form, which is not necessary to particularise, proceed on the same principle; but it does not seem to me that these decisions are applicable.

"Further, I think that, even if it were held that it is the duty of a railway company to see a drunk passenger safely off their premises, I do not think it relevantly averred that Coltart failed to fulfil that duty, because, while it is said that he laid M'Cormick on the platform, it is not averred that he did not return to attend to him. The pursuer says that Coltart undertook the duty of seeing M'Cormick safely off the platform. But I do not understand that averment to mean that he adopted an extra duty which was not otherwise incumbent on him, or that if he did the railway company would be liable for his nonfulfilment of it, because it is not said that this duty was undertaken to the deceased or to anyone else. I think that averment irrelevant.

"It is said that the station was insufficiently lighted, but it is not said that the death of M'Cormick was caused by the want of light, or that the light was not sufficient to enable passengers to find their way safely out of the station. There is no averment of any defect of the station leading to the accident." . . .

The pursuer reclaimed, and argued—The defenders' porter having undertaken the duty of seeing M'Cormick safely off the platform, their liability for his safety continued until that duty was discharged—*Richards* v. *London, Brighton, and South Coast Railway* (1849), 7 C.B. 839; *Bunch* v. *Great Western Railway Company* (1888), 13 App. Cas. 31. The pursuer was entitled to an issue.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK—I am clearly of opinion that the Lord Ordinary is right. Joseph M'Cormick had a contract with the railway company to carry him from Edinburgh to West Calder, by which the company was bound to carry him safely and without injury caused by their own fault. But when he came out of the train the contract ceased. The supposed analogy of a contract of a railway company to carry luggage is wholly erroneous. When the company contract to carry luggage they are under an obligation to see it safely delivered; but they, or the porters in their employment, are under no obligation to ensure the safety of passengers who have left the train in which they were travelling.

LORD TRAYNER—I agree. It is no part of the duty of a railway company to look after drunken passengers after they have been carried to their destination.

LORD MONCREIFF—I am of the same opinion. I certainly think that a porter in the employment of a railway company has no duty in his capacity as porter to see to the safety of a drunken man when he has left the train, whatever responsibility he may choose to assume otherwise.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Crabb Watt, K.C.—J. W. Forbes. Agent—D. Howard Smith, Solicitor.

Counsel for the Defenders and Respondents—Campbell, K.C.—King. Agents—Hope, Todd, & Kirk, W.S.

Thursday, February 4.

SECOND DIVISION.

OGLE'S TRUSTEES *v.* OGLE.

Succession—Vesting—Direction to Pay on Expiry of a Liferent to Children of Liferenter "and the issue of such of said children as may have died leaving issue."

A testatrix directed her trustees to hold the residue of her estate for J. in liferent, and on his death "to pay over to the children of the said J, equally among them and the issue of such of said children as may have died leaving issue, the fee or capital of the residue and remainder of said estates, declaring that the issue of any child or children of the said J. who may have predeceased leaving issue shall take equally among them the shares or share to which their parent or respective parents would have been entitled if alive." Two of J.'s children survived the testatrix but predeceased the liferenter without issue. *Held* that the shares of these children had vested in them.

Mrs Margaret Ogle died in December 1885 leaving a mutual settlement entered into between her and her husband, who had predeceased her, and a codicil thereto, executed by her in pursuance of powers conferred upon her by the settlement as the survivor of the spouses.

By their mutual settlement Mr and Mrs Ogle directed their trustees to pay the residue of their estate to Mr Ogle's brother John Ogle, whom failing "to his children alive at the time of the decease of the survivor" of them; and they reserved power to the survivor to alter or revoke their settlement in whole or in part.

By the codicil already referred to, executed by Mrs Ogle after her husband's death, she revoked the residuary clause of the settlement, and directed the trustees thereunder to hold the residue for John Ogle in liferent, and should he have predeceased her, or on his death in the event of his survivance, she directed them to "pay over to the children of the said John Ogle, equally among them and the issue of such of said children as may have died leaving issue, the fee or capital of the residue and remainder of said estates, declaring that the issue of any child or children of the said John Ogle who may have predeceased leaving issue shall take equally among them the share or shares to which their parent or respective parents would have been entitled if alive."

John Ogle survived Mrs Ogle, and died in March 1903, survived by seven children and by issue of one of his children who predeceased Mrs Ogle. He was predeceased by two of his children Robert Graham Ogle and Arthur Wesley Ogle, who had survived Mrs Ogle, and who left no issue.

In these circumstances a special case was presented for the opinion and judgment of the Court by (1) Mrs Ogle's trustees, (2) the children of John Ogle who survived him, and the issue of his child who predeceased Mrs Ogle, and (3) the personal representatives of Robert Graham Ogle and Arthur Wesley Ogle.

