first question proposes. I should propose simply to answer the questions put to us in the case by saying that in the circumstances put before us in the Special Case we consider that there is liability for the assessments in so far as laid upon the owner upon 106, 107, and 108, and that as regards all other owners' assessments and the whole of the occupiers' assessments there is no liability.

LORD KINNEAR and LORD MACKENZIE concurred.

LORD JOHNSTON was sitting in the Lands Valuation Appeal Court.

The Court pronounced this interlocutor—

"Find in answer to the questions of law in the case that in the circumstances set forth in the case there is liability upon the first parties for owners' but not for occupiers' assessments in respect of the items of property entered in the valuation roll for 1912-13 under numbers 106, 107, and 108, but that there is no liability upon them for assessment either as owners or occupiers in respect of the other portions of property held by them as set forth in the case; and decern . . ."

Counsel for the First Parties—Macmillan, K.C.—Hamilton. Agents—John C. Brodie & Sons, W.S.

Counsel for the Second Parties—Murray, K.C.—Hon. W. Watson. Agents—Mackenzie, Innes, & Logan, W.S.

Thursday, November 21.

FIRST DIVISION.

MILNE'S EXECUTOR *v.* TRUSTEES OF BRISTO PLACE BAPTIST CHURCH AND OTHERS.

Writ — Succession — Testament — Deletions in Holograph Will Found in Repositories of Testatrix.

A testatrix left certain testamentary holograph writings. These were found in a closed envelope which was in a locked desk found in a chest of drawers. The key of the desk was in another drawer of the same chest. The envelope was addressed to the brother of the testatrix. In the testamentary writings certain bequests had been deleted or scored, but these deletions were not initialled or otherwise authenticated.

Held, in a special case, that the deletions must receive effect as being alterations made by the testatrix.

Peter Milne, retired farmer, Annerley House, Brechin, executor-dative of Miss Mary Ann Milne, Isla Bank Cottage, Brechin (*first party*), Percival Waugh and others, Trustees of Bristo Place Baptist Church (*second parties*), and the Rev. John Fraser and others, the ministers and elders forming the Kirk Session of the West United Free Church, Brechin (*third parties*), and the said Peter Milne, as an individual, as sole next-of-kin of Miss Milne (*fourth party*), presented a Special Case for the opinion and judgment of the Court.

The *circumstances* in which the case was presented were—Miss Mary Ann Milne, Isla Bank Cottage, Park Road, Brechin (the testatrix), died domiciled there on 3rd May 1911, aged 75 years. For the last twenty years of her life she resided alone except during the three months immediately prior to her death, during which time she was attended by a domestic servant. The testatrix was from time to time visited by friends and relatives. Her sole next-of-kin was her only surviving brother Peter Milne. The testatrix left certain testamentary writings. After the death of the testatrix the said writings were found by the first party on the day of the death of the testatrix in a closed envelope which was contained in a locked desk found in a drawer of a chest of drawers in one of the rooms of her house. The key of the desk was found in another drawer of the same chest. The envelope was gummed up and addressed in the handwriting of the testatrix as follows—"To Mr Peter Milne, Annerley House, South Esk Street, Brechin." The envelope was opened by the first party and found to contain the said writings. [The originals of the writings and the envelope in which they were found were made available to the Court at the hearing of the case.] The flap of the envelope had been lost. The writings were holograph of the testatrix.

The holograph testamentary writings contained the following passages:—

"1909

also to the Babtist Denomination—
B
To the ∧ Congregation worshipping at present in B. Church Bristo Place, Edinburgh (of which I am a member) I bequeath £50, Fifty pounds sterling to aid in maintaing Gospel Ministry there, *&also* £50, *Fifty pounds to Building fund for proposed New Church—*
Per Treasurer.
It is also my express wish that the Residue of my Estate be equally given to West Church Congregation—Brechin to aid in Home & foreign—mission work—according as Minister & Session think best. *The other half to be given to the B. Congregation, before mentioned at Bristo Place Edinburgh—also for Missions at Home & abroad—For the* Advancement of Christ's Kingdom
MARY ANN MILNE.
Per.—The West Church Session Brechin I bequeath to the, now, Central fund—
£100, *one hundred pounds, as, a Thank——offering for the Gospel—Ministry of the Late Rev, Dr Foote & Rev, John Fraser—* Colleague & successor to the former

To the Mission for the Jews £50 fifty pounds
To the Foreign Mission Fund £50 fifty pounds
To the Zenana Mission 5 five pounds per— Mrs Fraser the Manse or Treasurer, & for clothing to poor of W,C, Congregation £5 pounds |per Mrs Fraser
To Brechin Infirmary £50 fifty Pounds per Treasurer
To Y. W,C, Association 5 five pounds per |Treasurer
To Mary Ann Young—Living—with her Father & Mother at St James Place, Brechin
(her Father James Young late of Westbank) ,,
ten pounds

M. A. MILNE.

August 1910

I bequeath to the West Church—Brechin My House, or property, in Macgregor St. To aid in maintaining Gospel Ministry—there—special to help—with Pastor's income. M. A. MILNE.

