The account of expenses lodged by the pursuers had appended to it an account of expenses incurred by them in connection with the preparation of the case to Messrs Pritchard & Sons, solicitors, London, and on 24th December 1904, in the Single Bills, their counsel moved the Court to remit this account to the Taxing Officer of the Supreme Court of Judicature, London, with a request that he would report at what figure it should be taxed. It was stated that the Auditor would not deal with it as it depended on English practice, and reference was made to *Camper & Nicholson, Limited* v. *Wemyss*, July 16, 1903, 11 S.L.T. 290.

Counsel for the defender objected, and moved that the account should first be sent to the Auditor in order that he might state with what items of the account the defender was properly chargeable as between party and party, and that these items alone should be remitted for taxation in England. They explained that there were large portions of the account for which the defenders were not liable, and argued that any question as to these should be decided by the Auditor according to Scottish practice.

The Court (LORDS ADAM, M'LAREN, and KINNEAR) remitted the account to the English Taxing Officer, issuing this interlocutor—

> "Find that the account of expenses incurred to Messrs Pritchard & Sons, solicitors, London, which is appended to the pursuers' account of expenses, falls to be taxed as between party and party according to English rules: Therefore remit the said account to the Taxing Officer of the Supreme Court of Judicature, the Taxing Office of the Royal Courts of Justice, London, with a request that he will examine and report at what figure the said account falls to be taxed as between party and party."

Counsel for the Pursuers and Respondents—F. C. Thomson. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders and Reclaimers—Younger. Agents—Strathern & Blair, W.S.

Saturday, December 24.

SECOND DIVISION.

CURRIE'S TRUSTEES *v.* CURRIE.

Succession—Will—Unauthenticated Pencil Deletions and Alterations — Unsigned Holograph Note Found with Will—Alterations on Note Corresponding with those on Will.

A testator left a holograph trust-disposition and settlement having on it certain alterations and deletions in pencil which were not initialed or authenticated. Beside the trust-disposition and settlement there was found an unsigned, undated, and uninitialed holograph note, containing a list of names with sums set opposite thereto—being a recapitulation of the legatees named in the settlement with the amounts of their respective legacies. The holograph note had on it alterations and deletions in pencil and in ink corresponding to those in the settlement.

Held (1) that the trust-disposition and settlement was valid, and (2) that in construing it no effect was to be given to the alterations and deletions—these being merely deliberative and not expressing the final intention of the testator.

Adam Currie died on 8th February 1904 leaving a holograph trust-disposition and settlement dated 27th October 1903. He was never married, and his death occurred suddenly when he was away from home on a visit. The said trust-disposition and settlement was found, along with an unsigned, uninitialed, and undated holograph note or jotting containing a list of certain names, and sums set opposite thereto, in his travelling bag, which he had with him at the time of his death.

When found, the trust-disposition and settlement had upon it certain deletions and alterations in pencil. The holograph note or jotting, which contained a recapitulation of the legacies contained in the settlement, also had upon it alterations and deletions, both in pencil and in ink, corresponding to those made on the settlement. The alterations on both documents, so far as they were in writing, were holograph of the testator, and it was presumed that the other alterations and deletions on the documents were also made by the testator.

Under the settlement as it originally stood the testator's brother William Currie was named therein as one of the trustees and as residuary legatee. William Currie predeceased the testator unmarried on 20th November 1903. The deletions and alterations on the settlement, *inter alia*, included the deletion, by scoring out in pencil, of the name of the said William Currie from among the trustees, and also the deletion of the name of William Currie as residuary legatee.

Questions arose among the parties interested in the succession as to whether the settlement of the testator was valid and effectual, and, if so, whether it ought to receive effect as it originally stood, without any alteration or deletion, or whether the alterations and deletions fell to receive effect as part of the testamentary disposition of the testator.

A special case was presented for the opinion of the Court in order that these questions might be settled. There were five parties to the special case. The contentions of the several parties appear from their respective arguments *ut infra*.

The questions of law were—"(1) Is the said trust-disposition and settlement valid and effectual? (2) If the preceding question be answered in the affirmative, do the deletions and alterations on the said trust-disposition and settlement, or any and which of them, fall to receive effect in construing the testa-

mentary writings of the deceased Adam Currie?"