The second parties maintained "that no vested interest had been taken by the said Robert Graham Ogle and Arthur Wesley Ogle under the said codicil at the date of their decease, and that the whole of the residue fell to be divided among themselves the second parties, in terms of said codicil."

The third parties maintained "that two shares of the residue of Mrs Ogle's estate vested in Robert Graham Ogle and Arthur Wesley Ogle upon the death of Mrs Ogle, and that they the said third parties were entitled to receive said shares."

The question of law was—"Had Robert Graham Ogle and Arthur Wesley Ogle at the dates of their respective deaths a vested interest in one-tenth share each of the residue of the trust estate which passed to their personal representatives to be administered as parts of their estates respectively."

At the hearing the following authorities were cited for the third parties—*Matheson's Trustees* v. *Matheson's Trustees*, February 2, 1900, 2 F. 556, 37 S.L.R. 409; *Thompson's Trustees* v. *Jamieson*, January 26, 1900, 2 F. 470, 37 S.L.R. 346; *Sword's Trustees* v. *Main*, July 17, 1902, 4 F. 1005, 39 S.L.R. 846. For the second parties—*Laing* v. *Barclay*, July 20, 1865, 3 Macph. 1143; *Bowman* v. *Bowman*, July 25, 1899, 1 F. (H.L.) 69, 36 S.L.R. 959; *Parlane's Trustees* v. *Parlane*, May 17, 1902, 4 F. 805, 39 S.L.R. 632.

LORD TRAYNER—Some cases of this class involve questions of some nicety, but I cannot say that I have felt difficulty in disposing of the questions now before us. The testatrix left the residue of her estate to be divided in this way—the life-rent to John Ogle, and the fee to John Ogle's children. She directed her trustees to hold the residue of her estate, and there are only two purposes for which they are directed to hold it. The first is to pay John Ogle the alimentary liferent of that estate, and the second directs the distribution of the fee. The question here raised is whether any right in that fee vested in a child who predeceased the liferenter without leaving issue. The direction to the trustees is to pay the fee of the estate at a certain time, and that time is postponed plainly for the purpose of protecting the alimentary liferent and for no other purpose. When that purpose is served accordingly, the estate is to be divided. Now, among whom? It is to be paid over "to the children of John Ogle equally among them." I think the testatrix had no intention of depriving any one of John Ogle's children of an equal share of that estate. On the contrary, I think she expressly says that her intention and desire is that every one of John Ogle's children should take a share. She goes on to provide that in the event of a child predeceasing the term of payment leaving issue, the issue shall take their parents' share. There is no provision with regard to the share of a child who had predeceased the term of payment without issue, but such child had his share conveyed to him by the words, "pay over to the children of John Ogle equally among them." There is no survivorship clause, and therefore I am of opinion that these two shares vested in the two sons who survived the testatrix but predeceased the term of payment. I would therefore answer the question in the affirmative.

LORD MONCREIFF—I am of the same opinion. I think that upon a sound construction of the deed of revocation the right to one-tenth share each of the residue vested in Robert Graham Ogle and Arthur Wesley Ogle on their surviving the longest liver of the spouses, although they predeceased their father John Ogle, who also survived the spouses and enjoyed the liferent. Questions of this kind necessarily depend upon the peculiar terms of the deeds under interpretation, and that is the construction which I put upon this deed, especially taken in connection with the mutual settlement of the spouses. Under that mutual settlement, on the death of the longest liver of the spouses the residue was to go to John Ogle if he survived the spouses, and failing him, to his children alive at the time of the decease of the survivor of the spouses. Under that deed it will be noticed no provision is made for the event of any child of John Ogle predeceasing the longest liver of the spouses and leaving issue. The husband died, and under the powers conferred upon her his widow revoked that settlement of residue and made two important alterations upon it. The first was that she cut down John Ogle's interest in the event of his surviving her to a liferent. The second was that she made express provision for the case of children of John Ogle predeceasing her leaving issue, and to prevent a lapse, she directed that the share which would have fallen to such children should go to their issue. I do not read the passage in which she makes this alteration as intended to prevent a lapse by a child of John Ogle surviving her and predeceasing his father. It is not said that the issue of children who may have died before the *liferenter* shall succeed. There is no date mentioned, and I read the words as meaning "shall die before *me*." I think, looking to the whole passage, that the true meaning of it is that it is intended to prevent a lapse by any of the children of John Ogle predeceasing the widow and leaving issue, and this view gains strength from the consideration that the only reason why there was any postponement of payment was to provide for the liferent. On the whole matter I am of opinion that the right

to these shares was vested in Robert and Arthur Ogle.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

The Court answered the question of law in the affirmative.