[The words italicised above were scored through in the testamentary writings.]

The holograph testamentary writings, when found by the first party, were in the same condition as presented to the Court, and contained the scorings or deletions. Apart from any inference which the Court might draw, there was no evidence to show when or by whom these scorings or deletions were made.

The testatrix was connected with the congregation now known as the West United Free Church, Brechin, during the whole of her life, and she was a member of that church up to the date of her death. Her ordinary residence was in Brechin, and while there she regularly attended the services of the said church. For a considerable number of years the testatrix worked as a Biblewoman amongst the poor of Brechin. Her salary as Biblewoman was furnished either by the said church or by Miss Foote, the daughter of one of the ministers of that church. In 1885 a brother of the testatrix, who was in the employment of the Indian Government, died leaving a considerable estate, which was divided equally between the testatrix and the fourth party, and after succeeding to that money the testatrix gave up her position as Biblewoman and lived on her own means. About eighteen years ago, in consequence of views which she came to hold upon the doctrine of baptism, she joined the Bristo Place Baptist Church in Edinburgh, there being no Baptist Church in Brechin. She continued a member of that church also till her death, and was in the habit of going to Edinburgh twice a year, staying there over two weeks, and while there attending Communion and other services in connection with the church.

The estate left by the testatrix, besides a dwelling-house in Macgregor Street, Brechin, consisted of moveables, as given up in the inventory, at £2457, 9s. 8d. After paying the various personal and specific legacies bequeathed by the testatrix, it was estimated that there would be a sum of over £1000 falling to be dealt with as residue.

The second parties *contended* that the bequest by the testatrix of £50 to the building fund of the Bristo Place Baptist Congregation, Edinburgh, and of one-half of the residue of her estate to the said congregation for missions at home and abroad were valid and effectual and ought to receive effect, notwithstanding the scorings or deletions of the passages containing these bequests, inasmuch as the said scorings or deletions were not authenticated in any way.

The third parties contended that in the circumstances, and in the absence of any evidence that the scorings or deletions were made by anyone other than the testatrix, these must be presumed to have been made by the testatrix herself, and must be given effect to. They also contended that the whole residue of the estate of the testatrix fell to the West United Free Church Congregation, Brechin.

The fourth party contended that effect must be given to the deletions in the testamentary writings of the testatrix, in respect that these deletions must be presumed to have been made by the testatrix herself, and further, that the bequest of half of the residue thereby cancelled fell into intestacy.

The *questions of law* for the opinion and judgment of the Court were—"(1) In the circumstances ought the scorings or deletions in the testamentary writings of the testatrix to receive effect as cancelling the bequests so scored or deleted? (2) In the event of the Court answering the first question in the affirmative, does the half of the residue originally destined to the Bristo Place Baptist Congregation, Edinburgh (*a*) fall into intestacy? or (*b*) accrue to the West United Free Church Congregation, Brechin?"

Argued for the fourth party—(1) The deletions ought to receive effect. They admitted that in accordance with the opinion of Lord M'Laren in *Pattison's Trustees* v. *The University of Edinburgh*, August 11, 1888, 16 R. 73, at p. 76, evidence was required that deletions in a will were made by the testatrix, but here from the admitted fact that the will was found in a closed envelope in a locked desk of the testatrix the reasonable inference to be drawn was that the alterations were made by the testatrix—*Nasmyth and Others* v. *Hare and Others*, 1821, 1 Sh. Ap. 65, Eldon, L.Ch., at p. 77; *Lamond* v. *Magistrates of Glasgow*, March 10, 1887, 14 R. 603, 24 S.L.R. 426; *Crosbie* v. *Wilson*, June 2, 1865, 3 Macph. 870, Lord Justice-Clerk Inglis at 877; *Winchester* v. *Smith*, March 20, 1863, 1 Macph. 685, Lord Cowan at 695. (2) Half of the residue fell into intestacy. There was clearly a severance of the residue into two halves. It was permissible to look at the deleted bequest to ascertain what the testator had originally intended—*The*

Magistrates of Dundee v. *Morris*, May 1, 1858, 3 Macq. 134, Lord Cranworth at 164, Lord Wensleydale at 171.

