dwelling-house; and if he can carry on a temperance hotel and only be liable at the rate of sixpence, I think that comes very near the case of this hydropathic establishment. It comes more under the category of a temperance hotel than any other; and therefore, on the whole matter, I come to the same conclusion as your Lordship.

Lord Mure—The words of section 31 are very broad. They expressly provide that any person who shall carry on in the said dwelling-house the business of an hotel-keeper, innkeeper, or coffee-house keeper, although not licensed to sell by retail intoxicating liquors, shall be assessed in the sum of sixpence per pound instead of ninepence. It extends to everyone who carries on the business of an hotel-keeper, and I confess I have come to the same conclusion as your Lordship. I do not see how it is possible to say that what is carried on in this house, according to the admitted facts of this case, is not, in part at all events, the business of an hotel-keeper. People are received and lodged there and fed, and they are charged for that a certain sum. No doubt there are certain specialties. They are said to be treated hydropathically. That is so, but the establishment is not exclusively for that—because it is admitted that people go there who are not so treated. It seems in fact to be a kind of temperance hotel, where, besides conforming to the rule of abstaining from alcoholic liquors, the guests are treated hydropathically by means of the water cure, and I cannot see how that puts the case in a different category from that of an hotel-keeper. I cannot see how that can be maintained under the words of section 31, and although there may be some rather absurd rules, as it seems to me, I do not think that they are so inconsistent with the carrying on of the business of an hotel-keeper as take the case out of the exemption in the 31st section.

Lord Shand—Throughout the discussion in this case I thought the question rather attended with difficulty and doubt, but at the same time, having heard the reasons stated by your Lordships, I do not feel that I am in a position to differ from the judgment which your Lordship proposes. If the case had been one in which the building had been exclusively devoted to the reception of the guests for medical treatment, although an incident of that treatment was that they should be boarded and reside in the house, I should certainly have been of opinion that this was not in any reasonable sense within the meaning of section 31 a carrying of on the business of an hotel-keeper, innkeeper, or coffee-house keeper. But it appears in the case that there is a very large class of persons coming there as visitors who do not want medical treatment, but who just come to a beautiful district to live for a time, as people live in hotels in the country, paying for their rooms and for their board, or for separate meals if they choose to have them. In that respect undoubtedly the establishment is substantially of the same kind as an hotel. The difficulty I have felt in the case has arisen from the two circumstances, that I do think the rules leave some power in the hands of those who are managing their business to exclude guests as in their opinion unsuitable, and in addition to that when guests are received they are put under some very remarkable restrictions which are not, I think, to be found in any hotel in this country. At the same time, I am not disposed to give undue weight to that circumstance. The broad features of the case are, as your Lordship has put it, that people are there living temporarily in a house which is practically open to the public, and they are living there as in an hotel at bed and board, paying hotel charges or what may be represented as hotel charges; and therefore, looking to the whole matter, I am not disposed to differ from the judgment which your Lordship proposes.

The Lords pronounced this interlocutor:—

"Having considered the case and heard counsel for the parties, and being of opinion that the appellants carry on in their establishment the business of an hotel-keeper within the meaning of the 31st section of the Statute 34 and 35 Vict. cap. 103, Remit to the Commissioners to reduce the assessment appealed against from £36, 7s. 6d. to £24, 5s., and decern," &c.

Counsel for Appellants—Mackintosh—Shaw. Agents—Henry & Scott, S.S.C.

Counsel for Respondents—Rutherfurd. Agent—Solicitor of Inland Revenue.

Thursday, June 16.

SECOND DIVISION.

SPECIAL CASE—SIR PETER COATS AND OTHERS.

Trust—Construction—Power of Revocation.

A. and E, sisters, executed a trust-deed in which they directed their trustees to pay out of their estate, as at the date of the death of the predeceaser, certain legacies, and give a liferent of their estate to the survivor of them during her life, with certain provisions as to residue. By a codicil they further directed their trustees to carry out the instructions of the survivor as to any change of destination of one-half of the estate, and to pay the survivor absolutely such part of one-half as she might demand in addition to the proceeds of the whole estate. In two other codicils variations and additions were made on the bequests, and all existing provisions with regard to residue were recalled and a new bequest of residue was made. A. died and was survived by E., who executed a deed of directions in which she reduced the annuities of two of her relatives and disposed of one-half of the estate to parties not named under the original trust-disposition and codicils. *Held* that the deed of directions was a valid exercise of her right under the first codicil, and that she was therefore entitled to revoke to the extent of half the annuities and the bequest of residue.

