

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latter maintained that the clause of the first codicil, in virtue of which the deed of directions bore to be granted, was revoked by the provision contained in the third codicil recalling all provisions with regard to residue, and they also maintained that Elizabeth Boswall barred herself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-