Argued for the third parties—(1) The deletions ought to receive effect. On this point they adopted the argument of the fourth party. (2) There was a good bequest of the whole residue to the West Church. There was sufficient explanation of the word "equally" as meaning between home and foreign mission work. Alternatively "equally" should be held *pro non scripto*.

Argued for the second parties—The deletions should be disregarded. (1) Those who maintained that the deletions should receive effect must discharge the *onus* of showing that the deletions were made by the testatrix—*Pattison's Trustees* (*cit. sup.*). The circumstances here of the will being in a gummed envelope and in a locked desk were not sufficient to discharge that *onus*. (2) Here the usual authentication of initialling was absent, and even if the deletions were made by the testatrix, it must be proved that they were the expression of her final intention and were not merely deliberative—*Petticrew's Trustees* v. *Pettigrew*, December 6, 1884, 12 R. 249, Lord Craighill at 252, 22 S.L.R. 171; *Currie's Trustees* v. *Currie*, December 24, 1904, 7 F. 364, 42 S.L.R. 297; *Hamilton's Trustees* v. *Hamilton*, November 28, 1901, 4 F. 266, 39 S.L.R. 159; *Lamont* v. *Magistrates of Glasgow* (*cit. sup.*); *Parker* v. *Matheson and Others*, March 9, 1876, 13 S.L.R, 405; Jarman on Wills (6th ed.), pp. 156 and 161; Lord M'Laren on Wills, p. 413 (quoting Jarman).

LORD PRESIDENT—The first question in this case is whether the deletions which are found in the testamentary writings of the late Miss Milne are to have effect. I think it is quite clear that they must, when they are taken in connection with the facts and circumstances which are put before us in the Special Case. Here is an old lady, of probably not very great education, who lives alone and leaves behind her a set of testamentary writings, carefully addressed to a relation, in a closed envelope. All this is found with no suggestion of opening or tampering by anybody. And inside the closed envelope is found a holograph testamentary writing. This makes various bequests. There is more than one sheet, and there are additions made at various times, and there are, as it stands, deletions. These deletions are quite, so to speak, appropriate to the additions that are afterwards made. For instance, first of all, there originally stood a bequest of £50 to a building fund of a proposed new church. Well, that is taken out, and one may guess that Miss Milne had either changed her mind, or that by the time of the deletion that particular purpose had been made good by other funds from other people. One deletion I particularly refer to. In the document of 1909 she leaves to the session of the West Church, Brechin, £100, and then that is deleted, and in August 1910 she bequeathes to the West Church, Brechin, a certain property in Macgregor Street. It would be quite natural that when she came to leave this property in Macgregor Street to the West Church she should cancel the legacy of £100 to the church.

I mention these things only to show that the deletions, so far from making the will unintelligible, are just such deletions as you might expect to find. But I put my judgment upon what was laid down in the House of Lords (*Nasmyth and Others* v. *Hare and Others*, 1821, 1 Sh. App. 65), that if in circumstances like these you find apparently undisturbed the holograph testamentary writing of a person which bears certain alterations, there is then a presumption of fact that these alterations were made by the testator or testatrix. If that is so, that seems to me to end the question, because if that deletion was made by the testatrix herself, I cannot imagine that it could be made for any reason except to alter the will to the extent of the deletion. Mr Brown argued that there must be a second stage, and that you must show not only that the deletion had been made by the testatrix, but that it had been made with the intention of being final, and was not merely deliberative. I cannot think there is any such second stage. I quite agree that you must be satisfied that it is a proper deletion. It is not every ink mark upon a writing that necessarily infers a deletion, but in this case there is no doubt about that. We have had the advantage of seeing the original, and there is no question that these are proper deletions. The consequence is, that if I once come to the result, as I do here, that they were made by the testatrix herself, I also come to the conclusion she made them for the purpose of altering her will.

Now the only other question is this. the testatrix deals with her residue in this way—"It is also my express wish that the residue of my estate be equally given to the West Church Congregation, Brechin, to aid in Home and Foreign Mission work—according as minister and session think best." Then she went on to say, "the other half to be given to the Baptist Congregation, Bristo Place, Edinburgh." That second bequest is scored, and, in accordance with what I have said, disappears. The question is, then—Is the bequest to the West Church congregation a bequest of the whole or the half? I think, following the judgment of the House of Lords in the well-known case *The Magistrates of Dundee* v. *Morris* (1858, 3 Macq. 134) that one is entitled to look at the deleted part to see the whole sense of the whole sentence as originally written. I think that, although she was not very grammatical, the bequest was one half to the West Church congregation, and the other half to the Baptist Church congregation. It is quite clear that the latter half is undisposed of, and therefore goes into intestacy.