Argued for the first, second, and third parties—The trust-disposition and settlement was valid and ought to be read as it originally stood before any alterations were made upon it. The pencil alterations being unsigned and unauthenticated, were merely deliberative, and did not express any completed intention of the testator—*Pattison's Trustees* v. *Edinburgh University*, November 9, 1888, 16 R. 73. The present case was distinguished from the case of *Lamont's Trustees* v. *Magistrates of Glasgow*, March 10, 1887, 14 R. 603, 24 S.L.R. 426, where the testator specially directed that any separate writings however informal should receive effect. Here there was no evidence of the testator's completed intention to alter his settlement. The holograph note or jotting referred to was not indicative of any such completed intention, and further it was not signed or authenticated, and thus could not receive effect—*Hamilton's Trustees* v. *Hamilton*, December 4, 1901, 4 F. 266, 39 S.L.R. 159.

The fifth party concurred in the argument for the first, second, and third parties.

Argued for the fourth party—The alterations and deletions showed that he did not intend the settlement to subsist as an operative will. Alternatively, the deletions and alterations on the trust-disposition and settlement ought to receive effect in construing the deed. The present case was ruled by the case of *Lamont's Trustees, supra*. The place of the notes in *Lamont's Trustees* was here supplied by the holograph note or jotting. In the case of *Pattison's Trustees, supra*, there was an ordinary probative deed, while here the trust-disposition and settlement was holograph of the testator.

[At the close of the discussion Lord Young intimated that he was not prepared to express an opinion without further consideration, and the parties thereupon agreed to accept the decision of the other three Judges.]

LORD JUSTICE-CLERK—I think this is a very clear matter on the decisions. Mr Sandeman has argued his case very fairly and frankly, and has been unable to put before us any judgment that would favour his contention. In several cases it has been distinctly decided that alterations on a signed will in order to be valid must be authenticated in some way, and here there is no authentication whatever. On the authorities it appears to me that alterations like the present made by pencil must be held to be merely deliberative, and I should have arrived at that conclusion apart from the decisions. When a man has signed his will, and is considering whether he should alter it, it is quite natural that he should draft proposed alterations in pencil. But that he should suppose that in making these pencil alterations he was indicating his final opinion I cannot conceive. At any rate I am perfectly clearly of opinion that it cannot be held that he did so. In the case of *Hamilton's Trustees* (4 F. 266), an unsigned holograph memorandum was handed by the testator to his law-agents to be put up with his settlement, and nevertheless it was held that that memorandum was not effectual as a bequest, because the Court considered that it was merely deliberative. We were referred to the case of *Lamont* (14 R. 603), but that was a very different case. In that case the truster had expressly directed his trustees to give effect to any writing, although defective in the solemnities required by law, from which they might be satisfied as to his intentions and wishes. That is an entirely different case from the present, on which its only bearing is as an illustration of the general rule that alterations of a will must, except in very special circumstances, be authenticated.

On these grounds I am of opinion that the pencil alterations here were not effectual, and therefore that the second question in the case should be answered in the negative.

LORD TRAYNER—I concur with your Lordship. It appears to me that this is a clear case ruled absolutely by authority and that there is no room for argument.

LORD MONCREIFF—I am quite of the same opinion. There are here two documents under consideration, the one being the original will of the deceased on which there are certain deletions and alterations in pencil, and the other an uninitialed holograph note or jotting also altered both in pencil and ink. I take the latter first. The manner in which the alterations have been made show the tentative or deliberative way in which the testator has made them. He writes in ink and then cancels in pencil. The question is, what effect is to be given to the jottings and to the pencil alterations? I think it is evident that the deceased changed his mind from day to day and made these alterations on the document without arriving at any fixed or settled resolution as to changing his will.

With regard to the will the alterations thereon are so faint as to be hardly visible. However, it is quite sufficient for the decision of this case that, on the authorities, alterations of this kind are not to be given effect to unless they are in some way authenticated or amount to distinct evidence of an evinced intention to alter or cancel which the law can recognise. I therefore agree with your Lordships.

The Court answered the first question of law in the affirmative and the second question in the negative.

Counsel for the First, Second, and Third Parties—D. Anderson. Agents—Lister, Shand, & Lindsay, S.S.C.

Counsel for the Fourth Party—Sandeman. Agent—F. J. Martin, W.S.

Counsel for the Fifth Party—J. A. Christie. Agent—Alexander Wylie, S.S.C.