COURT OF SESSION.

Tuesday, November 18.

SECOND DIVISION.

(SINGLE BILLS.)

BONNAR *v.* BONNAR.

Expenses — Husband and Wife — Parent and Child — Expenses of Wife in Note for Access to Child — Interim Award — Guardianship of Infants Act 1886 (49 *and* 50 *Vict. cap.* 27), *sec.* 5.

The Guardianship of Infants Act 1886 enacts—Section 5—"The Court . . . in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as to costs as it may think just."

In a note for access to a pupil child at the instance of the mother, arising in a petition for custody at her instance, the Court *granted* her an interim award of expenses.

The Guardianship of Infants Act 1886 (49 and 50 Vict. cap. 27), sec. 5, is quoted *supra in rubric.*

Mrs Agnes Swift or Bonnar, Main Street, Neilston, wife of Neil Bonnar junior, residing at Langside Road, Glasgow, presented a note to the Court. She stated that on 24th October 1911, in a petition for the custody of her pupil son at her instance, the Court refused her the custody but allowed her access, subject to arrangement between the parties, and that the respondent had refused her reasonable access. She craved the Court to allow her access to her child. The respondent having lodged answers, a proof was allowed on the note and answers, and the petitioner thereafter in Single Bills moved for an interim award of expenses.

Argued for the petitioner—The Court had power under the Guardianship of Infants Act 1886 (49 and 50 Vict. cap. 27), sec. 5, to make an interim award of expenses. The case of *A B* v. *C D*, June 27, 1906, 8 F. 973, 43 S.L.R. 731, was not authoritative, because the statute was not referred to as the foundation of the claim.

Argued for the respondent—An interim award of expenses would only be granted in consistorial causes, and a petition for custody was not a consistorial cause. The principle on which such an award was based was that the husband was liable for the "necessary" expenses of the wife, but the wife's expenses in a petition were not "necessaries"—*A B* v. *C D* (*cit. sup.*). There was no precedent for giving an interim award of expenses in a case where expenses would only be given as between party and party. The Act, no doubt, gave a general power to deal with expenses, but this could not cover interim expenses unless *per expressum.*

LORD JUSTICE-CLERK — I am clearly of opinion that section 5 of the Guardianship of Infants Act 1886 gives us absolute discretion in cases such as this to deal with the question of expenses, and I am unable to hold that we are excluded from dealing with this question of interim expenses which is now before us. If, as was argued, the intention of that section was that we should only have a discretion in pronouncing a final decree for expenses, that should have been expressly stated, because the general power of the Court to award expenses includes the power of dealing with expenses at any stage of a case if occasion arises making it right to deal with any expenses before final judgment. [*His Lordship then dealt with the circumstances in which the application was made.*] Holding, as I do, that the motion is competent, I think that in this case there ought to be an award of expenses, and I would propose to your Lordship to grant a modified sum of seven guineas.

LORD DUNDAS—I agree in thinking that we have an absolute discretion in this matter; that the petitioner is entitled in the circumstances to a reasonable award of expenses to enable her to bring her witnesses to the proof which has been allowed at the instance of the husband; and that seven guineas would be a reasonable amount to award her.

LORD SALVESEN—I agree. If this were an application at common law, I think that there would be great force in Mr Stevenson's argument. We are certainly not in the habit of granting interim awards of expenses except in consistorial causes. But this application is based on a statute which expressly gives us very wide powers in dealing with the matter of expenses. Moreover, although the action is not a consistorial one, it is a process between husband and wife with reference to the issue of the marriage in which the wife's rights have now been placed more or less on an equality with those of the husband. [*His Lordship then dealt with the circumstances of the application.*]

LORD GUTHRIE concurred.

The Court found the petitioner entitled to seven guineas expenses.

Counsel for the Petitioner—King Murray. Agent—James M'William, S.S.C.

Counsel for the Respondent — James Stevenson. Agent—Campbell Faill, S.S.C.

Friday, November 21.

FIRST DIVISION.

(Before Seven Judges.)

[Sheriff Court at Aberdeen.

GRANT AND ANOTHER (TAYLOR'S EXECUTRICES) *v.* THOM AND OTHERS.

Succession—Testament—Writ—Holograph Writing—Subscription.

An unsubscribed document in the form of a will, holograph of the deceased, was found in her repositories inside an unsealed envelope, on the back of which were written the words "My will." The document, which was headed "Sunnybank Alford My last will Jessie Taylor," disposed of her whole estate.

Held (*diss.* Lords Salvesen, Mackenzie, and Guthrie) that it could not receive effect as a testamentary writing.

Authorities reviewed.

