damage thereby sustained;" and the defenders' witnesses were all cross-examined on behalf of the pursuer as well as on behalf of the other defender. No alternative case is made on record or in the course of the proof.

Besides, a very little inquiry should have satisfied the pursuer that he had not sufficient grounds for proceeding against Galbraith. It was certainly not a sufficient reason for his doing so that Arthur alleged that Galbraith sold the Ralli car to him. Galbraith's assurance, supported by the bankrupt Morris Reid and others, should have satisfied him that there was no sale of that car.

The result is that I am of opinion that the pursuer is entitled to expenses against Arthur in the Court below; that as Galbraith has been assoilzied and is not entitled to expenses against Arthur he must get his expenses in the Court below from the pursuer.

As to the expenses in the appeal, I think there should be no expenses as between the pursuer and Arthur. Galbraith must get his expenses as against the pursuer.

The Court dismissed the appeal, and found in fact and in law in terms of the interlocutor of 22nd January 1900. *Quoad* expenses, the interlocutor proceeded—"Recal the said interlocutors in so far as they find the defender Arthur liable in the expenses of the defender Galbraith: Find the pursuer entitled to expenses against the defender Arthur in the Inferior Court only: Also find the defender Galbraith entitled to expenses against the pursuer both in the Inferior Court and in this Court; and *quoad ultra* find no further expenses due as between the pursuer and the said defender Arthur."

Counsel for the Defender and Appellant Arthur—Salvesen, Q.C.—Findlay. Agents—Simpson & Marwick, W.S.

Counsel for the Pursuer and Respondent—W. Campbell, Q.C.—Hunter. Agent—Alexander Ross, S.S.C.

Counsel for the Defender and Respondent Galbraith—Ure, Q.C.—Guy. Agents—Macpherson & Mackay, S.S.C.

Wednesday, November 7.

SECOND DIVISION.

GRAY'S TRUSTEES *v.* WILSON.

Writ—Addition—Testament—Subscription—Holograph Addition Inserted between End of Tested Deed and Testator's Signature—Holograph Writing—Succession—Testamentary Writing—Authentication of Holograph Addition.

A testator who died domiciled in Scotland caused a will to be framed in English style, which he signed before witnesses. On his death an addition in red ink, holograph of the testator, and headed "Codicil," was found inserted in a blank space between the end of the deed and his signature. The "codicil" made certain additional provisions in favour of a beneficiary under the will.

Held that the holograph addition was authenticated by the testator's signature as part of his will, and must therefore receive effect.

This was a special case presented for the determination of questions as to the validity and effect of the testamentary writings of Robert Gray, who resided in Dundee, and died there on 19th December 1899.

By his will, which was dated 7th July 1893, the testator appointed certain persons to be his trustees and executors. He, *inter alia*, bequeathed to Agnes Wilson, his housekeeper, an annuity of £30, to Mrs Barbara Wilson an annuity of £10, and to Mrs Robert Dow an annuity of £5. He further directed his trustees to pay over the residue of his estate, after the death of the last annuitant, to the Association for the Education of the Deaf and Dumb in Dundee, to be applied in establishing bursaries or scholarships. The will, which was written on a printed form of a will in the English style, was framed by Mr Miln, actuary in the Dundee Savings Bank, at the testator's request, and according to his instructions. It was duly signed by him in Mr Miln's office in presence of two witnesses, who subscribed it as such.

After the testator's death the will was found in his repositories. On the margin of the first page was written a note in red ink, in the testator's handwriting, in these terms—"Mrs Barbara Wilson died on the 22nd of Decr., year 1894. Her annuity falls to Agnes Wilson afore mentioned." This note was neither signed nor initialled. In a space which had been left between the end of the will and the testator's signature, there was written also in red ink and in his handwriting the following addition:—"*Codicil.*—The will above was written by John Miln, formerly clerk to John Sturrock, writer, Dundee. I hereby enjoin that the annuity of ten pounds designed for Mrs Barbara Wilson, who died in Glasgow last year, shall be added to the annuity of Mrs Agnes Wilson forementioned, together with free use of my house furniture for her life, including my library, and my trustees foresaid may choose anything if they like for themselves."

The admitted facts with regard to these additions in red ink were as follows:—"Mrs Barbara Wilson, the mother-in-law of Agnes Wilson, died on 22nd December 1894. About a week after her death the deceased had a conversation with his housekeeper in his house. He asked her whether she wished to remain in his house after his death, seeing that she would have no home in Glasgow in consequence of the death of her mother-in-law who lived there. Mrs Agnes Wilson said she would like to remain, and the deceased then told her that the £10 annuity which he had left to her mother-in-law would be added to her

annuity, as he did not think she would have enough, and that she would get the use of his furniture during her life. On the same day he told her that he had written a codicil to his will in red ink, and that it was all right now. He told her also that the codicil gave her an additional annuity of £10 and the furniture until she died, and that the furniture was then to be sold by his trustees. He many times on later dates repeated these statements to Mrs Agnes Wilson."