On the 18th July 1867 Alexander Boswall, flax-spinner, Leven, died intestate, leaving an estate worth £13,000 in which he was succeeded by his two sisters Agnes and Elizabeth Boswall as next-of-kin, in equal shares. On 15th October there-

after the sisters executed a trust-disposition and settlement in which they conveyed to their trustees the whole estate which should belong to them or either of them at the time of the death of the predeceaser of them, under directions to pay certain legacies, and to pay over to the survivor of them for her life the annual proceeds of their said estate. There was also a clause disposing of the residue. By a codicil of 5th December 1868 the trustees were directed to fulfil the instructions of the survivor as to any change of the destination of half of the estate, and to pay over to the survivor such part of said half as she might require or demand for her own use in addition to the annual proceeds of the whole estate. Two other codicils were subsequently executed making variations on the bequests, excluding some and including others, and further, all provisions contained in the trust-disposition and codicils thereto with regard to the residue of their estate were recalled and other bequests of residue were made. On 5th January 1871 Agnes Boswall died, survived by her sister Elizabeth, who on 21st February 1878 executed a deed of directions in which she instructed her trustees to reduce certain annuities by one-half of their amount, and further disposed *mortis causa* of one-half of the estate to certain beneficiaries who were not named under the original trust-deed and codicils thereto. Various difficulties having arisen as to the construction of the above deeds, this Special Case was presented to the Court, the trustees of the deceased ladies and beneficiaries under the deeds appearing as parties of the first part, and Mrs Campbell or Boswall and Mrs Boswall or Chaffey (whose annuities had been reduced) appearing as parties of the second part. The latter maintained that the clause of the first codicil, in virtue of which the deed of directions bore to be granted, was revoked by the provision contained in the third codicil recalling all provisions with regard to residue, and they also maintained that Elizabeth Boswall barred herself from revoking any portion of the trust-disposition and codicils by accepting under their provisions the whole income of the trust-estate. In these circumstances they argued that Elizabeth Boswall had no power by the deed of directions to reduce their respective annuities by one-half, and that she had no power to dispose *mortis causa* of one-half of the estate or any portion thereof to parties not named as beneficiaries under the original trust-deed and codicils thereto.

The question submitted to the Court was—Whether Elizabeth Boswall was entitled to revoke to the extent of one-half the annuities of the second parties hereto and the bequest of residue?

The Court were of opinion that the deed of directions was a valid exercise of the survivor's right under the first codicil, and therefore they answered the question in the affirmative.

Counsel for First Parties — Asher — Millie. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for Second Parties—D.-F. Kinnear, Q.C.—Scott. Agents—T. & W. A. M'Laren, W.S.

Thursday, June 16.

SECOND DIVISION.

[Sheriff of Perth.

KENNEDY'S TRUSTEES *v.* KENNEDY.

Bill—Acceptance—Proof—Writ or Oath.

In an action by testamentary trustees to recover the amount of a bill drawn by the truster and accepted by the defender, the Court refused to allow the defender a proof at large in support of averments to the effect that the bill having been discounted by the defender was retired by the truster on its arrival at maturity in payment of a debt due by him to the defender.

This was an appeal against the judgment of the Sheriff of Perthshire in an action at the instance of the testamentary trustees of the late Robert Kennedy, distiller, Ballechin, Strathtay, who sought to recover from the truster's nephew James Kennedy the sum of £168, 1s. 2d., the amount of a bill drawn by the trustees and accepted by his nephew, the defender. The bill sued upon was found in the repositories of the truster after his death, and this action was raised close upon the time when the sexennial prescription would apply to it.

The defender averred that the truster owed him sums of money for work done under his employment, that he was disinclined to pay these debts in cash, but that in order to discharge his liabilities in part he drew the bill in question which was accepted by the defender and discounted by him, and thereafter, when it fell due, was retired by the truster, and the debt due to the defender was thus *pro tanto* discharged; further that the bill was not intended to create a debt against the defender, and that he could not therefore be made liable for its contents.

The Sheriff-Substitute (BARCLAY) allowed a proof at large that the bill sued for was not granted for value, or imposed on the defender an obligation for the sum therein. This judgment was however recalled by the Sheriff-Principal (MACDONALD, Q.C.), who found that the defender's averment could only be proved by writ or oath of party. On appeal the Court affirmed the Sheriff's judgment and dismissed the appeal with expenses.

Counsel for Appellant—A. J. Young. Agent—Begg & Murray, Solicitors.

Counsel for Respondent — Dickson — Boyd. Agent—James F. Mackay, W.S.

Thursday, June 16.

OUTER HOUSE.

[Lord Fraser, Ordinary.

BARTHOLOMEW *v.* HOUSTON.

Husband and Wife—Jus Mariti—*Process—Diligence at instance of Married Woman.*

Where a complainer who had been incarcerated on a charge proceeding upon a decree for a sum of money falling under the *jus mariti* (said charge being at the instance of a married woman), presented a note of sus-