Expenses of Roup.—This was a preliminary expense required to obtain the rent, as a higher rent was to be expected if the parks were let by public roup and not by private bargain. It was an annually recurring expense, and should therefore be included in the deductions allowed.

Argued for the respondent—Neither the discount nor the expenses of the roup were permissible deductions. The papers in *Maitland* v. *Assessor for Midlothian*, 1893, 20 R. 628, 30 S.L.R. 618, showed that in that case both had been disallowed.

LORD SALVESEN—There are some points in this case which it is possible for us to decide, the first being whether discount paid to the grazing tenants for what the Committee call "prompt payment of their rents," but what I, in the light of other matters disclosed in the case, would describe as prepayment, is a good deduction from the gross rental of the grass parks. I am of opinion, following the case of *Maitland* (20 R. 628, 30 S.L.R. 618), where I think the matter is made the subject of decision, that it is not a good deduction. If a proprietor lets an agricultural subject on the footing that the tenant may either pay £100 of rent on the termination of the lease, or, in his option, pay £95—representing a discount of one shilling in the pound—at the commencement of the lease, I think the yearly rent or value of the subject is £100. The landlord gets a consideration in respect of the discount, namely, prepayment of the rent which would ordinarily fall to be paid when the occupation was completed. Accordingly I think that we should uphold the Committee's decision on this matter. [*After dealing with matters with which this report is not concerned his Lordship proceeded*]—As regards the expenses of the roup of the grass parks I am also of opinion that these expenses do not form a legitimate deduction from the gross rent of the parks. This apparently was decided in the case I have already referred to, where it was held that the expenses of advertising the roup could not be deducted—a decision which as at present advised I am prepared to accept as sound. On the whole matter I think we have not sufficient grounds for interfering with the determination of the Committee and should accordingly hold that their decision was right.

LORD CULLEN—I am of the same opinion. With regard to the expenses of the roup it appears that no figure for these expenses has been proved, but assuming that we had the figure, as at present advised I am of opinion that the expenses incurred in finding tenants by the competitive method of a private roup do not under the Valuation Acts form proper deductions from the rents contracted to be paid.

As regards the discount, it seems to me that we do not have sufficient information in the case to enable us to know precisely what the facts are, but I agree with your Lordship in the view that the discount would not form a proper deduction from the rent if it was given in respect of the rent being paid earlier than would be the case in a grazing lease conceived in ordinary terms. [*His Lordship then dealt with matters with which this report is not concerned.*]

LORD HUNTER—I concur.

The Court refused the appeal.

Counsel for Appellant—Skelton. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondent—J. R. Dickson. Agents—Ross Smith & Dykes, S.S.C.

COURT OF SESSION.

Saturday, March 11.

FIRST DIVISION.

STENHOUSE *v.* STENHOUSE.

Succession—Testament—Holograph Writing—Subscription—Adoption—Adoption of Unsubscribed Writing.

An unsubscribed document in the form of a will holograph of the deceased was found in his repositories inside a closed envelope on the back of which was written, also in deceased's handwriting, the words "Will & Testemony off Joseph Stenhouse for Mr Sturrock, S.S.C., Dalkeith." The document, which was headed "18 Westfield Park, Dalkeith, Will & Testemony of Joseph Stenhouse, April 1915," disposed of his whole estate. *Held* that the holograph docquet on the envelope did not constitute a subscribed adoptive writing, and that it was incapable therefore of supplying by adoption the lack of subscription of the holograph document it referred to so as to make the letter a valid testamentary writing.

Joseph Stenhouse and others, *first parties*, James Stenhouse and others, *second parties*, and Elizabeth Stenhouse and another, *third parties*, presented a Special Case to the Court for the determination of certain questions as to the effect of an unsubscribed document, holograph of the late Joseph Stenhouse, found in his repositories.

The Case stated—"1. Joseph Stenhouse, who resided at No. 18 Westfield Park, Dalkeith, died there on 28th March 1921. He was never married, and was predeceased by all his brothers and sisters, none of whom left any issue except his brother Andrew. The parties of the first part are the whole children of the said Andrew Stenhouse, save Margaret and Robert, both of whom predeceased the said deceased Joseph Stenhouse. Margaret left no issue, and Elizabeth Stenhouse or Anderson, a daughter of Robert, is a party of the first part. The parties of the first part with the addition of Jane Stenhouse or Bennie, party of the second part, the remaining child of the said deceased Robert Stenhouse, are the whole heirs *in mobilibus* of the said deceased Joseph Stenhouse. The parties of the second part are the whole beneficiaries under the document after mentioned,

and the parties of the third part are two of these beneficiaries. 2. In a locked chest, the key of which was in the possession of the said deceased Joseph Stenhouse, in his house at No. 18 Westfield Park aforesaid, there was found by John Stenhouse, nephew of the deceased, after deceased's death, a sealed envelope on which was written in his own handwriting 'Will & Testemony off Joseph Stenhouse for Mr Sturrock, S.S.C., Dalkeith.' Prior to his death the deceased had informed the said John Stenhouse that he had made a will in favour of his grandnephews and grandnieces, and that the said John Stenhouse would find said will in said locked chest, the key of which deceased carried in his pocket. On being opened the envelope was found to contain a document, also holograph of the said deceased Joseph Stenhouse, written in copying ink pencil and dated 'April 1915.' The document contained certain deletions and alterations also made with copying ink pencil. The document itself was not subscribed, and the deletions and alterations were not authenticated in any way. . . . It was in the following terms:—