A question having arisen in regard to the validity and effect of the additions in red ink this special case was presented for the opinion and judgment of the Court.

The parties to the special case were—(1) the trustees and executors under the will, (2) Mrs Agnes Wilson, (3) Mrs Robert Dow, (4) the directors of the Dundee Institution for the Education of the Deaf and Dumb.

The first and second parties maintained that the holograph marginal note on page one of the deceased's will, and the holograph addition written in red ink at the end of the will beginning "codicil" were, or at least the said addition beginning "codicil" was, a good and valid testamentary provision made by the deceased, and must receive effect as containing his final directions for the disposal of his estate.

The third and fourth parties maintained that the two additions in red ink and holograph of the deceased were invalid and ineffectual, being unsigned and otherwise destitute of the formalities necessary to give them due testamentary effect under the law of Scotland. They therefore claimed that the whole residue of the estate snbject to the annuities which it was admitted were validly bequeathed, must be held for the fourth parties.

The question of law for the opinion of the Court was—"Are the red ink holograph additions to the said will, or either and which of them, valid and effectual as part of the testamentary writings of the deceased Robert Gray?"

Argued for the first and second parties—The addition headed "Codicil" should receive effect. It was as truly part of the deed as any other, and was authenticated by the testator's subscription. The law required no other evidence of a completed intention. But if that was necessary it was matter of admission that the testator had spoken to his housekeeper of the additional provision given her by the "codicil," both before and after he had made it—Stair, iv. 42, 6; *Speirs* v. *Home Speirs*, July 19, 1879, 6 R. 1359; *Russell's Trustees* v. *Henderson*, Dec. 11, 1883, 11 R. 283; *Burnie's Trustees* v. *Lawrie*, July 17, 1894, 21 R. 1075.

The first and second parties did not argue in support of the validity of the unsigned marginal addition.

Argued for the third and fourth parties—The so-called "codicil" was not validly subscribed. It partially revoked the will, which the testator had previously subscribed. It was settled that an alteration in the terms of a deed could not be made in the testing clause, and the present was a less favourable case for admitting it. The testator might easily have signed the codicil if he had meant it to receive effect. That he had not done so showed that it was merely deliberative—*Brown* v. *Maxwell's Executors*, May 21, 1884, 11 R. 821, *per* Lord Young; *Pattison's Trustees* v. *University of Edinburgh*, Nov. 9, 1888, 16 R. 73; *Parker* v. *Matheson*, March 9, 1876, 13 S.L.R., 405; *Goldie* v. *Shedden*, Nov. 4, 1885, 13 R. 138.

LORD JUSTICE-CLERK—The document, of which a facsimile is before us, bears on its face to be signed by the testator, with the exception of the marginal addition on the first page, which has no special authentication. Taking the document as it stands, I have no difficulty in holding that it is effectual in all its parts, with the exception of the marginal addition, and that it is quite in accordance with the rules which govern the authentication of deeds to hold that the red ink addition which is written between the testator's signature and the body of the will must receive effect. It is, no doubt, distinguished from the deed by being headed "codicil," in the testator's handwriting, and being written in red ink, but I think these facts afford no reason for not giving effect to it, looking to the position which it occupies in the deed. The marginal addition is not in form a part of the deed; it could not be got in except by something which showed that it was intended to be brought in. What is written on the margin is deliberative, and does not show a final resolve in the mind of the testator. But the codicil is not in that position.

If we are entitled to look at the facts, we find that the testator had said to Mrs Wilson, that it was his intention to make the additional provision for her which he made by his codicil, and further, that he told her that he had done so. There is therefore nothing in the admitted facts to throw doubt upon the conclusion which I draw from the deed itself; and I am accordingly of opinion that the question of law should be answered by declaring that the marginal addition is not effectual, but that the "codicil" is.

