see that such conclusions would be appropriate to a mere demand for an accounting irrespective of a petitory conclusion, because the meaning of a decree against two people jointly and severally is simply this, that as regards the pursuer each is to be made liable *in solidum*, but that *inter se* they may be liable *pro rata*—that is, each for his own share—and therefore the decree against each for full payment to the pursuer will still leave open to each a claim for contribution against the other. Now in a case of that kind it might very well be that the dismissal of a conclusion against one defender might be prejudicial to the other, who after such dismissal still remains in the case, because upon the hypothesis upon which the pursuer brings his action he has a right of relief of which he is deprived by the discharge of a co-obligant. But a general demand against several persons to account for their intromissions implies a demand against each to render an account of the intromissions had by himself. It appears to me that once it is clear that one of the defenders originally called is not liable to account at all, there is no difficulty whatever in holding that the case must go on as against the others, who according to the allegation have had intromissions with the pursuer's funds, for which they have not yet accounted. It is not disputed that the petitory conclusions for payment are perfectly relevant so as to enable the pursuer to get his decree for money against one or other or both of the defenders remaining, although the action is dismissed as against the other defender Brown. And therefore I am quite unable to see that there is any reason why this action should not go on as against the remaining defenders, and I think the authorities which your Lordship has referred to are all in favour of that course being taken.

LORD PEARSON — I am of the same opinion.

LORD M'LAREN was absent.

The Court recalled the Lord Ordinary's interlocutor, dismissed the action as against the defenders Robert Brown & Co. and Robert Brown, and *quoad ultra* allowed the pursuer to lodge a minute of amendment of his condescendence against the remaining defenders.

Counsel for the Pursuer (Respondent)—Constable, K.C.—Munro. Agent—Thomas Henderson, W.S.

Counsel for the Defenders (Reclaimers)—Cooper, K.C.—Kemp. Agents—Sharpe & Young, W.S.

Saturday, November 14, 1908.

OUTER HOUSE.

[Lord Skerrington.

PENTLAND AND OTHERS *v.* PENTLAND'S TRUSTEES.

Succession—Testament—Clause Validating Informal Writings — Unsigned Holograph Writing Subscribed "Your Loving Mother."

A testatrix by her settlement directed her trustees to "give effect to any wishes which I may hereafter express in writing, however informal." She subsequently executed an unsigned holograph writing in favour of certain of her children, which she subscribed "Your loving mother." The writing was found in her repositories after her death enclosed in a sealed envelope, on which she had endorsed the words "Not to be opened untill." *Held per* Lord Skerrington (Ordinary) that the document was a valid testamentary writing.

Crosbie v. *Wilson*, June 2, 1865, 3 Macph. 870, *followed.*

Hamilton's Trustees v. *Hamilton*, November 28, 1901, 4 F. 266, 39 S.L.R. 159, *distinguished.*

Mrs Jane Muir or Pentland died on 30th June 1905 leaving a probative trust-disposition and settlement dated 19th January 1894, by which she directed her trustees to hold her estate in trust (*first*) for the liferent use of her husband in the event of his surviving her, and (*second*) on the death of the survivor of the spouses for the liferent use of two of her daughters Jeanie Pentland and Margaret Lawrie Pentland so long as they remained unmarried. The third purpose provided, *inter alia* "that after the death of the survivor of me and my said husband, and on both of the said Jeanie Pentland and Margaret Lawrie Pentland being married or dying, I direct my trustees (*first*) to give effect to any wishes which I may hereafter express in writing, however informal. . . ." In the *fourth* place she directed her trustees to divide the residue of her estate among her whole children then alive and the issue of predeceasers.

Mrs Pentland was survived by her husband and by eight sons and four daughters. Shortly after her death there was found in a drawer in a chest of drawers in her bedroom, where she was accustomed to keep private and important papers, a holograph writing enclosed in a sealed envelope, on which she had endorsed the words "Not to be opened untill." The writing was in the following terms:—"*The Cottage, Laverock Bank Road, Trinity, Edinburgh.*"—[The words in italics were embossed on the notepaper.]—"This is to certify that all the money given by my brother James and son Frank to me, and to be given as a loan to the firm, with the interest on same, is to be divided apart to all

the other monies that may be to share in the family to my four daughters, and David, Fred, and Arthur. Pearl to have my watch, and if she and Margaret L. should be married, Maggie is to have the piano, it has always been understood to be hers. Pearl to divide the small tables in drawing-room as she thinks fit. The chest of drawers in my room and walnut wardrobe to go to Pearl and M. L. as they like to settle it. Can also keep or give away the old dressing-table in my room, it must be over a hundred years old now. I hope the father and I will be spared yet awhile, but our time must be short at longest—leaving much love to one and all in the blessed hope we shall all meet in the home above.