'18 Westfield Park Dalkeith
Will & Testemony of Joseph Stenhouse
April 1915

'Should I be taken away before my sister
Joan Stenhouse
~~20~~ 30
I leave to her for life ~~15~~ shillings a-week
(*one word here delete and undecipherable*) House rent & taxes
also off my estate
the rest to be diveded between
James Stenhouse son of Joseph
Stenhouse
(James one share
(twins Stenhouse sons of Andrew
Stenhouse
(John divided
Joseph Stenhouse son of John
Stenhouse
Margret Stenhouse daughter of Tomas
Stenhouse
Mary Stenhouse daughter of James
Stenhouse
Jane Stenhouse daughter of the late
Robert Stenhouse
one only if married
that Jane get double share if not married
all to be 21 years of age before they get it
This to given to Mr Sturrick
S.S.C. Dalkeith
which will carry through all transactions
also
Margaret Stenhouse Daughter of John
Stenhouse
Elizabeth Stenhouse Daughter of Joseph
Stenhouse
these 2 get one share each
My money is in War Loans ending 1923
April Commershall Bank
a small sum in the same Bank
that it cannot be divided till my sister death
be
Watch & Gold Chain to given to Joseph
Stenhouse
Four words here delete and undecipherable.'

No other writing of a testamentary character by the said deceased Joseph Stenhouse has been found. . . . In the same locked chest there was found a sealed envelope on which was written in the said deceased Joseph Stenhouse's handwriting 'Private, Mr Sturruck, S.S.C., Dalkeith.' On being opened it was found to contain (1) a certificate, No. 246,755 in name of Joseph Stenhouse of 18 Westfield Park, Dalkeith, gentleman, dated 18th July 1918, for £1000 registered £5 per cent. National War Bonds 1923, repayable 1st April 1923; (2) deposit-receipt, No. 8479, dated 13th December 1920, of the Bank of Scotland, Eskbank Branch, in name of Miss Joan Stenhouse and Mr Joseph Stenhouse, 18 Westfield Park, Eskbank, for £155 sterling, to be drawn by either or survivor of them; (3) deposit-receipt, No. $\frac{1}{335}\frac{1}{9}$, dated 11th January 1921, of the Commercial Bank of Scotland, Limited, Dalkeith, in name of Mr Joseph Stenhouse, 18 Westfield Park, Dalkeith, for £150 sterling; (4) a receipt, dated 3rd July 1918, by the agent of the said branch of the Commercial Bank of Scotland at Dalkeith, for an application for National War Bonds amounting to £1000 sterling, together with payment of a like sum by cheque; and (5) a printed notification from the chief accountant of the Bank of England, dated 18th July 1918, forwarding register certificate in respect of a sum of registered £5 per cent. National War Bonds 1923. There is no evidence other than before set forth of whether the said deceased Joseph Stenhouse intended the said document to receive effect as a testamentary writing or not. . . . 6. Questions have arisen between the parties as to the effect of the said document holograph of the said deceased Joseph Stenhouse. The parties of the first part contend that as the said document is not subscribed by the said deceased Joseph Stenhouse it is invalid as a testamentary writing. . . . 7. The parties of the second and third parts contend that the holograph writing of the said deceased Joseph Stenhouse is a valid testamentary disposition of his means and estate. . . ."

The *questions of law* included the following:—"1. In the circumstances above set forth is the said document found in the said deceased Joseph Stenhouse's repositories a valid testamentary writing? . . ."

Argued for first parties — Subscription was essential. It might be either direct or indirect, *i.e.*, by adoption—*Taylor's Executors* v. *Thom*, 1914 S.C. 79, 51 S.L.R. 55. The fact that the writer had been altering the document from time to time indicated lack of finality. The docquet on the envelope was merely descriptive. *Russel's Trustees* v. *Henderson*, 11 R. 283, 21 S.L.R. 204, was a very special case and had been so treated in subsequent cases. The following additional authorities were cited:—*Goldie* v. *Sheddon*, 13 R. 138, 23 S.L.R. 87; *Skinner* v. *Forbes*, 11 R. 88, 21 S.L.R. 81; *Foley v. Costello*, 6 F. 365, 41 S.L.R. 286; *France's Judicial Factor* v. *France's Trustees*, 1 S.L.T. 126.