I therefore propose that your Lordships should answer the first question in the affirmative and the second question, branch (*a*), in the affirmative.

LORD KINNEAR—I agree.

LORD MACKENZIE—I am of the same opinion. I think that, in the circumstances stated here, we are quite justified in drawing the inference and coming to the conclusion which your Lordship proposes.

LORD JOHNSTON was sitting in the Lands Valuation Appeal Court.

The Court answered in the affirmative the first question, and the second question, branch (*a*).

Counsel for the First and Fourth Parties—Chisholm, K.C.—D. Anderson. Agent—Lewis Jack, Solicitor.

Counsel for the Second Parties—Macmillan, K.C.—C. H. Brown. Agents—Maclachlan & Mackenzie, S.S.C.

Counsel for the Third Parties—Chree, K.C.—A. R. Brown. Agents—Gordon, Falconer, & Fairweather, W.S.

Saturday, November 16.

FIRST DIVISION.

[Lord Cullen, Ordinary.

SHEPHERD'S EXECUTORS *v.* MACKENZIE AND OTHERS.

Entail—Improvement Expenditure—Obligation by Heir in Possession to Repay Cost of Improvements Executed by Lessee—Action by Lessee's Executors against Succeeding Heir—Competency—Extent of Charge—Date at which Improvements Fall to be Valued—Interest—Entail (Amendment) (Scotland) Act 1878 (41 *and* 42 *Vict. cap.* 28), *secs.* 1 *and* 2.

A, an heir of entail in possession, granted a lease of the mansion-house, &c., to B, who undertook to execute a variety of improvements thereon, A binding himself and the succeeding heirs, and *subsidiarie* his own heirs and executors, to repay as at his (A's) death three-fourths of the certified cost thereof. By a subsequent agreement the limit of improvement expenditure for which A was to be liable was fixed at £6700. On the expiry of the lease B's executors brought an action against, *inter alia*, C, the succeeding heir (who alone lodged defences), to enforce A's obligation to repay, as having devolved on him in virtue of section 1 of the Entail Amendment (Scotland) Act 1878. C pleaded that the action, so far as laid against him, was incompetent.

Held (1) that the action was competent; that the limit of £6700 effeired to the statutory improvements only, and did not fall to be divided proportionally between statutory and non-statutory improvements, and that, accordingly, C was bound to repay the certified cost thereof as at A's death, that being the date when the obligation to repay became prestable; but (2) that the pursuers were only entitled to decree for three-fourths of that sum, that being the extent to which A himself could have charged the estate.

Held further that the pursuers were not entitled to interest from the date of citation, but from the date of decree only, C not being in *mora* till the amount due had been proved against him.

Entail—Process—Improvement Expenditure—Agreement by Heir to Repay Cost of Improvements Executed by Lessee—Petition to Charge at Instance of Lessee's Executors—Competency—Entail Amendment (Scotland) Act 1875 (38 *and* 39 *Vict. cap.* 61), *sec.* 11—*Entail Amendment (Scotland) Act* 1878 (41 *and* 42 *Vict. cap.* 28), *sec.* 1.

A, an heir of entail who had granted a lease of the mansion-house to B, arranged with the latter that he (B) should execute a variety of improvements, A binding himself and the succeeding heirs of entail to repay to B as at his (A's) death three-fourths of the certified cost thereof. In security of the obligation A expressly bequeathed and assigned to B and his executors the aforesaid sum. On A's death B's executors presented a petition under section 11 of the Entail Amendment (Scotland) Act 1875 for authority to charge the estate with this sum. The succeeding heir of entail objected to the competency of the application.

Held that, as the petitioners were not, and did not represent, an heir of entail who had executed or paid for improvements, they were not entitled to the charge craved, and petition *dismissed* as incompetent.

The Entail Amendment (Scotland) Act 1875 (38 and 39 Vict. cap. 61), section 11, enacts—"Where any heir of entail in possession of an estate in Scotland . . . shall have executed improvements on such estate, of the nature contemplated by this or any other Entail Act, as the case may be, and shall have died after the passing of this Act without having charged the estate with the amount which he is entitled to charge of the sums expended on such improvements, it shall be lawful for any person to whom such heir of entail may have expressly bequeathed, conveyed, or assigned such sums, or any part thereof, to make application by summary petition to the Court, praying the Court, after such inquiry as to the Court shall seem proper, to find and declare that the sums specified in the petition, or any part thereof, have been expended on improvements on the said estate by the deceased heir of entail; and that the petitioner is in right thereof; and to decern and ordain the heir in possession of such entailed estate to execute in favour of the petitioner, or of any other person such petitioner may think fit, a bond and disposition in security over the said estate, other than the mansion-house, offices, and policies thereof, or over some