Counsel for the First and Third Parties—Smith, K.C.—Balfour. Agents—Mackenzie & Black, W.S.

Counsel for the Second Parties—Younger. Agents—J. & J. Ross, W.S.

Saturday, February 6.

SECOND DIVISION.

[Lord Low, Ordinary.

FOLEY *v.* COSTELLO.

Succession—Testament—Writ—Holograph—Subscription.

Held that an unsubscribed holograph document beginning with the words "I will all the money I have," written below the words "I, Ethel F. Costello," which latter words were underlined and bore the appearance of a superscription, could not receive effect as a will, and that it was incompetent to prove by parole evidence that the writer intended it to receive such effect.

Skinner v. *Forbes*, November 13, 1883, 11 R. 88, 21 S.L.R. 81, and *Goldie* v. *Shedden*, November 4, 1885, 13 R. 138, 23 S.L.R. 87, *followed*.

This was an action at the instance of John Joseph Foley, 55 Park Avenue, Sandymount, Dublin, against Hubert Costello, 52 Witton Road, Aston, Birmingham, and others, the next-of-kin of the deceased Miss Ethel Frances Costello, 12 Wellington Street, Portobello. The summons concluded for declarator that the following writings, namely—"I, Ethel F. Costello, I will all the money I have to John J. Foley, who is to pay two legacies out of it to one of £100 to *Hattie* Harriet Mason, and one of £50 to Raymond St Clair Swanson. All personal belongings to go to Jessie St Clair Swanson, Glasgow. I wish my body to be cremated if it is possible to gratify that wish. I also wish Dr John Balfour, Portobello, to use means to ascertain beyond all possibility of doubt that death veritably and indeed taken place within forty-eight hours of my reputed death. I desire these measures to be taken if possible"—were holograph of the said Miss Ethel F. Costello, and formed a valid and effectual testamentary settlement of her estate and affairs.—[*The word "Hattie" above had a line drawn through it*].

The pursuer averred—"(Cond. 3) On or about Monday, 19th January 1903, Miss Costello drew out in her own handwriting a document in the following terms—[*The document is quoted above*]. (Cond. 4) On Monday, 19th January 1903 Miss Costello informed Miss Mills, a friend of hers who resided at the same address, that she had made her will. (Cond. 5) Again on Tuesday evening, 20th January 1903, Miss Costello, in conversation with Miss Mills, referred to the fact that she had settled her will, and informed her of its contents. These were identical with the contents of the document referred to. (Cond. 6) Early on Wednesday morning, 21st January 1903, Miss Costello came into the kitchen of the house at 12 Wellington Street, Portobello, and informed her landlady Mrs Blakely that she was dying. She asked Mrs Blakely to send for a doctor, and added that she had made her will. In point of fact the document above referred to was then pinned on her night-dress, where it had been affixed by Miss Costello herself, and it constituted the will she referred to. (Cond. 7) A doctor was immediately summoned, but Miss Costello became unconscious, and died about 6·30 a.m. on the morning of the said 21st January 1903. (Cond. 8) The document condescended on is holograph of Miss Costello. It was intended by her to constitute, and does validly constitute, her last will and testament."

The words with which the writing quoted above opened, "I, Ethel F. Costello," were underlined, and the writing proceeded on a new line, below these words, so that they occupied the position of a superscription.

The defenders pleaded—"(1) The pursuer's averments are irrelevant and insufficient to support the conclusions of the summons."

On 12th December 1903 the Lord Ordinary (LOW) allowed the pursuer a proof of his averments, with the exception of those in condescendence 4 and 5.

Opinion.—"The pursuers in this action seek to have it declared that a writing of a testamentary nature, holograph of the deceased Miss Costello, and commencing 'I, Ethel F. Constello,' but not subscribed by her, constitutes a valid testamentary settlement.

"I do not think that it has ever been doubted that the proper and recognised method of authenticating a holograph will so as to show that it is not a mere draft or memorandum for future consideration, but the completed act of the writer, is that it should be subscribed with the writer's name. There has, however, been very considerable difference of opinion as to whether the want of subscription can be supplied by extrinsic evidence, and in particular by the evidence of facts and circumstances from which it may be inferred that the writing though not subscribed was the expression of the final and completed will of the writer.

"There have been a series of cases in the First Division in which the doctrine that a holograph will is not valid unless subscribed by the testator has been affirmed with increasing strictness.

"The first case was *Dunlop* v. *Dunlop* (1 D. 912), in which all the Judges, while affirming that rule, indicated the opinion that there might be circumstances in which effect would be given to a holograph will although unsubscribed.