Argued for second parties—The docquet on the envelope was probative, and by adoption made the document it referred to a valid will. Prior to the case of *Taylor's Executors* v. *Thom* (*cit.*) there was no doubt

that the law would have upheld this docquet as authenticating the will—*Russel's Trustees* v. *Henderson* (*cit.*). The facts were very similar in the case of *Murray* v. *Ruffel*, 1910, 2 S.L.T. 388. The testator's ignorance of legal forms must also be kept in view, a fact which distinguished this case from *Shiell* v. *Shiell*, 1913, 1 S.L.T. 62. The case of *Taylor's Executors* was distinguishable by the fact that there the envelope was unsealed and did not bear a direction to the writer's lawyer.

LORD PRESIDENT—A will derives its whole validity from being the finally concluded act of the testator, and where there is a doubt the question always is whether the document put forward as a will contains evidence showing that it constitutes such an act. Subscription is the proper evidence. A will being simply a direction or set of directions for the disposal of the testator's estate after his death, subscription of the document in which these directions are set down is unnecessary if in another writing which unmistakably identifies that document the testator designates and adopts it as containing his will. In that case the adoptive writing is really the will, and the document containing the directions plays the part of a schedule annexed to and incorporated with it. But if the adoptive writing is really to make the will, and therefore to constitute the finally concluded act, I think it follows from a number of decisions, some of which are not perhaps easy to reconcile, that it must contain the like evidence of being a finally concluded testamentary act as if the whole thing had been included in one document. The adoptive writing, in short, requires to be subscribed if it is to be effectual. To recognise any other rule would involve the risk of mistaking mere descriptive docquets and backings for testamentary acts with all their important consequences. The writing on the envelope in the present case only repeats the heading written at the top of the pretended will, and is incapable in my opinion of being construed as anything more than a descriptive docquet. It falls far short of constituting a subscribed adoptive writing.

LORD MACKENZIE—I am of the same opinion. We are asked here to apply the principle of adoption. I am quite unable to do so, because I do not think there is enough to show that there was subscription of a document sufficient to adopt the informal writing.

LORD SKERRINGTON—The principle of adoption is a very important and valuable one, but it should be applied with discretion, because otherwise the result might be to whittle away the rule that a testamentary writing must be subscribed.

In the present case the docquet on the envelope does not in my judgment raise any question of adoption.

LORD CULLEN—The holograph writing within the envelope is not subscribed, and is not therefore a completed testamentary act. The contention of the second parties is that the holograph docquet on the back of the envelope supplies the lacking subscription. Putting aside any questions as to the due identification of the document to which the docquet refers, the docquet, on this contention, falls to be regarded as a will or testamentary writing, duly authenticated by subscription, whereby the deceased intended to adopt or incorporate by reference, as by way of a schedule, the holograph writing in question and so to make good indirectly the want of subscription in the latter. It is difficult to understand why the deceased, if minded to supply the defect of subscription of that writing, should have taken such a course instead of appending his subscription to it in the ordinary way. I am, however, unable to regard the docquet as such a testamentary writing. It appears to me to be merely of the nature of a backing, descriptive of the document to which it refers, leaving the legal qualities of the latter to speak for themselves.

The Court answered the first question of law in the negative.

Counsel for First and Third Parties—Patrick. Agents—T. & J. C. Sturrock, Solicitors.

Counsel for Second Parties—W. A. Murray. Agent—A. N. Stephenson, S.S.C.

HIGH COURT OF JUSTICIARY.

Monday, March 13.

(Before the Lord Justice-Clerk, Lord Salvesen, and Lord Ormidale.)

[Sheriff Court at Dumbarton.

YEUDALL *v.* SWEENEY.

YEUDALL *v.* LYNN.

Justiciary Cases—Statutory Offence—Carrying Passengers by Boat without Certificate from Board of Trade as to Survey—Boat "which Carries more than Twelve Passengers"—Merchant Shipping Act 1894 (57 *and* 58 *Vict. cap.* 60), *sec.* 271 (1)—*Merchant Shipping Act* 1906 (6 *Edw. VII, cap.* 48), *sec.* 21.

Justiciary Cases—Procedure—Complaint—Relevancy—Plea not Timeously Stated.

The Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60) enacts—Section 271 (1)—"Every passenger steamer which carries more than twelve passengers shall (*a*) be surveyed once at least in each year in the manner provided in this part of this Act; and (*b*) shall not ply or proceed to sea or on any voyage or excursion with any passengers on board unless the owner or master has the certificate from the Board of Trade as to survey under this part of this Act, the same being in force and applicable to the voyage or excursion on which his steamer is about to proceed." Section 743 renders the provisions of section 271 applicable to motor boats.

In two prosecutions against the owners of motor boats for conveying more than twelve passengers without