Mrs Elsie Grant, widow, 107 Warrender Park Road, Edinburgh, and another, executrices-dative of the late Miss Jessie Taylor, Sunnybank, Alford, *pursuers*, brought an action against Robert Taylor Thom, boilermaker, Inverurie, and others, *defenders*, in which they sought declarator that the document after mentioned was the valid will of Miss Taylor.

The document in question was as follows:—

"Sunnybank Alford
My last Will Jessie Taylor

"I leave my fourth share of this house to Jessie Taylor Gellie (Dora) my cottage at Kemnay Lilliesleaf to Robert Grant 43 Lauderdale Street Edinburgh Sell out my shares in the N. of S. and T. & County Bank. also N. of S. & Steme Coy and Scotish Union & N. Insurance Coy also what money may be in the Bank after my funeral divide it equally between Mrs Grant 107 Warrender Park Road Mrs Gellie 110 Desswood Place Aberdeen Dr Grant George Alford Grant Vancouver Cara Grant Robina Thomson Glassgreen & Isbe Thomson Jane Joiner and Freida Joiner let all share alike also Eleanor Thomson King Williams Town S. Africa to Nellie Grant £5 because of her usage to me when living in her Father's house last. my clothes divided among those also my bedding linnen and the furniture to Robert Grant my eight day or Grandfather clock what furniture is not wanted sell out and let the money go with what is in the Bank Mrs Thomson Glassgreen all my dishes or however many she want divide the books I would not like the Bibles sold"

The defenders pleaded, *inter alia*—"(2) The alleged testamentary writing founded on not having been subscribed by the said Jessie Taylor is inoperative as her will, and decree of absolvitor should be granted accordingly with expenses."

On 12th July 1913 the Sheriff-Substitute (YOUNG), after a proof, pronounced this interlocutor—"Finds in fact (1) that the late Miss Jessie Taylor, whose ordinary residence was at Sunnybank, Alford, Aberdeenshire, died in a nursing home at Aberdeen on 26th February 1913; (2) that shortly after her death an examination was made of her repositories in her house at Alford, and in particular attention was directed to a locked drawer as the place in which she was accustomed to keep papers of value and importance; (3) that in that drawer, part of a chest of drawers which stood in the kitchen, there was found, along with share certificates, deposit-receipts, and titles to property, an unclosed envelope, No. 5 of process, on the back of which was written the words 'My will,' and inside which was the document No. 5a of process; (4) that this document does not expressly bear to be written by the deceased, but it, as well as the words on the envelope, has been proved to be in her handwriting; (5) that at the beginning of the document and slightly separated from the body of it there is this heading, 'Sunnybank Alford My last will Jessie Taylor,' and what follows contains words of bequest, and appears to deal with every item of the deceased's estate excepting a small sum of cash in the house and a proportion of rents current at her death; (5) that the said document is not dated, but there is evidence to the effect that in all probability it was written after September 1912; and (7) that it is not subscribed: Finds in law that the said document, not being subscribed, is not a valid and effectual testamentary writing: Therefore refuses decree of declarator as concluded for."

The pursuers appealed.

On 17th October 1913 the First Division appointed the case to be heard before a Court of Seven Judges.

Argued for appellants—Subscription was not essential where, as here, its equivalent was present—*Russell's Trustees* v. *Henderson*, December 11, 1883, 11 R. 283, 21 S.L.R. 204; *Murray* v. *Kuffel*, 1910, 2 S.L.T. 388. The words "My last will Jessie Taylor." were equivalent to "what follows is my will, Jessie Taylor." A valid will might adopt as part of it marginal additions or informal writings, provided the intention to adopt were clear—*Gillespie* v. *Donaldson's Trustees*, December 22, 1831, 10 S. 174; *Baird* v. *Jaap*, July 15, 1856, 18 D. 1246. The question, in short, was one of adoption and identification. *Esto* that the early cases of *Titill* (1610), M. 16,959, and *Pennycuick* (1709), M. 16,970, in which testamentary effect was given to holograph writings though unsubscribed, were not now law, and that subscription was essential—Stair, iv, 42, 6; *Dunlop* v. *Dunlop*, June 11, 1839, 1 D. 912—subscription was present here, for the words "my last will" were duly signed. That was sufficient to distinguish this case from those of *Dunlop* (*cit.*); *Skinner* v. *Forbes*, November 13, 1883, 11 R. 88, 21 S.L.R. 81; *Goldie* v. *Shedden*, November 4, 1885, 13 R. 138, 23 S.L.R. 87; *Foley* v. *Costello*, February 6, 1904, 6 F. 365, 41 S.L.R. 286; and *Shiell* v. *Shiell*, 1913, 1 S.L.T. 62, in all of which it was held that an unsubscribed