"Yr. loving mother.

"August 4th 1904."

On 6th June 1908 David N. Pentland and others, the beneficiaries mentioned in the said holograph writing, brought an action against Mrs Pentland's trustees for declarator that the document formed part of her testamentary writings.

The argument sufficiently appears from the opinion (*infra*) of the Lord Ordinary.

The following authorities were referred to:—*Titill*, December 6, 1610, M. 16,959; *Russell's Trustees* v. *Henderson*, December 11, 1883, 11 R. 283, 21 S.L.R. 204; *Burnie's Trustees* v. *Lawrie*, July 17, 1894, 21 R. 1015, 31 S.L.R. 841; *Crosbie* v. *Wilson*, June 2, 1865, 3 Macph. 870; *Gillespie* v. *Donaldson's Trustees*, December 22, 1831, 10 S. 174; *Baird* v. *Jaap*, July 15, 1856, 18 D. 1246; *Speirs* v. *Home Speirs*, July 19, 1879, 6 R. 1359, 16 S.L.R. 784; Stair, iv, 42, 6; *Hamilton's Trustees* v. *Hamilton*, November 28, 1901, 4 F. 266, 39 S.L.R. 159; *Parker* v. *Matheson*, March 9, 1876, 13 S.L.R. 405; *Skinner* v. *Forbes*, November 13, 1883, 11 R. 88, 21 S.L.R. 81; *Dunlop* v. *Dunlop*, June 11, 1839, 1 D. 912; *Weir* v. *Robertson*, February 1, 1872, 10 Macph. 438, 9 S.L.R. 266.

Lord Skerrington — The late Mrs Pentland died on 30th June 1905 survived by eight sons and four daughters, and by her husband, who died on 29th May 1906. She left a probative trust-disposition and settlement dated 19th January 1894, by which she directed that her husband should enjoy the free income of her estate, and that after his death the income should be enjoyed by two of her daughters until they both married or died. After the death or marriage of these daughters the testatrix directed her trustees (*first*) 'To give effect to any wishes which I may hereafter express in writing, however informal,' and (*fourth*) To divide the residue among her whole children then alive, and the issue of predeceasers.

There was found in the drawer of a chest of drawers, where Mrs Pentland kept her private and important papers, a holograph writing by her. It was enclosed in a sealed envelope on which the words 'Not to be opened untill' are endorsed in her handwriting. The writing refers to a specific sum of money belonging to the testatrix, and provides for its division among her four daughters and three of her sons. The leading question in the case is whether this document is valid as a testamentary writing. It is not subscribed by the writer but it concludes with the words 'Yr. loving mother, August 4th, 1904.'

The first question is whether this holograph writing is effectual by itself and without reference to the clause in the trust-disposition and settlement above quoted. In my opinion it is settled that subscription is essential to the completeness and validity of a holograph testamentary writing, and that it is incompetent to resort to parole evidence for the purpose of showing that the writer regarded the document as complete without subscription. See *Skinner* v. *Forbes*, 1883, 11 R. 88, and *Goldie* v. *Shedden*, 1885, 13 R. 138. I do not think that the words 'Yr. loving mother' constitute a subscription in any sense of the term. They are a mere description of the writer. The parties are agreed that it was Mrs Pentland's 'habit to sign letters to her children merely with the words "your loving mother,"' but this admission comes to no more than that she did not think it necessary to authenticate such letters with her subscription. Accordingly I am of opinion that the writing is ineffectual by itself and that the admitted facts do not give it validity.

The next question is as to the effect of what I may call the dispensing clause contained in the trust-disposition and already quoted. In the third edition of his book on Wills and Successions, vol. i, p. 289-290, Lord M'Laren expresses the opinion that 'the attestation of a will cannot in any reasonable sense be held to apply to a codicil subsequently executed,' and that certain decisions of the Court of Session to an opposite effect 'are contrary to principle and to the provisions of the Attestation Statutes.' While I agree with his Lordship that these cases might be reconsidered on a proper occasion, the decisions to the effect that a testator may by anticipation give validity to subsequent writings which would otherwise be invalid are too numerous to enable me to disregard them, more particularly as the doctrine was affirmed by the First Division so recently as 1899 in the case of *Fraser* v. *Forbes' Trustees*, 1 F. 513.

