

of such a nature as to colour, so to speak, the ordinary transactions of his life. I do not think, therefore, that it could be held that anything which was not coloured by the delusions to which he was subject was insufficiently done by him, nor can any such action be described as having been done by him while he was in a state of unsound mind. For that reason I think it cannot be held that he was incapable of disposing of his property. The question which we have to consider here, as in every such case, is one of simple fact—whether or not, according to the evidence brought forward, the testator had or had not a sound disposing mind, or was or was not capable of conceiving and executing the will which he left behind? If, on the evidence brought forward, the Court or the jury are satisfied that he was so capable, then the ground of challenge is absolutely swept away, and it matters not that on something else the testator might have shown that he was of unsound mind. That he was of unsound mind in connection with something else is not the question. The question is, Was the will well made? Was it made by anyone who knew what he was doing? Was it made when he was uninfluenced by any peculiarity in regard to the particular matter he was doing? Is there anything to be found in the will which shows that in executing it he was influenced by the peculiarity or delusions to which he was subject? Now, I think that the answer to that question must be in the negative. I conceive that it would not only be very unfortunate, but a very strange result, if this will were to be set aside in the circumstances of this case. For some years—perhaps not for many, but for some years—Major Ballantyne was capable of doing everything that any sane man would be expected to do, or which it was necessary for any man to do. He performed all his duties as an officer. He performed all his social duties and his duties to his friends and others. So far as we can see, he transacted in a perfectly satisfactory way every duty which he was called upon to perform. The manner in which he performed his duties gave no indication of any mental peculiarity whatever. He did his part just as well as any man going out and in in the world would do. Now, if we come to the conclusion on these facts that this will was not made by a man capable of disposing of his property, I should think it would be a very unreasonable one. There seems to me to be no ground for any such conclusion. It would be strange as well as unreasonable to hold that when he was doing other things so reasonably and satisfactorily he could not make a will just as well. Of course these remarks are all on the assumption that the making of the will was not influenced by the delusion which led to the suicide, and which undoubtedly coloured his later actions.

I have said this much, but I do not know that there is any reason for going further—if, indeed, there is reason for going so far—for the Lord Ordinary has given an admirable exposition of his own views both as to the law and the facts of the case, and I entirely concur with him, and in truth adopt everything he has said.

LORD RUTHERFURD CLARK—I concur.

The Court adhered.

Counsel for Pursuers—D. F. Mackintosh, Q. C.—Graham Murray. Agents—Russell & Dunlop, C. S.  
Counsel for Defenders—J. P. B. Robertson, Q. C.—Dickson. Agents—J. & F. Anderson, W. S.

Wednesday, January 6.

## FIRST DIVISION.

[Sheriff of Fife.]

DENHAM v. BETHUNE AND OTHERS.

Process—Appeal—Judicature Act 1825 (6 Geo. IV. cap. 120), sec. 40—Sheriff—Proof.

An action to interdict the defender from golfing or “putting” on a piece of ground forming part of Pilmour Links at St Andrews was raised at the instance of Lieut.-Col. Bethune and others on behalf of the St Andrews Ladies’ Golf Club, who claimed to be tenants of the ground in question, and to have enjoyed uninterrupted possession thereof for more than seven years prior to the action. The defender maintained right, as an inhabitant of St Andrews, to golf on the ground. The Sheriff allowed a proof, and the defender applied for a jury trial. The Court were of opinion that a proof ought to be taken, and remitted to one of the Sheriffs-Substitute of the district to take a proof in the cause.

Counsel for Appellant—M’Kechnie. Agents—Mitchell & Baxter, W. S.

Counsel for Respondents—Gillespie. Agents—Mackenzie & Kermack, W. S.

Wednesday, January 6.

## FIRST DIVISION.

[Sheriff of Lanarkshire.]

SELKIRK (COUPLAND’S TRUSTEE) v. COUPLAND.

Bankruptcy—Goodwill of Hotel Business—Delivery of Licence—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 29), secs. 91 and 93.

The tenant of an hotel became bankrupt, and after his sequestration obtained, with the concurrence of the trustee, a new certificate or licence. The trustee then sold the goodwill of the business. Held that the licence was an accessory of the goodwill, and that the trustee was entitled to delivery of it for behoof of the creditors.

This was an appeal of the trustee against a deliverance of the Sheriff in the process of sequestration of the estates of H. C. Coupland, hotel-keeper, Langham Hotel, Buchanan Street, Glasgow, under the Bankruptcy (Scotland) Act 1856. The question “Will you hand me the certificate of licence for the Langham Hotel?” was put to the bankrupt by the agent for the trustee, and objected to by the agent for the bankrupt “(1) on the ground that it was hypothecated