.C.

Agent for Mr Keith—Wm. B. Hay, S.S.C.

Friday, November 10.

LAING & IRVINE *v.* WILLIAM ANDERSON AND OTHERS.

WILLIAM LAIDLAW & SONS v. WILLIAM ANDERSON & OTHERS.

Triennial Prescription—Act 1579, *c.* 83. *Held* that the triennial prescription does not apply to proper mercantile transactions between manufacturer and merchant.

The facts in the case of *Laing & Irvine*, as stated by the pursuers, were as follows:—

In 1853 Andrew Cathrae, then resident in Mel-