The most striking and also the most apposite of the cases in question is that of *Crosbie* v. *Wilson*, 1865, 3 Macph. 870, where it was decided that a writing in the following terms:—'To A B my musical clock'—holograph of a testatrix, but unsigned by her, was effectual as part of her testamentary writings, in respect that in a trust-deed called 'No. 8' she had directed her trustees 'to pay such legacies as I may by a writing under my hand or by any writing subscribed by me, however informal, bequeath or direct to be paid.' The learned Judges seem to have had no difficulty in holding that the writing in question was a writing under the hand of the testatrix within the meaning of this clause,

and therefore valid. As the judgment which I am about to pronounce proceeds very much upon the authority of this decision, I think it well to point out that another of the testamentary writings called 'No. 9' contained a dispensing clause applicable to 'any writing holograph of myself, whether signed by me or not,' but the interlocutor and opinions of the Judges do not refer to this latter clause.

It follows from this decision that a testator may dispense by anticipation with the formality of subscription in the case of subsequent holograph writings, and that it is a question of construction of the clause whether such was his intention. With this case there must be contrasted that of *Hamilton's Trustees* v. *Hamilton*, 1901, 4 F. 266, where the dispensing clause referred to 'any writing under my hand (however informally executed or defective) shewing my wishes and intentions.' Notwithstanding this clause, the Court held that an unsigned and undated holograph memorandum which the testator had handed to his law agents to be put up with his settlement was not operative as a testamentary writing. The Lord Justice-Clerk proceeded upon the ground that the memorandum was in no way authenticated as being an expression of the final will of the testator. Lord Trayner expressed the opinion that by 'any writing under his hand' the testator meant any writing subscribed by him. He also said that what the testator desired to dispense with was formality of execution but not non-execution.

Turning to the dispensing clause in the present case, I cannot find that the testatrix made it a condition that the informal writings therein referred to should be authenticated by her subscription, though of course the Court must be satisfied that any such writing really expresses her wishes—in other words, that it was intended to be complete and operative as a testamentary writing. In the present case she authenticated the writing by the description of herself which she was in the habit of using when writing to her children. Further, she enclosed it in a sealed envelope with an endorsation thereon which I read as meaning that the envelope was not to be opened until her death. Lastly, when the writing is looked at, it is apparent that the testatrix did not contemplate that she might subscribe it at some future time, seeing that she added the date immediately below the words "Yr. loving mother."

In these circumstances I am driven to the conclusion that the writing in question does express Mrs Pentland's testamentary wishes, and that it is effectual upon the authority of *Crosbie's* case. The case of *Hamilton's Trustees* does not, I think, decide that in every case it is an implied condition that the document shall be authenticated with the writer's subscription. In this connection I may refer to the case of *Gillespie* v. *Donaldson's Trustees*, 1831, 10 S. 174, where an informal writing superscribed by the testator but not subscribed was held effectual, in respect that the dispensing clause merely required that such writings should be 'signed,' and that signature is not synonymous with subscription.

[*His Lordship then dealt with matters on which the case is not reported.*]

The Lord Ordinary pronounced this interlocutor:—". . . Finds, declares, and decerns that the said holograph writing or codicil is effectual and valid, and ought to be construed as part of the testamentary writings of the said deceased Mrs Jane Muir or Pentland. . . ."

Counsel for Pursuers — W. Thomson. Agent—W. I. Haig Scott, S.S.C.

Counsel for Defenders—W. E. Mackintosh. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

COURT OF TEINDS.

Friday, December 11.

(Before Lord M'Laren, Lord Kinnear, Lord Low, Lord Dundas, and Lord Guthrie.)

MINISTER OF MAYBOLE *v.* THE HERITORS.

Teinds—Stipend—Augmentation—Grant of 4½ Chalders, which Exhausted the Free Teind.

A parish minister applied for an augmentation of stipend of 4½ chalders, which if granted would exhaust the free teind. The heritors did not oppose the application.

The Court having regard to the exceptional circumstances of the case, *granted* the augmentation craved.

In a process of augmentation raised by the Minister of Maybole against the heritors, the minister craved an augmentation of 4½ chalders, with £20 for communion elements. The augmentation asked for was not opposed by the heritors.

Counsel for the minister stated that the stipend, as last modified on July 18th, 1887, stood at 25 chalders, with £20 for furnishing communion elements, and that now the free teind available for augmentation amounted to only £60, which at the present valuation of the chalder (viz., £13, 12s.) was equal to about 4½ chalders. In these circumstances he asked the Court to grant the full augmentation craved on the ground, *inter alia*, that the exhaustion of the free teind would save the expense both to minister and heritors of any future augmentation, which, at the best, could only produce a very small sum.

LORD M'LAREN—[*who delivered the judgment of the Court*]—It is quite natural that, as the augmentation of 4½ chalders asked for exhausts the free teind, the heritors should consent to it rather than be put to the inconvenience of a further application hereafter; and therefore while we grant the 4½ chalders asked for, the case will not