LORD TRAYNER—I agree. Of course a testamentary writing to be effectual must be subscribed; and the question here is, is this document subscribed? The case against it is that it is difficult so to hold because of the use of the word "codicil," and also because it contains within itself evidence that it was written after the earlier part of the deed. I think the codicil is not the less truly subscribed because the testator's name was already written below it, and in my opinion that name authenticated everything that was written above it. In fact, the whole deed, including the codicil, is subscribed—the testator's name is "subscribed" to it all. It is probable that the testator, finding that he had room between the end of the deed and the signature to put in the codicil, did so, intending that the one signature should serve for the whole deed. And in doing so I think he

complied with the strict rule that a deed must be subscribed. If we go past the deed itself and take into account the stated facts—although I doubt the propriety of doing so—the statements and admissions of the parties exclude the idea that this addition was merely deliberative, for we are told that the testator not only said that he was going to make these additional provisions, but also said that he had done so. But I think the codicil is effectually made part of the deed apart from that extrinsic evidence.

LORD MONCREIFF—I am of the same opinion. I assume that every holograph will must be authenticated by the signature of the testator, or by his initials, if it was his habit to sign by means of his initials. In some cases parole evidence has been admitted to connect the signature with the writing; and where that is necessary it would appear to be competent. The point which is to be ascertained here is, whether the addition in red ink—I do not mean the marginal addition—was deliberative or not. I think it is clear that the testator's intention was that the codicil should get the benefit of, and be authenticated by the signature "Robert Gray," which he had already written as his subscription to the body of the deed. The peculiarity of the case is, that the signature does duty both for the will and the codicil. But if it is plain that the testator intended it to serve for both, I see no reason why his intention should not receive effect.

The only other observation I have to make is this—it often happens that a testator in making holograph interlineations or marginal additions to his will neglects to authenticate them by his initials. Now, it is quite settled that the mere fact that the will itself is subscribed will not be sufficient to sustain such holograph alterations, although in a sense they are inserted above the subscription, because often these are put on tentatively; and if they are not authenticated it would not be safe to regard them as the expression of a completed intention. Here, instead of making a marginal addition or interlineation, the testator has put this addition immediately above his signature at the end of the deed. I am clearly of opinion that he intended the addition so made to form part of his testamentary writings, and I therefore agree that the question should be answered as your Lordship proposes.

LORD YOUNG was absent.

The Court answered the question of law by deciding that the red ink addition on the margin of the will was not a valid and effectual addition thereto, and that the holograph red ink addition at the end of the will, and beginning "codicil" was a valid and effectual part of the testamentary writings of the deceased.

Counsel for the First and Second Parties—W. Campbell, Q.C.—Sandeman. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for the Third and Fourth Parties—Lees—Henderson. Agents—Kinmont & Maxwell, W.S.

Tuesday, November 13.

FIRST DIVISION.

DUKE OF ATHOLL *v.* GLOVER INCORPORATION OF PERTH

Expenses—Taxation—Making and Printing Excerpts from Session-Papers in Old Cases Referred to.

The Auditor on taxation having allowed as a charge against the unsuccessful party the expense of making and printing excerpts from the session-papers in certain old cases referred to at the debate, objection was taken to his report in respect of the allowance of this charge. Objection *sustained.*

See *Wedderburn* v. *Duke of Atholl,* and *Duke of Atholl* v. *Glover Incorporation of Perth,* March 3, 1899, 36 S.L.R. 481, and 1 F. 658, and (H.L.) May 28, 1900, 37 S.L.R. 686.

In these cases the pursuers (the Duke of Atholl and Others) were found entitled to expenses both in the Court of Session and House of Lords.

On the motion for approval of the Auditor's report on the expenses in the Court of Session in these cases, the defenders objected to a charge of £40 which had been allowed for the expense of excerpting and printing extracts from the session-papers in certain old cases which had been referred to at the debate; and argued, that as the session papers could be obtained from the library, the expense of printing from them should not be allowed against the losing party. The pursuers pointed out that these excerpts had been used both at the hearing before the Division and before the House of Lords, and that the expense of printing them could not be recovered as part of the costs in the House of Lords, as it was there a rule not to allow the expenses of documents already printed in the Court below.

LORD ADAM—[*after dealing with another objection*]—The second objection is quite different. It appears that there were several old cases referred to by both parties which are very briefly reported, and it is alleged that the reports were incorrect, and that the grounds of these decisions could not be understood or the point decided ascertained without reference to the session-papers. In the course of that investigation Mr Johnston's clients printed large excerpts from the session-papers, and the question is, whether he is entitled to charge the expense thereby incurred against the unsuccessful party. These excerpts may have been useful to the Court and to counsel, but I take it they are of the nature of things which a party may do to facilitate the apprehension of the case by counsel, but which he cannot charge against the opposite party. In the ordinary course counsel obtains and reads, in the course of his argument, the session-papers, and I think we cannot allow the expense of procuring and printing excerpts from them.