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

be taken as a precedent except under precisely similar circumstances.

The Court granted the augmentation craved.

Counsel for the Minister—A. J. P. Menzies. Agents—J. Douglas Gardiner & Mill, S.S.C.

COURT OF SESSION.

Wednesday, January 6.

FIRST DIVISION.

[Lord Ordinary in Exchequer Causes.

BALFOUR AND ANOTHER, PETITIONERS.

Process—Jurisdiction—Exchequer—Petition to Uplift Parliamentary Deposit Effeiring to Part of Undertaking not Completed—Jurisdiction of Lord Ordinary in Exchequer Causes to Entertain Petition—Court of Exchequer (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 56), *sec.* 2.

The Court of Exchequer (Scotland) Act 1856, which transfers the jurisdiction of the Court of Exchequer in Scotland to the Court of Session, and provides for the appointment of a Lord Ordinary in Exchequer Causes, enacts, sec. 2, that, "unless where otherwise expressly provided by this Act, all proceedings in Exchequer Causes under this Act shall be brought in the first instance before such Lord Ordinary."

Held that section 2 was not limited to the class of causes initiated by that Act, but applied to all cases which would, but for the Act, have been brought in the Court of Exchequer, and that accordingly a petition to uplift part of a Parliamentary deposit effeiring to a portion of an undertaking which had not been completed was competently presented to the Lord Ordinary in Exchequer.

Statute—Construction—Petition to Uplift Parliamentary Deposit—Public Act Providing for Petition to Inner House—Private Act for Petition to Court of Exchequer—Application to Lord Ordinary in Exchequer—Competency—Parliamentary Deposits and Bonds Act 1892 (55 *and* 56 *Vict. c.* 27), *sec.* 1, *sub-secs.* (1) *and* (3), *and sec.* 3.

The Parliamentary Deposits and Bonds Act 1892, sec. 1, sub-secs. (1) and (3), provides that where moneys have been deposited to secure the completion of any undertaking authorised by Parliament, and the undertaking has not been completed, "the High Court" may order that the deposit fund or any part thereof be paid or transferred to the depositors.

Sec. 3 enacts—"In the application of this Act to Scotland . . . 'High Court' shall mean the Court of Session in either Division thereof."

A private Act (subsequent in date to the foregoing statute) provided that if the undertaking were not completed within the statutory limit of time, the deposit fund should be applied in payment of compensation "in such manner and in such proportions as to the Court of Exchequer in Scotland" might seem fit, and that if no such compensation were payable it should (subject to claims of creditors) be repaid to the depositors.

Held that as the provision in the Public Act as to the Court on whose order repayment was to be made was permissive in its terms, it was not inconsistent with that contained in the later private Act, and that accordingly a petition to uplift part of a Parliamentary deposit, effeiring to a portion of the undertaking which had not been completed within the time limit, had been competently presented to the Lord Ordinary in Exchequer Causes.

The Court of Exchequer (Scotland) Act 1856 (19 and 20 Vict. c. 56), sec. 2, enacts—[*The material portion of the section is quoted supra, in rubric.*]

The Parliamentary Deposits and Bonds Act 1892 (55 and 56 Vict. c. 27), sec. 1, enacts—"Power to release deposits—(1) Where in pursuance of any general or special Act of Parliament, or of any rules made thereunder, moneys or securities have been deposited with, or are standing in the name of, the Paymaster-General"—[in Scotland the King's and Lord Treasurer's Remembrancer]—"to secure the completion by any company of any undertaking authorised by Parliament, and the undertaking has not been completed within the time limited in that behalf, the High Court may" . . . (after providing for compensation, &c.) . . . "(3) . . . order that the deposit fund or any part thereof be paid or transferred to the depositors. . . ."

Sec. 3—[*The section so far as material is quoted supra, in rubric.*]

The Dundee, Broughty Ferry, and District Tramways Order Confirmation Act 1904 (4 Edw. VII, cap. clxx), enacts, sec. 86—"If the company do not previously to the expiration of the period limited for the completion of the tramways, complete the same . . . then and in every such case the tramways deposit fund, or so much thereof as shall not have been paid to the depositors . . . shall be applied towards compensating any landowners or other persons whose property has been interfered with, . . . and shall be distributed in satisfaction of such compensation, as aforesaid, in such manner and in such proportions as to the Court of Exchequer in Scotland may seem fit, and if no such compensation is payable, . . . then the tramways deposit fund . . . shall be repaid or retransferred to the depositors. . . ." [*Cf.* General Orders under Private Legislation Procedure (Scotland) Act 1899 (62 and 63 Vict. c. 47), Order 107.]

On 15th October 1908 George Balfour, engineer, Cannon Street, London, and