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.

LORD M'LAREN—As regards the 2nd objection, I agree that it would be an innovation to allow the expense of excerpts from printed reports because they are referred to merely as precedents. Where a reference to old documents is necessary in the course of a historic inquiry, the rule might be different.

The LORD PRESIDENT and LORD KINNEAR concurred.

The Court disallowed the charge objected to, and *quoad ultra* approved of the Auditor's report.

Counsel for the Pursuers — Solicitor-General (Dickson, Q.C.)—C. N. Johnston. Agents—Thomson, Dickson, & Shaw, W.S.

Counsel for the Defender—Dundas, Q.C. —Blackburn. Agents—Dundas & Wilson, C.S.

Wednesday, November 14.

FIRST DIVISION.

MACKNIGHT'S TRUSTEE *v.* CORPORATION OF EDINBURGH.

Arbitration — Procedure — Statutory Arbitration—Housing of the Working Classes Act 1890 (53 *and* 54 *Vict. c.* 70), *Sched. II., sec.* 26—*Appeal against Award of Arbitrator.*

The Housing of the Working Classes Act 1890, Schedule II., section 26, provides that a party to whom compensation exceeding £1000 has been granted in an arbitration under the Act, if dissatisfied with the amount awarded, may apply to the Court for leave to submit the question of the proper amount of compensation to a jury, and that the Court may grant leave "upon being satisfied that a failure of justice will take place if the leave is not granted."

Circumstances in which leave *refused.*

Observations on the considerations by which the Court should be guided in considering whether leave should be granted.

This was a petition at the instance of Hugh Martin, S.S.C., trustee upon the testamentary estate of the late A. E. Macknight, advocate, under section 26 of Schedule II. of the Housing of the Working Classes Act 1890. That section enacts —"(*a*) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under Part I. of this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds £1000, . . . the party dissatisfied may, upon obtaining the leave of the High Court, which leave may be granted by such Court, or any judge thereof at chambers in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen. The cause of appeal shall be deemed to have arisen (1) where a certificate has been issued as aforesaid, at the date of the issue of the certificate." By article 30 of said schedule, sub-sec. (*e*) it is provided that in Scotland "any reference to the High Court shall be construed as a reference to the Court of Session."

The Lord Provost, Magistrates, and Council of Edinburgh, acting under the Edinburgh Improvement Scheme Provisional Order Confirmation Act 1898, on 6th December 1899 served a notice on Mr Martin intimating that they proposed to purchase under their statutory powers certain property in Allan Street, which formed part of the trust estate under his charge.

Mr Martin claimed £2500 as compensation, and as parties were unable to agree as to the amount, Mr Hall Blyth, C.E., was appointed by the Secetary for Scotland as sole arbitrator under the provisions of the Housing of the Working Classes Act 1890.

Proof was led before the arbitrator on 12th May 1900. For the claimant Mr Marwick, architect, and Mr Lawrence, surveyor, valued the subjects at £2470. It was also proved that when the Corporation first resolved to acquire the property, their own valuators had valued the subjects at £2117. For the Corporation, Bailie Brown, a valuator, who was also Convener of the Improvement Schemes Committee, valued the subjects at £1133. No other witnesses were examined.

The arbitrator having visited the subjects in question and considered a representation against his proposed findings, issued an award by which he fixed the compensation at £1556.

On August 17th he granted a certificate of the amount of compensation.

Mr Martin thereupon presented this petition to the First Division of the Court of Session, in which, after narrating the facts above set forth, he prayed the Court "to grant leave to the petitioner, as trustee foresaid, to appeal in the manner provided in the said Act against the award of Benjamin Hall Blyth, Esq., dated 6th June 1900; and to submit to a jury the question of the proper amount of compensation in respect of the said lands and others situated in Allan Street, Stockbridge, belonging to the trust estate of the said late Alexander Edward Macknight, required to be taken by the Lord Provost, Magistrates, and Council of the City and Royal Burgh of Edinburgh, as local authority aforesaid, in respect of which the sum of £1556 was so awarded."

Answers were lodged for the Corporation.

The arguments sufficiently appear from the opinions of the Judges.